CA Intermediate

Corporate & Other Laws

BY

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- ✓ Teaches theory in most interactive manner·

Preface of Book

- ✓ Covers all SM Questions along with Past Papers, RTP's and MTP's·
- ✓ Solutions are as per ICAI New Scheme of Education and Training issued on July 1, 2023·
- ✓ Questions are bifurcated chapter-wise·
- ✓ Colourful Practice Book·
- ✓ Applicable for May 2024 and Nov 24 examination

We hope that this book serves the purpose of its readers. Valuable suggestions and constructive feedback form learners is welcome and would be gratefully acknowledge please feel free to e-mail your feedback, problems or suggestions to us on

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DEDICATED

To My Parents

for raising me to believe that anything was possible

Remember

"Success is not the destination, but the journey of dedication, resilience, and relentless pursuit of knowledge.

Keep your spirits high, and you'll conquer every challenge in your path."

Happy Learning and all the best!!

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Chapter 1 Preliminary

Que 1 **Study Material/Mtp1 Nov 2021/Mtp Nov 2020**

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid-Up Share Capital of ₹70 lakh and turnover of ₹30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
(i) Whether the MNP Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is ₹15 crore?

Ans. Relevant Provisions: Small Company: According to **Section 2(85)** of the Companies Act, 2013, **Small Company** means a company, other than a public company,

(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and

(2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under **section 8**; or

(C) a company or body corporate governed by any special Act.

Explanation: 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.

Conclusion: (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid-up share capital of ₹70 lakh and having turnover of ₹30 crore. Since only one criteria of share capital not exceeding ₹4 crores is met, but the second criteria of turnover not exceeding ₹40 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
(ii) If the turnover of the company is ₹15 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Que 2 **Study Material**

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

a.	**Directors & their relatives**	**50**
b.	**Employees**	**15**

c.	**Ex-Employees (shares were allotted when they were employees)**	**10**
d.	**5 couple holding shares jointly in the name of husband & 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.

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

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

It is **further** provided that -

(A) persons who are in the employment of the company; and

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

Fact of the Case: 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

a.	Directors & their relatives	50
b.	5 couple holding shares jointly in the name of husband & wife (5*1)	5
e.	Others	145
	Total	**200**

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

Que 3 **Mtp1 May 2021**

Kavya Ltd. has a paid-up share-capital of Rs. 80 crores. Anjali Ltd. holds a total of Rs. 50 crores of Kavya Ltd. Now, Kavya ltd. is making huge profits and wants to expand its business and is aiming at investing in Anjali Ltd. Kavya Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of Anjali Ltd.

Ans. Relevant Provisions: In terms of **section 2(87)** of the Companies Act 2013 **"subsidiary company"** or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

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

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

Explanation: Provided that nothing in this subsection shall apply to a case—

(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.

In the given question, Kavya ltd. cannot acquire the shares of Anjali Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in **section 19.**

Conclusion: Since, Kavya ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of Kavya Ltd It (Anjali Ltd.) is holding Kavya Ltd. Further, as per the provisions of **section 19** of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Que 4 **Past Paper July 2021**

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

(1) Paid-up equity share capital ₹50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of 10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account.

You are to advise on the following points explaining the provisions of the Companies Act, 2013:
(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?
Ans. Relevant Provisions: (i) According to **section 2(85)** of the Companies Act, 2013, **small company** means a company, other than a public company, having-
(A) paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Explanation: 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.
Provided that nothing in this clause shall apply to a holding company or a subsidiary company.
Also, according to **section 2(87)**, subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Conclusion: In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹10 totaling ₹50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid-up share capital (₹4 crore) and turnover (₹40 crores) is within the limit as prescribed under **section 2(87),** hence, Smart Solutions Private Limited can be categorized as a small company.

Que 5 **Past Paper Nov 2021**

Define "Small Company"
Ans: According to **section (85)** of the Companies Act, 2013, **'Small company'** means a company, other than a public company, —
(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that **nothing in this clause shall apply to**—

(A) a holding company or a subsidiary company;

(B) a company registered under **section 8;** or

(C) a company or body corporate governed by any special Act.

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

Que 6 **Mtp 2 May 2022**

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

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

(i) paid-up share capital of which does not exceed Four crores' rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed Forty crore rupees:

Explanation: Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under **section 8**; or

(C) a company or body corporate governed by any special Act;

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

Que 7 **Past Paper May 2022**

MNP Limited is a registered public company having the following:

a.	Directors & their relatives	18
b.	Employees	26
c.	Ex-Employees (shares were allotted when they were employees)	15
d.	Members holding shares jointly (7*2)	14
e.	Others	137

The Board of Directors of MNP Limited proposes to convert the company into a private limited company.
Referring to the provisions of the Companies Act, 2013, advise:
i. Whether the company can be converted into a private company?
ii. Whether the existing number of members need to be reduced for the proposed private company?
Ans: Relevant Provisions: According to **Section 2(68)** of the Companies Act, 2013, **"Private company"** means a company having prescribed minimum paid-up share capital, and which by its articles, 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 following shall not be included in the number of members -
(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.

Fact of the Case: Accordingly, total Number of members in MNP Limited are:

a.	Directors & their relatives	18
b.	Members holding shares jointly (7*2)	7
c.	Others	137
	Total	**162**

Conclusion: (i) MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since the existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.
(ii) There is no need for reduction in the number of members for the proposed private company as the existing number of members are 162 which does not exceed the maximum limit of 200.

Que 8 **Past Paper May 2022**

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine whether, D Private Limited and E Private Limited will be treated as related parties as per the provisions of the Companies Act, 2013?
Ans: According to **section 2(76)(viii)** of the Companies Act, 2013, **Related party**, with reference to a company, means anybody corporate which is -
(A) a holding, subsidiary or an associate company of such company;
(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.
However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to **section 188** to a private company, though being a related party.

Que 9 **Rtp Nov 2022**

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.

Ans: As per **section 2(40)** of the Companies Act, 2013, **Financial Statement** in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in subclause (i) to sub-clause (iv):

Exemption: As per the provision to **section 2(40),** the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.
In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company.

Que 10 **Rtp May 2023**

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.
Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹1.5 crore with 40 members and turnover of ₹18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s): -

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statements for the financial year as a part of its financial statements?

Provide your answer by analysing Sankul (P) Ltd. into the following category of companies: -

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.

Ans: Relevant Provisions: According to **section 2(10)** of the Companies Act, 2013,

Financial statement in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in subclause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analysed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to **section 2(10)** of the Companies Act, 2013:

(i) One person company – It is given that the company has 40 members and also its name does not contain the words 'OPC', so it is not a one-person company.

(ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to **section 2(85)** even though it's paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as a small company also.

(iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.

(iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a startup company and also, as per proviso to **section 2(71)** of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

Conclusion: So, Sankul (P) Ltd. shall be deemed to be a public company as it is a subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.
Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to **section 2(10)** of the Companies Act, 2013.

Que 11 **Past Paper May 2023**

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was ₹1.80 crore; and paid-up share capital was ₹80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

Ans: As per **section 2(85)** of the Companies Act, 2013, Small company means a company, other than a public company, —

(i) paid-up share capital of which does not exceed four crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under **section 8**; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of ₹1.80 crore, and paid-up share capital was ₹80 lakh. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.). Hence, the contention of the Company Secretary is correct.

Que 12 **Mtp2 Nov 2023**

The information extracted from the audited Financial Statement of Pacific Solutions Private Limited as on 31st March, 2023 is as below:

(1) Paid-up equity share capital ₹50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹2,00,00,000. It is further understood that Smart Software Limited is holding 2,00,000 equity shares, fully paidup, of Pacific Solutions Private Limited. Pacific Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2023-24. The ROC has issued a notice to Pacific Solutions Private Limited as it has failed to file the Cash Flow Statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:
(i) Whether Pacific Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
(ii) Whether Pacific Solutions Private Limited has defaulted in filing its financial statement?

Ans. (i) According to **section 2(85) of the Companies Act, 2013**, small company means a company, other than a public company, having-
(A) paid-up share capital not exceeding four crore rupees; and
(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees:
Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Smart Software Limited (a public company) holds 2,00,000 equity shares of Pacific Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹10 totalling ₹50 lakh). Hence, Pacific Solutions Private Limited is not a subsidiary of Smart Software Limited and hence it is a private company and not a deemed public company.

Further, the paid-up share capital (₹50 lakh) and turnover (₹2 crore) is within the limit as prescribed under section 2(85), hence, Pacific Solutions Private Limited can be categorised as a small company.

(ii) According to **section 2 (40), Financial statement** in relation to a company, includes—
(a) a balance sheet as at the end of the financial year;
(b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(c) cash flow statement for the financial year;
(d) a statement of changes in equity, if applicable; and

(e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):
Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Pacific Solutions Private Limited being a small company is exempted from filing a cash flow statement as a part of its financial statements. Thus, Pacific Solutions Private Limited has not defaulted in filing its financial statements with Registrar of Companies.

Chapter 2 Incorporation of Company Matters and Thereto

Que 1 **Study Material**

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

Ans: 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 an 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.

Que 2 **Study Material, Mtp 1 May 2020**

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as a limited liability company to impart classroom teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purposes 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.

Ans: 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 license, 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.

Que 3 **Study Material**

Alfa school started imparting education on 1 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?
Ans: **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 a 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 license of the company where the company contravenes any of the requirements or the conditions of this

sections subject to which a license 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 license and opportunity to be heard in the matter.

(ii) Where a license 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 license 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.

Que 4 **Study material**

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.

Ans: 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 a 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, the registered office is shifted from one ROC to another, therefore the company will have to seek approval of the regional director.

Que 5 **Study material**

Anushka security equipment 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 the government has reduced customs duty on import of CCTV cameras. Hence imported cameras from China are cheaper than its own manufacturing. Now it wants to utilize the remaining amount in the 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 advice will you give to the company? If yes, then give steps to be followed.

Ans: 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 a copy of the 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 a 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.

Que 6 **Study Material**

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?

Ans: **Alteration of Objects Clause of Memorandum**

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under **section 13(1)** of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum, In the case of alteration to the objects clause, **section 13(6)** requires the filing of the Special Resolution by the company with the Registrar. **Section 13 (9)** states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. **Section 13 (10)** further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Que 7 **Study Material, Past Paper Jan 2021**

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

Ans: 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.

Que 8 **Study Material**

Manglu and friends registered a company in the name of Taxmann advisory private limited. Taxmann is a registered trademark. After 5 years when the owner of the 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 the trademark? Can the owner of a registered trademark request the company and then change its name at its discretion?

Ans: 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 if the owner of that trademark applies 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, the company and defaulting officer are punishable.

In the given case, the owner of a registered trade-mark is filing an objection after 5 years of registration of a 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**, a company can anytime change its name by passing a special resolution and taking approval of the Central Government. Therefore, if the owner of a registered trademark requests the company for change of its name and the

company accepts the same then it can change its name voluntarily by following the provisions of **section 13.**

Que 9 **Study Material**

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.

Ans: 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.

Que 10 **Study Material**

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 shareholders of H made a charitable trust and donated his 10% shares in H and 50 crores to the trust. He appointed S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold share in its holding company in this way?

OR

Mtp 1 May 2023

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

Ans: 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, the 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 the holding company.
In the given case, one of the shareholders of the holding company has transferred his shares in the holding company to a trust where the shares will be held by the subsidiary company. It means now the 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.

Que 11 **Study Material, Mtp 1 May 2021, Mtp 2 Nov 2021, Mtp 1 Nov 2022**

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

Ans: 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 cases where securities are held with a depository, the records of the beneficial ownership may be served by such depository to 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.

Que 12 **Study Material**

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:
(1) Whether the contention of Ashok is valid.

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

Ans: 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 affected.

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

(i) The contention of Ashok shall be tenable, for the reason that the notice was not properly served.

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

Que 13 **Study Material**

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 the company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firoz Bhai Mr. Parag signed a partnership deed with Firozbhai on behalf of the company because he has an implied authority. Later in a dispute the company refused to accept liability as a partner. Can the company deny its liability as a partner?

Ans: As per **section 22** of the Companies Act, 2013 a company may authorize any person as its attorney to execute deeds on its behalf in any place either in or outside India. But a 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 the company has not neither given any written authority nor affixed the 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, the company can deny its liability as a partner.

Que 14 **Mtp 1 Nov 2020**

New a One Person company (OPC) was incorporated during the year 2015-16 with an authorised capital of Rs. 45 lakhs (4.5 lakhs shares of Rs. 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was Rs. 2 crores and Rs. 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether New (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

(i) If promoter increases the paid-up capital of the company by Rs. 10 lakhs during 2017-18

(ii) If turnover of the company during 2017-18 was Rs. 3 crores.

Ans: As per Rule 3 of the Companies (Incorporation) Rules, 2014, no One Person Company (OPC) can convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, **except** where the paid-up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, **Section 18** of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Based on the above provisions, our advice in the given circumstances will be as under:

(i) The promoter increases the paid-up capital of the company by ₹10.00 lakh during 2016-2017, i.e., to ₹55 lakhs (45+10= 55). In this situation, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

(ii) Where the turnover of XYZ (OPC) during 2016-17 was ₹3.00 crore, there will be no change in the answer. In this situation also, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

Que 15 **Mtp 1 May 2020**

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution

passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

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

Thus,

I. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

II. If not for the doctrine, the company could escape creditors by denying the authority

of officials to act on its behalf.

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

Mr. Tridev. Thus, the company is bound to pay the loan.

Que 16 **Mtp 2 May 2021**

Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director. Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013.

Ans: As per the provisions of **sub-section (3) of section 5** of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution are met or complied with. Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.

Manner of inclusion of the entrenchment provision: As per the provisions of sub-**section (4) of section 5** of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Notice to the Registrar of the entrenchment provision: As per the provisions of sub-**section (4) of section 5** of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed. In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Que 17 **Mtp 2 May 2021**

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013.

Ans: As per **Section 10A** of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless: (i) A declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; **and**

(ii) The company has filed with the Registrar a verification of it registered office as provided in **sub-section (2) of section 12.**

Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company

Que 18 **Mtp 2 May 2021, Mtp 2 Nov 2021, Mtp 2 May 2023, Past Paper May 2022**

Does an explanation added to a section widen the ambit of a section?

Ans: Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation.

But the explanation should not be construed to widen the ambit of the section.

Que 19 **Mtp 1 Nov 2021, Mtp 1 Nov 2022**

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain.

Ans: 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.

Que 20 **Mtp 2 Nov 2021**

What is the minimum number of persons required to form a private company and a public company. Explain the consequences when the number of members falls below the minimum prescribed limit.

Ans:(1) According to **section 3** of the Companies Act, 2013, a company may be formed for any lawful purpose by—

(a) 7 or more persons, where the company to be formed is to be a public company;

(b) 2 or more persons, where the company to be formed is to be a private company; or

By subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to section 3A,

- If at any time the number of members of a company is reduced,
  - in the case of a public company, below 7,
  - in the case of a private company, below 2,

And the company carries on business for more than six months while the number

of members is so reduced, then

- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant (aware) of the fact that it is carrying on business with less than seven members or two members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after six months) and may be severally sued therefore.

Que 21 **Mtp 1 May 2022, Mtp 2 Nov 2022**

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

(ii) Whether the company may be wound up?

(iii) Whether the Gully Gilli Danda Club can be merged with Stick Private Limited, a company engaged in the business of networking?

OR

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

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

(ii) Whether the Company may be wound up?

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

Ans:(i) According to **section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of **section 8** subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to Gully Gilli Danda Club as **section 8** company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under **section 8.**

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

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

Que 22 **Mtp 2 May 2022**

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

Ans: 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 identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.
As per **section 13**, company can anytime change its name by passing a special resolution and taking approval of Central Government.
Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of **section 13**.

Que 23 **Mtp 2 Nov 2022**

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

OR

Past Paper Jan 2021

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

Ans: Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So, entrenchment means making something more protective. **Section 5** of the Companies Act, 2013 describes the provisions relating to entrenchment.

Articles may contain provisions for entrenchment [Section 5(3)]: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company

in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision [Section 5(5)]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Que 24 **Mtp 1 May 2023, Past Paper July 2021**

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

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

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

(i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e., Registrar of Mumbai. As per **Section 12 (5)** of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

(ii) Section 12 talks about shifting of registered office only, in the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.

[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROCs in the same State.]

In line **section 12 (5)** of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by regional director of such change.

(iii) In the third case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.

Que 25 **Rtp Nov 2020**

Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.

Ans: According to **Section 8(1)** of the Companies Act, 2013, the companies licensed 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 Bio safe Herbals, a company licensed under **Section 8** of the Companies Act, 2013, which is planning to declare dividend, is not in accordance to the provisions of the Companies Act, 2013.

Que 26 **Rtp May 2021**

Nadeem incorporated a "One Person Company" making his sister Nisha as the nominee. Nisha is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

(A) If Nisha is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(B) If Nisha maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Ans: As per Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 following the answers:

(A) Yes, it is mandatory for Nisha to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(B) Yes, Nisha can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

As per the latest amendments to Companies Act:

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

(a) shall be eligible to incorporate One Person Company (OPC);

(b) shall be a nominee for the sole member of One Person Company (OPC).

For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year.

Que 27 **Rtp Nov 2021**

AB Limited issued equity shares of ₹1,00,000 (10000 shares of ₹10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:

(i) Whether AB Limited is a subsidiary of RS Limited?

(ii) Whether AB Limited can hold shares of RS Limited?

(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?

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

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

(i)controls the composition of the Board of Directors; or

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

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

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

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

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.
Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

(i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e., on 01.08.2020), according to the exception to **section 19.**

(iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

Que 28 **Rtp May 2022**

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013.

Ans: According to **section 2(69)** of the Companies Act, 2013, Promoter means a person:
(a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
(c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.
As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating

to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

Que 29 **Rtp Nov 2022**

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

Ans: As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise- (a) shall be eligible to incorporate a One Person Company (OPC);
(b) shall be a nominee for the sole member of a One Person Company (OPC).
By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

Que 30 **Rtp May 2023**

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

Ans: 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 requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of **section 13**.

Que 31 **Past Paper Nov 2020**

Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013? Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

(i)Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.

(ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.

(iii)Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

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

The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent in such manner as may be prescribed.

Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

(i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.
(ii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise, shall be a nominee or the sole member of a One Person Company. As per the latest provisions, the term "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year. Here Ms. Devaki is an Indian Citizen (as well as resident in India during the immediately preceding financial year in India). So, she is eligible for being nominated as nominee of the OPC.

(iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

Que 32 **Past Paper July 2021**

State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.
(i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
(ii) Whether the Company may be wound up?
(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?
Ans: (i) According to **Section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of **section 8** subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to State Cricket Club as **section 8** company, as the affairs of the company are conducted fraudulently and dividend

was paid to its members which is in contravention to the conditions given under **section 8.**

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

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

Que 33 **Past Paper Nov 2021**

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

(A) Who is eligible to act as a member of OPC?

(B) Whether "Ekta Readymade Garments (OPC) Private Ltd." can convert into any other kind of company as on 1st December 2020?

(C) If the company increases its paid-up share capital by ` 30 lakhs in August, 2019, can it be converted in any other kind of company immediately?

Ans: (A) The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. Only a natural person who is an Indian citizen whether resident in India or otherwise- (a) shall be eligible to incorporate One Person Company (OPC); (b) shall be a nominee for the sole member of One Person Company (OPC).

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

relevant period exceeds two crore rupees.1 Ekta Readymade Garments Ltd. was incorporated on 1st April, 2018.

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

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

Que 34 **Past Paper May 2022**

(i)ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

(ii) Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seek your advice regarding the effect of registration of the company on the company itself and on its members.

Ans: (i) According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means anybody corporate which is –

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to **section 188** to a private company, though being a related party.

(ii) As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company:

(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.

(2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.

(3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Que 35 **Mtp2 Nov 2023**

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

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

(ii) Whether the Company may be wound up?

(iii) Whether the Country Pool Club can be merged with Cool Net Private Limited, a company engaged in the business of networking?

Ans: (i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to Country Pool Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

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

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

Chapter 3 Prospectus and Allotment of Securities

Que 1 **Study Material**

Company's prospectus was given to a solicitor of the company and he forwarded it to one of his clients despite it being marked strictly private, who applied for shares based upon the same. Later filed suit for damages. Will this communication amount to an issue to the public and whether the provisions of the Act are attracted?

Ans- No, this did not amount to an issue to the public and accordingly the provisions of the Act relating to liability for omissions, etc. not attracted here. **(Case law Nash Vs Lynde).**

Que 2 **Study Material**

In the case of Super-Fix-it Limited, some of the members of a company offer part of their holding of shares to the public (in consultation with board of directors), wherein the company took all actions on their behalf for carrying out the transaction.

Company incurs the expense of 3.2 lakh for carrying out such transactions, can company recover the amount so incurred in full from such members?

Ans- Yes, members who offer whole or part of their holding of shares to the public, in consultation with board of directors, shall authorize the company to take all actions on their behalf for carrying out the transaction, and bound to reimburse the company for all expenses made by it on this matter **[section 28(3)]**.

Que 3 **Study Material**

All the statements contained in a prospectus issued by a company were literally true. It was also stated in the prospectus that the company had paid dividends for a number of years but there was no disclosure regarding the fact that the dividends were paid out of realized capital profits and not out of trading profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars.

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

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

Que 4 **Study Material**

A prospectus issued by a company contained certain mis-statements. On becoming aware of the fact regarding mis-statements in the prospectus, one of the experts Anilesh who had earlier given his consent, forthwith gave a reasonable public notice stating that the prospectus was issued without his knowledge and consent. Is it possible for Anilesh to escape liability for mis-statement in the prospectus?

Ans- **Section 35 (2)** of the Companies Act, 2013 states that no person shall be liable under **Sub-section (1)** if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent. The case of Anilesh is covered under the above exception provided by **Sub-section (2)** and therefore, he will escape liability for mis-statement in the prospectus.

Que 5 **Study Material**

An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under the circumstances?

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

Certain situations when a director will not incur any liability for mis-statements in a prospectus are covered under exceptions provided by **Section 35 (2)** but no such exception specifies that relying on the statements prepared by the promoters of the company is a valid ground for a director to escape liability for mis-statement.

Que 6 **Study Material**

The Board of Directors of a company decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

Ans- Under **Rule 13** of the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in

case of shares, five percent (5%) of the price at which the shares are issued or a rate authorized by the articles, whichever is less.
The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both. Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorized by the Articles.

Que 7 **Study Material**

Ruhi and her brother Sohit were offered jointly 1000 equity shares of 100 each by Soumya Software Private Limited under the issue of shares on private placement basis. Offer-cum-application letter addressed to both containing their names as "Ms. Ruhi, Mr. Sohit". From whose account the company is required to take subscription money for 1000 equity shares?

Ans- According to the first Proviso of **Rule 14 (5)** of the Companies (Prospectus and Allotment of Securities) Rules, 2014, monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. Since Ruhi's name appears first in the application, therefore the subscription of 1,00,000 shall be payable by her from her account. It is obligatory for the company to ensure that the money is paid from her bank account and not from the bank account of her brother Sohit.

Que 8 **Study Material**

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

Ans: Irregular allotment: The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfilment of those requirements.
In broad terms, an allotment of shares is deemed to be irregular when it has been made by a company in violation of **Sections 23, 26, 39 or 40**. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public 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.

Que 9 **Study Material**

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.

Ans: 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 time 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 mobile 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 on 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 subsequent 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.

Que 10 **Study Material/ RTP Nov 2020/ RTP May 2022**

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.

Ans: 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 subsection, 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.

Que 11 **Study Material**

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.

Ans: 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.

Que 12 Study Material/ Mtp1 May 2021/ Mtp2 Nov 2022/ Past Paper Dec 2021

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, the 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 offer? 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 debentures is given after allotment of equity shares but within the same financial year?

Ans: 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 the 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 offers 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 a 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 an 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 with 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 the 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 an 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.

Que 13 **Study Material**

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.

Ans: 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 an 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 on 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.

Que 14 **Study Material**

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

The Articles of Association of X Limited contained 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."

Ans: 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 authorized by the 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 (ie. Deal & Co.), is invalid.

Que 15 **MTP1 May 2021**

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

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

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

(a) No criminal liability under **section 34** shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

(b) No civil liability for any mis statement under **section 35** shall apply to a person if he proves that:

(1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; **or**

(2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **sub-section (5)** of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

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

Que 16 **Past Paper Jan 2021/ Mtp2 Nov 2023**

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

(i) A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. The aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme.

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

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

Ans- As per the provisions of **sub-section (2) of section 42** of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board *(herein referred to as "identified persons")*,

whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.

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

According to **Rule 14 (2)** of the Companies (Prospectus and Allotment of Securities)

Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

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

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

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

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

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

Que 17 **MTP1 Nov 2021**

What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus?

Ans-Meaning of Abridged Prospectus: - According to **Section 2(1)** of the Companies Act, 2013, an abridged prospectus means a memorandum containing

such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Circumstances under which the abridged prospectus need not accompany the application forms: **Section 33 (1)** of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to **section 33 (1)** an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

(i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; **or**

(ii) Where the securities are not offered to the public.

Penalties in case of contravention of provision: a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Que 18 **Past Paper Nov 2021**

RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allotee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

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

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

In the given question, the non-disclosure of the fact that dividends were paid out of capital profits are a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under

exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.
Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Que 19 **Mtp2 May 2021**

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

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

Minimum subscription [Section 39 (1)]
No Allotment shall be made of any securities of a company offered to the public for subscription; **unless;** -
(i) the amount stated in the prospectus as the minimum amount has been subscribed; **and**
(ii) the sums payable on application for such amount has been paid to and received by the company-
Application money: Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Further **section 39 (3)** provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.

In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

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

Que 20 **RTP May 2021**

Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate

to the company about necessary contents of its memorandum to be specified therein.

Ans- According to **Section 30**, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:

(i) the objects,
(ii) the liability of members and the amount of share capital of the company,
(iii) the names of the signatories to the memorandum,
(iv) the number of shares subscribed for by the signatories, and
(v) the capital structure of the company.

Que 21 **Mtp1 May 2022/ Past Paper July 2021**

ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

Ans- Information Memorandum together with Shelf Prospectus is deemed Prospectus. The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. **[Explanation to Section 31].**

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

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, **and**

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required for issue of securities. **[Sub-section (1)]**

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

Que 22 **Past Paper May 2022**

The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of

the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Ans-As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. [**Explanation to Section 32**]

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.

The company may follow the provisions of **section 32** in issuing a red herring prospectus:

(1) Red Herring Prospectus is issued prior to issue of Prospectus: A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) Filing with the registrar: A company proposing to issue a red herring prospectus

shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) Obligations under Red Herring Prospectus vis-à-vis Prospectus: A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Que 23 **Past Paper Nov 2022**

Aarna Ltd. was dealing in export of cotton fabric to specified foreign countries. The company was willing to purchase cotton fields in Punjab State. The prospectus issued by the company contained some important extracts of the expert report. The report was found untrue. Mr. Nick purchased the shares of Aarna Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Would Mr. Nick have any remedy against the company? State the circumstances where an expert is not liable under the Companies Act, 2013.

Ans- (i) Whether Mr. Nick has any Remedy?

Under **Section 35 (1)** of the Companies Act 2013 (the Act), where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.
In the present case, Mr. Nick purchased the shares of Aarna Limited on the basis of the expert's report published in the prospectus. Mr. Nick can claim compensation for any loss or damage that he might have sustained from the purchase of shares.
Since, Mr. Nick did not suffer any loss due to purchase of such shares, he cannot claim any compensation for any loss or damage.
Further, **Section 35** of the Act also mentions punishment prescribed by **Section 36** of the Act i.e., punishment for fraud under **Section 447**.

(ii) Circumstances when an expert is not liable:

An expert will not be liable for any mis-statement in a prospectus under the following situations:

(i) Under Section 26 (5) of the Act: It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, **or**

(ii) Under Section 35 (2) (b) of the Act: It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under Section 35 (2) (c) of the Act: It states that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **Section 26(5)** of the Act to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Que 24 **Mtp2 May 2023/ Past Paper Jan 2021/ Mtp1 Nov 2023**

Bheem Ltd. issued 1,00,000 equity shares of ₹100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹15,00,000 required to be received on application of shares and

share application money shall be payable at ₹20 per share. The prospectus further reveals that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Bheem Ltd. received an amount of ₹20,00,000 on share application.

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

Ans- As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in **section 39** of the Companies Act, 2013. According to **section 39(1),** no allotment of any securities of a company offered to the public for subscription shall be made **unless-**

- the amount stated in the prospectus as the minimum amount has been subscribed, and
- the sums payable on application for the amount so stated have been paid to and received by the company by cheque or another instrument.

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

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

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

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

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

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the

public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of **section 40**. Therefore, this shall be deemed to be irregular allotment of shares. Consequently, Bheem Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

Que 25 **Past Paper May 2022**

MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generies with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology department. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

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

In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, **section 35** also mentions punishment prescribed by section 36 i.e., punishment for fraud under **section 447**.

Circumstances when an expert is not liable: An expert will not be liable for any misstatement in a prospectus under the following situations:

(i) Under **section 26 (5):** It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or

(ii) Under **section 35 (2) (b):** It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under **section 35 (2) (c):** As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **section 26(5)** to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Chapter 4 Share Capital & Debentures

Que 1 **Study material**

Can a company have only preference share capital?

Answer – It may be noted that while a company may have only equity share capital but it cannot have only preference share capital. This is because preference shareholders have certain 'preferential rights' over the equity shareholders. Thus, in the absence of equity share capital, there cannot be preferential share capital.

Que 2 **Study material**

Where a shareholder paid the first two calls after a great delay and neglected to pay the third call and the directors, being annoyed, and called upon him to pay the whole amount due. In your opinion is call valid?

Answer - A call can't be made on some of the members only, unless they constitute a separate class of shareholders, hence such a call shall be invalid.

Que 3 **Study material**

Moon Star Machineries Limited is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member even if no part of that amount has been called up by it. 'Anand', a shareholder, deposits in advance the remaining amount due on his partly paid-up shares without any calls being made by the company. Advise the company about the validity of accepting money in advance.

Answer - In view of the authorisation given by the Articles, Moon Star Machineries Limited is permitted to accept the advance amount received on unpaid calls from Anand. In other words, this is a valid transaction.

Que 4 **Study material**

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. provided 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.

Ans: 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.

Que 5 **Study material**

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.

Ans: 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.

Que 6 **Study material**

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?

Ans: 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.

Que 7 **Study Material, Past Paper May 2022**

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?

Ans: 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.

Que 8 **Study Material**

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.

Ans: 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.**

Que 9 **Study Material**

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.

Ans: 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 paid-up 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.

Que 10 **Study Material**

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

Ans: 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.

Que 11 **Study Material, Rtp Nov 2022, Past Paper Dec 2021**

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 number of debentures issued by the company?

Ans: 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 promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
(vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vii) is a relative of any promoter or any person who is in the employment of the company as 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

Que 12 **Study Material, Mtp 2 May 2023, Rtp May 2021**

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.
Ans: 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.

Que 13 **Study Material**

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.

Ans: 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.

Que 14 **Rtp Nov 2021**

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

Ans: According to **Section 46(1)** of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly, any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller. Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.).

In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name.

However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers. However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

Que 15 **Mtp 2 May 2021**

Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

Ans: Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares.

However, **section 67 (3)** of the Companies Act, 2013, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership.

Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

Purchasing in order to redemption its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of **section 68** of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and up to specified limits and only after following the prescribed procedure.

Que 16 **Mtp 1 Nov 2021**

Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2021:

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

Directors of the company seeks your advice in following cases:

(i) Whether company can give bonus shares in the ratio of 1:3?

(ii) What if company decide to give bonus shares in the ratio of 1:2?

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account:

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

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

Accordingly:

(i) For issue of 1:3 bonus shares, there will be a requirement of 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of 12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.

(ii) In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of 15 lakhs (i.e., $\frac{1}{2}$ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of 15 Lakhs is exceeding the available eligible amount of 12 lakhs.

Que 17 **Mtp 2 Nov 2021, Rtp Nov 2021**

Kat Pvt. Ltd., is an unlisted company incorporated on 2.6.2012. The company have a share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees on 5.7.2021. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid-up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provisions for issue of sweat equity shares by a start-up company, with reference to the provisions of the Companies Act, 2013? Explain.

OR

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

Ans: Sweat Equity Shares are governed by **section 54** of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014.

According to section 54, the company can issue sweat equity shares to its director and permanent employees of the company.

According to proviso to rule 8 (4), a startup company, [as defined in notification number G.S.R.127(E), dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India], may issue sweat equity share not exceeding 50% of its paid-up share capital up to 10 years from the date of its in incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non- transferable for a period of three years from the date

of allotment. Hence in the above case, the company can issue sweat equity shares by passing special resolution at its general meeting.
The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid-up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment (as not five years, as given in the question)

Que 18 **Mtp 2 Nov 2021**

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

Ans: 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. Mana 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.

Que 19 **Mtp 1 May 2022, Past Paper July 2021**

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

the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

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

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

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

Que 20 **Mtp 1 Nov 2022, Past Paper Dec 2021**

Following is the extract of the Balance sheet ABC Ltd. as on 31st March, 2022:

Particulars		**Amount (₹)**
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000,12% Preference Shares of 10 each	1,00,000	
1,00,000 equity shares of 10 each	10,00,000	
11,00,000		
Issued & Subscribed Capital:		
8000,12% Preference Shares of 10 each fully paid up		
80,000		
90,000 equity shares of 10 each, 8 paid up	7,20,000	
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		
Long-term borrowings:		

Secured Loan: 12% partly convertible Debenture @ 100 each	5,00,000

On 1st April, 2022 the company has made final call at 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2022. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders. Answer the following questions according to the Companies Act, 2013, in above case:

(A) Which of the above-mentioned sources can be used by company to issue bonus shares?

(B) Calculate the amount to be capitalized from free reserves to issue bonus shares?

Ans: (a) Issue of Bonus Shares

According to **section 63 (1)** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

Section 63 (2) provides that the company can issue bonus shares only when the partly paid -up shares, if any outstanding on the date of allotment, are made fully paid-up. **(A) The following sources can be used by the company to issue bonus shares:**

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

Particular	Amount
Amount of bonus shares to be issued	90,000 shares x $\frac{1}{4}$ = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	22,500 x 10 per share =2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+25,000+2,00,000 =3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	2,25,000

Que 21 **Mtp 2 Nov 2022**

Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of 10 each. The BOD has appointed an underwriter for this

issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

(1) Decide whether the advice of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act, 2013.

(2) What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Ans: According to **section 53** of the Companies Act, 2013, except as provided in section 54, a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

According to **section 54** of the Companies Act, 2013, notwithstanding anything contained in **section 53**, a company may issue sweat equity shares of a class of shares already issued, if the prescribed conditions are fulfilled.

(1) As per facts of the question and provisions of **section 53** and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advice of the underwriter to issue shares at a discount is not valid.

(2) In terms of provisions of **section 54** of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

Que 22 **Mtp 1 May 2023**

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

Ans: 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 the valuation report of a registered valuer (*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.

Que 23 **Mtp 1 May 2023**

State the purposes for which the securities premium account can be utilized?

Ans: Application of Securities Premium Account: As per the provisions of **sub-section (2) of section 52** of the Companies Act, 2013, the securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under **section 68.**

Que 24 **Past Paper Nov 2020**

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

(i) Reduction in Authorized Capital from 5 crore divided into 50 Lakhs equity shares of 10 each to 4 crores divided into 50 Lakhs equity shares of 8 each.

(ii) Conversion of 30 Lakhs partly paid-up equity shares of 8 each to fully paid-up equity shares of 8 each there by relieving the shareholders from making further payment of 2 per share.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

Ans: (i)Procedure for reduction of share capital-

In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under **section 66** of the Companies Act, 2013 which deals with the Reduction of share capital.

Procedure:

(1) Reduction of share capital by special resolution: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,-

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Issue of Notice from the Tribunal: The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.

(3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

(4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

(5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(ii) Alteration of Share Capital: SSP Limited proposes to alter its share capital. The Present authorized share capital 5 Crore will be altered to 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum.

A limited company having a share capital may, if so, authorized by its articles, alter its memorandum in its general meeting to –

1. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.

2. A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum **[Section 64 of the Companies Act, 2013].**

The Company has to follow the above procedures to alter its authorized share capital.

Que 25 **Past Paper Nov 2020**

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ` 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course. Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Ans: As per the provisions of **sub-section (1) of section 53 read with section 54** of the Companies Act, 2013, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares. As per the provisions of **sub-section (2)** of section 53 of the Companies Act, 2013, any share issued by a company at a discount shall be void.

In terms of the above provisions, issue of shares by ABC Limited at a discount of 1 per share is not valid.

In case the above shares have been issued to employees as Sweat equity shares, then the issue of shares at discount is valid. **[Section 54(1) of the Companies Act, 2013.]**

Que 26 **Past Paper Jan 2021**

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized?

Ans: When a company issue shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issue shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount.

However, as per the provisions of **section 53** of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under **section 54** of the Companies Act, 2013.

As per the provisions of **sub-section (1) of section 52** of the Companies Act, 2013, where a company issue 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".

Application of Securities Premium Account: As per the provisions of **sub-section (2)** of section 52 of the Companies Act, 2013, the securities premium account may be applied by the company—
(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
(e) for the purchase of its own shares or other securities under **section 68.**

Que 27 **Past Paper Jan 2021**

London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:
(A) Whether company's proposal is in order?
(B) Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?
Ans: According to the provisions of **section 68 (2)** of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under **subsection (1),** unless—
(a) the buy-back is authorised by its articles;
(b) a special resolution has been passed at a general meeting of the company authorising the buy-back: Provided that nothing contained in this clause shall apply to a case where— (i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
(c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:
Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.
In the instant case, London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.
(A) the Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.

(B) if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our answer will not change. This proposal of the company will also be not in order.

Que 28 **Past Paper Jan 2021**

The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of 3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of 40,000 per month, to buy 500 partly paid-Up equity shares of 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.

Ans: As per **section 67(2)** of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance 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.

As per the provisions of **section 67(3)(c)** of the Companies Act, 2013, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company).
- Therefore, this condition has not been fulfilled;
2. The amount does not exceed their salary or wages for a period of six months.
- This condition has not been fulfilled.
3. The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd., which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.

Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore, we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

Que 29 **Past Paper May 2022**

SKS Limited issued 8% 1,50,000; Redeemable Preference Shares of 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?

Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Ans: 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 the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

Que 30 **Past Paper May 2022**

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

Ans: (i) Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e., at 3.00 PM. Hence, the meeting was validly called.

(ii) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.

Effect of non-disclosure: As per **section 102(4),** if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him. If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty **[Section 102(5)].**

Que 31 **Past Paper Nov 2022**

The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum number of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

Authorised Share Capital:	**₹**
1,00,000 Nos. of Equity Shares of 100 each	1,00,00,000
Subscribed and Paid-up Share Capital:	
40,000 Nos. of Equity Shares of 100 each, fully paid-up.	40,00,000
Share Premium Reserve	50,00,000

General Reserve	30,00,000
Balance in Profit and Loss Account	20,00,000
Capital Reserve (profit on sale of Fixed Assets)	30,00,000
8% Non-Convertible Debentures	30,00,000
9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period	20,00,000
Short-term Cash Credit Loan from XYZ Bank Limited (On hypothecation of stock and receivables of the Company, repayable on demand)	50,00,000

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:
(i) The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?
(ii) What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?

Ans: The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with **Section 180(1)(c)** of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	**Amount**
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	**1,40,00,000**

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	**50,00,00**

Here, Short- term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = ₹90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹90,00,000.

(ii) Issue of Debentures with an Option to Convert into Shares: According to **Section 71(1) of the Companies Act, 2013** a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

Que 32 **Past Paper May 2022**

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to ₹10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

Ans: According to **Section 61(1)(d)** of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if

any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in **Section 61 (1),** give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e., from 10 Lakh to 1 crore).

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ₹100 each) can reduce the face value of each share to ` 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to ₹10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

How the company can alter its Share Capital

The company has to alter its memorandum in its general meeting as per the procedure contained in **Section 13** of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Que 33 **Past Paper May 2023**

Innovative Ltd., a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	**INR (Crore)**
Authorised Share Capital	**10.00**
100,00,000 Equity Shares of 10 each Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of 10 each	**5.00**
Share Premium	**1.00**
General Reserve	**3.52**
Profit & Loss Account	**1.58**

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price 25 per share with a consideration of 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate?
(ii) Whether lock-in period was justifiable?

Ans: Issue of Sweat Equity Shares: As per **section 53,** a company shall not issue shares at a discount, except as provided in **section 54.**

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to **section 54 (1),** a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely-

(a) the issue is authorised by a special resolution passed by the company;
(b) 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.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Que 34 **Past Paper May 2023**

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50,00,000 equity shares of 10 each) 5,00,000

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of 10 each, fully paid-up) 2,00,00,000
(iii) Free Reserves 50,00,000
(iv) Securities premium account 25,00,000
(v) Capital Redemption Reserve 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue.

Ans: Conditions for bonus shares

According to **section 63(1)** of the Companies Act, 2013, a company may issue fully paidup 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 [Section 63(2)]: 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.

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of 1,00,00,000 (i.e. half of 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. 1,00,00,000 (50,00,000+ 25,00,000+ 25,00,000). 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.

Chapter 5 Acceptance of Deposits by Companies

Que 1 **Study Material/ Mtp1 May 2023**

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

Ans: 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.

Que 2 **Study Material**

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?

Ans: 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 percent 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 las referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.**e. in Form DPT-3**).

Que 3 **Study Material**

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

Ans: 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.

Que 4 **Study Material/ Past Paper May 2022**

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

Ans: 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)**, a 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.

Que 5 **Study Material**

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 Zorr Technology Private Limited a start-up company, requested his close friend Bitesh to lend to the company 30.00 lakh in a single tranche by way of a convertible nate repayable within a period six years from the date of in issue Advise whether it is a deposit or not.
(ii) Polestar Traders Limited received a loan of 3000 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 to the company or Swat, 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 Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?
Ans: (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 Rs 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 duel 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 are 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 the 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 the public.

However, **Proviso to Section 73 (1)** states that nothing in this subsection 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.

Que 6 **Study Material**

ABC Limited having a net worth of 120 crore wants to accept deposits 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 deposits from the members in case their company falls within the category of an 'eligible company'.

Ans: 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 has 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

Que 7 Study Material/ Mtp1 Nov 2021/ Mtp2 May 2022/ Mtp1 Nov 2022

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 non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.
(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.
(iv) Textile Traders Limited received a loan of ₹30,00,000 from R who is one of its directors

Ans: 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.

(iv) In terms of **Rule 2 (1)(c)(viii)**, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, ₹30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

Que 8 Study Material/ Mtp2 May 2021/ Rtp Nov 2020/ Rtp May 2023

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.

(iii) Wire Electricals Limited having paid-up capital of ₹1.00 crore availed a term loan of ₹10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

Ans: (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'.

(iii) 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. Taar that the term loan of ₹10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

Que 9 **Study Material**

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 utilize 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.

Ans: (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 utilize 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

Que 10 **Study Material**

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?

Ans: According to the first provision 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.

Que 11 **Past Paper Nov 2020**

Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital	**₹70 Crores**
Securities Premium	**₹20 Crores**
Free Reserves	**₹20 Crores**
Long-term borrowings	**₹50 Crores**

The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.
(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.
(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.
Ans- According to **Rule 2(1)(e)** of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in **sub-section (1) of section 76** of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees

and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of **sub-section (1) of section 180**, may accept deposits by means of an ordinary resolution.

Net worth of Viki Limited as per **section 2(57)** of the Companies Act, 2013 can be calculated as follows:

Paid up share capital:	₹70 crores
Free Reserves:	₹20 crores
Securities premium:	₹20 crores
Total:	**₹110 crores**

Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹100 crores.

Tenure for which Deposits can be Accepted: As per **Rule 3(1)(a)** of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

As per **Rule 3(1)(b)** of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Number of Deposits: As **per Rule 3(4)(b)** of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the number of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five percent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum number of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Maximum number of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum number of deposits: 25% of 110 crores (70 + 20 + 20) -11

crores (outstanding deposit under plan A) = 16.5 crores.

(ii) In terms of **Rule 3(5)** of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.
For Plan B: Maximum number of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Que 12 **Mtp May 2020**

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) Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.
(ii) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?
Ans-(i) 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 Rs. 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.
If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

(ii) According to **section 73 (1)** of the Companies Act, 2013, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.
However, **Proviso to Section 73 (1)** states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in **section 73** (1) of the Act with respect to the acceptance or renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Que 13 **Mtp1 Nov 2021**

Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

Ans- In this respect following provisions are required to be observed as mentioned in **Rule 7** of the Companies (Acceptance of Deposits) Rules, 2014:

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.

Que 14 **Past Paper Dec 2021**

Discuss the following situations in the light of 'Deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ₹20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Shriram Readymade Garments Limited wants to accept deposits of ₹50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?

(iii) The turnover of Y Ltd. is ₹400 crore as per last audited financial statement and net worth is ₹50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013?

Ans- (i) In terms of **Rule 2 (1)(c)(xvii)** of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.
In the given case, Moon Technology Private Limited, a start-up company, received ₹20.00 lacs from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ` 25.00 lacs. Hence, the amount of ₹20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

(ii) According to **Rule 3 (1)** of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months. However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:
(1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
(2) such deposits are repayable only on or after three months from the date of such deposits or renewal.
In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(iii) As per **Rule 2 (1) (e)** of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in **section 76 (1),** having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:
However, an eligible company, which is accepting deposits within the limits specified under **section 180 (1) (c),** may accept deposits by means of an ordinary resolution.

Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of ₹400 crore and net worth of ₹50 crore. Hence, it cannot be termed as an eligible company and thus cannot accept deposits from the public.

Que 15 **Mtp1 May 2022/ Past Paper July 2021**

The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not?

Ans- According to **Rule 2 (1) (c)** of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfilment of following conditions:

(a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

Que 16 **Rtp May 2022**

Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹1 crore will be considered as deposit?

Ans- As per **sub-clause (ixa) of Rule 2 (1) (c)** of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

Hence, ₹1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

Que 17 **Mtp2 Nov 2022/ Past Paper Jan 2021**

Rashmika Ltd. received share application money of ₹50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.
The share application money of ₹5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ₹50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.
You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

Ans- According to **Rule 2(1)(c)** of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit. Further, on 30.07.2021 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Kumar (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded

will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2021.

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakh adjusted against payment due to be received from Mr. Kumar, cannot be treated as refund.

Que 18 **Past Paper Nov 2022**

Perfect Limited Company raised the secured deposit of` 100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & building	**₹60 crores**
Plant & machinery	**₹20 crores**
Factory Shed	**₹20 crores**
Trade Mark	**₹20 crores**
Goodwill	**₹25 crores**

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Ans- As per **second proviso to Section 76(1)** of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the number of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, **Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014**, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e., goodwill, trade-marks, etc.).
- Total value of security should not be less than the number of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed]

Total deposits accepted and interest payable thereon	= 100 crores 100+ [(100*12%) *3 years] = 136 crores

Since, the total value of security is less than the number of deposits accepted and
interest payable thereon, hence the charge is not validly created.

Que 19 **Past Paper May 2023**

City Bakers Limited obtained a term loan of ` 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013.

Ans: Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is registered under **section 77,** 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, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Chapter 6 Registration of Charges

Que 1 **Study Material/ MTP1 May 2021**

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

Ans: 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 authorized 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 authorized officer of the charge holder

Que 2 **Study Material**

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

Ans: A **'Floating Charge'** is a type of charge that is created on assets or a class of assets which are 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 crystallized 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 crystallized. On crystallization 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.

Que 3 **Study Material/ RTP Nov 2021**

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.

Ans: 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 wilfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under **section 77,** he shall be liable for action under **section 447** (punishment for fraud).

Que 4 **Study Material**

Renuka Soaps and Detergents Limited released on 2nd May, 2022 that particulars of charge created on 10th March, 2022 in favor 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 realized 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.

Ans: 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 (Le 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 realizes 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 9 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.

Que 5 **Study Material/MTP1 May 2021/ MTP2 Nov 2021/ MTP2 May 2022**

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?

Ans: 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 the 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 the above, the contention of NRT Limited is correct.

Que 6 **Study Material**

'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.

Ans: 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 authorized 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 states 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.

Que 7 **Study Material/ MTP Nov 2020**

ABC Limited created a charge in Favor of OK Bank which was duly registered. Later on, the Bank enhanced the facility by another 20 crores. 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.

Ans: 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

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

(ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under **Section 82** (Company to report satisfaction of charge) or **Section 83** (Power of Registrar to make entries of satisfaction and release).

Before directing that the time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it 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.

Que 8 **Study Material/ MTP Nov 2020/ MTP1 Nov 2022**

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.

Ans: **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 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.

Que 9 **Rtp Nov 2020**

What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013.

Ans- Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

(i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge, —

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that 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, - enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that 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, as the case may be, despite the fact that no intimation has been received by him from the company.

(ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under **section 81(1).**

According to the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge –
(1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of **section 82 or 83,** he shall issue a certificate of registration of satisfaction of charge.

Que 10 **Past Paper Nov 2022**

DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Ans- Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to **Section 82 (1)** extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

Que 11 **Past Paper Nov 2020**

Rose (Private) Limited on 3rd April 2019 obtained ₹30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

(i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

Ans- As per the provisions of **Section 2(16)** of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

(i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for ` 30 Lakhs working capital loan, it is required to create a charge on it.

Rose (Private) Limited is not required to create a charge for ₹5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

(ii) As per the provisions of **Section 77** of the Companies Act, 2013, in case the above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

Que 12 **Mtp2 Nov 2021**

Define Charge.

Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013.

Ans- Section 2(16) of the Companies Act, 2013 defines "charge" 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.

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar 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.

Que 13 **Past Paper Nov 2022**

Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:
(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
(2) When can the Registrar refuse to register the charges the present scenario?
Ans- (i) (1) Registration by charge holder: **Section 78** of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.
Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in **section 77 (1)],** the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.
(2) Registrar refuse to register the charges: However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Que 14 **Mtp2 Nov 2022**

Krish (Private) Limited on 7th May 2022 obtained ₹25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹5 Lakhs ad hoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and ad hoc overdraft in accordance with the provisions of the Companies Act, 2013?
Ans- As per the provisions of **section 2(16)** of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it.

Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

Que 15 **Mtp2 Nov 2022**

Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation.

Ans- As per the provisions of **Section 77** of the Companies Act, 2013, in case the charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e., another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

Que 16 **Mtp2 May 2023/ Past Paper Jan 2021**

Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company

received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013.

Ans- According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

Que 17 **Rtp May 2022**

Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?

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

Ans- According to **section 77(1)** of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to **section 77 (1)** the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

(a) Krish Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).
Taking advantage of clause (b) of first proviso to **section 77 (1),** Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.
(b) Clause (b) of second Proviso to **Section 77 (1)** provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.
If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.
Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non - registration of charge.

Chapter 7 Management & Administration

Que 1 **Study material**

Luxy Hairstyles Private Limited allotted 500 shares in the name of Mr. Zoey's daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the entries to be made in the register of members, since Mila is incompetent to contract in her capacity as minor.

Ans: Since minors are not competent to enter into any contract, their names cannot be entered in the register of members without the details of guardians. Therefore, Mr. Joe is advised that while filling MGT – 1, the name of a minor shall be entered only if the details of the guardian are available. Thus, Zoey's name shall also appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Que 2 **Study material**

Tanya and Tarun who recently got married were jointly allotted 1000 shares by New Hospitality Services Private Limited. Tarun intimated the company that only the name of his wife should appear in the records of the company in respect of joint holding of shares allotted to them. The directors of the company are not sure whether this is possible, given that the shares are held in the names of both Tanya and Tarun.

Ans: Joint holders of shares may request the company to enter their names in the register in a certain order, or execute transfers to have their holdings split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another holder. However, the condition of Tarun that only the name of his wife, Tanya, should appear in the register as a member cannot be acceded to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Que 3 **Study material**

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2021, for laying down the financial statements relating to the Financial Year ended 31st March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the annual return for the year ending 31st March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view

that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

Ans: The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92 (4) states that every company has to file an annual return with the RoC within 60 days from the date on which Annual General Meeting is held or where no Annual General Meeting is held in any year, it shall be filed within 60 days from the date on which the Annual General Meeting should have been held, along with the reasons for not holding the AGM.

In the above case, the Annual General Meeting should have been held by 30th September, 2021 but it did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of **Section 92** of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in **Section 92 (5)** of the Act.

Que 4 **Study material**

Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice for attending the Annual General Meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.

Ans: As per Rule 18 (3) (v) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the email and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.

Que 5 **Study material**

The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakhs divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice

which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakhs accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.

Ans: In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth Rs. forty lakh which works out to 80% (40,00,000/50,00,000x100) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (i.e., shareholders holding shares worth ` 47,50,000) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.

Que 6 **Study material**

There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1st July 2022 at 2:00 p.m. at its registered office. There were 28 members present till 2:30 p.m. at the venue of the AGM. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions after observing due process. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

Ans: As per the provisions of **Section 103** of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a general meeting of the company. Thus, the quorum for the Annual General Meeting of Nice Games Private Limited was complied with and the company has not contravened any of the provisions of the Companies Act, 2013.

Que 7 **Study material**

Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2022 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General Meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Ans: According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business. In the above case, while the required quorum as per **section 103** of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at

the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Que 8 **Study material**

Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra-ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?

Ans: The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members. Accordingly, in case of Mr. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

Que 9 **Study material**

Consider a situation where directors are also the shareholders of the company.

Ans: Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director shall vote in the same manner as a common shareholder would have voted in a general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

Que 10 **Study material**

Can an insolvent shareholder vote at the general meeting by show of hands?

Ans: Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as a member.

Que 11 **Study material**

The Annual General Meeting of Super Star Bakers Limited was attended by 60 members. In respect of a particular business, the resolution was to be passed as a special resolution. Ten members voted against the resolution whereas five abstained themselves from the voting. The Chairman of the meeting Mr. Ravinder declared that the resolution was passed as a special resolution. Whether the declaration is valid.

Ans: In case of a special resolution, the requirement is that the votes cast in favour of the resolution must be three times the number of the votes cast against it. In the above case, ten members voted against the resolution which implies that minimum thirty members (three times of ten) must vote in favour of the resolution. Ignoring five members who abstained themselves from voting, forty-five members (sixty minus ten minus five) voted in favour of the resolution which far exceeds the required majority of thirty members. Therefore, declaration by Mr. Ravinder, Chairman of the meeting, that the resolution was passed as a special resolution is valid.

Que 12 **Study material**

In the annual general meeting of Steel Products Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.

Ans: For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting decides that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any. The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution. Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would be immaterial.

Que 13 **Study material**

Abbeys Grocers Private Limited closed its financial year on 31st March, 2022. When should it hold is Annual General Meeting (AGM) for the financial year 2021-22?

Ans: According to **section 96 (1)** of the Companies Act, 2013, Abbeys Grocers Private Limited should hold its annual general meeting for the financial year 2021-22 latest by 30th September 2022 unless an extension is granted by jurisdictional Registrar of Companies for any special reason.

Que 14 **Study material**

Abbyrush Mechanics Limited was incorporated on 12th July, 2022. When should the company hold its first Annual General Meeting (AGM)?

Ans: In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2023. According to **section 96 (1),** the company must hold its first AGM latest by 31st December 2023 i.e., within 9 months of the close of its financial year on 31st March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Que 15 **Study material**

The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10th voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2022. However, the directors did not pay any heed to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.

Ans: In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitions and therefore, the Board Directors is required to initiate the process of calling the meeting. According to **section 100 (4),** if the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of such requisition, then the requisitions may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to **section 100 (5),** a meeting by the requisitions shall be called and held in the same manner in which the meeting is called and held by the Board of Directors. Accordingly, the requisitions being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

Que 16 **Study material**

The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitions. In view of this, requisitions themselves decided to call the meeting to be held in Madrid, Spain on 2nd October, 2022. Discuss whether the general meeting can be convened on the said date and place.

Ans: Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitions. As per Rule 17 (2) of the Companies (Management and Administration) Rules, 2014, the requisitions should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the

meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2022 is a National Holiday.

Que 17 **Study material**

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?

Ans: 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.

Que 18 **Study Material/ Rtp May 2021**

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?

Ans: 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.

Que 19 **Study material**

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.

Ans: 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 item, of every director and the manager, if any or all 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.

Que 20 **Study Material**

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?

Ans: (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.

Que 21 **Study Material**

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.

Ans: 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.

Que 22 **Study Material**

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?

Ans: 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 item, 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.

Que 23 **Study Material**

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i)In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the

meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Ans: **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.

Que 24 **Study Material**

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

Ans: 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.

Que 25 **Study Material**

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

Ans: 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.

Que 26 **Study Material / Mtp 1 May 2021**

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.

OR

Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company

has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company 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.

Ans: 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.

Que 27 **Study Material / Mtp 1 Nov 2022**

The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra ordinary general meeting to consider the appointment of Managing Director:

(i) A is the representative of Governor of Uttar Pradesh.
(ii) B and C are preference shareholders,
(iii) D is representing Y Ltd. and Z Ltd.
(iv) E, F, G and H are proxies of shareholders.

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

Ans: 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.

Que 28 **Study material**

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

Ans: 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.

Que 29 **Study Material/ Mtp 1 Nov 2020/ Rtp Nov 2021**

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?

OR

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. 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 idea 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?

Ans: 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 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.

Que 30 **Study Material/ Rtp Nov 2020**

Madurai Basketry 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?

Ans: 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 affected - 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.

Que 31 **Study Material/ Mtp 2 Nov 2021**

KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2022 at 11:00 AM. 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.

(iv)What happens if there is no Quorum at the adjourned meeting?

Ans: 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.

Que 32 **Study material**

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?

Ans: 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.

Que 33 **Study material**

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 Rs. 30 crores divided into 3 crores shares of Rs. 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

Ans: 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.

Que 34 **Study Material/ Mtp 1 May 2022/ Mtp 2 May 2023**

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.

OR

Miraj Limited held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to 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.

OR

A Ltd. held its Annual General Meeting on September 15, 2021. The meeting was presided over by Mr. B, the Chairman of the Company's Board of Directors. On September 17, 2021, Mr. B, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. B and by whom?

OR

Moon Light Ltd. held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Shreeram, the Chairman of the Company's Board of Directors. On September 17, 2022, Mr. Shreeram, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in USA. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Shreeram and by whom?

Ans: 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 requisitions 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.

Que 35 **Study material**

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.

Ans: **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.

Que 36 **Study material**

The paid-up share capital of Disha Home Appliances Limited is Rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.

Ans: In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer **Section 92 (2)** of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

(i) a listed company; or
(ii) a company having paid-up share capital of Rs. 10 crores or more or turnover of Rs. 50 crores or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state

that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Que 37 **Study material**

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.

Ans: (i) In terms of **Section 121 (2)** of the Companies Act, 2013, Prince Auto parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.

(ii) In terms of **Section 121 (3)** of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:

- **Company:** Rs. one lakh and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. five lakhs.
- **Every officer who is in default:** Minimum Rs. twenty-five thousand and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. one lakh.

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to Rs. five 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 Rs. one lakh in case of continuing failure.

Que 38 **Mtp 1 Nov 2020**

OEMR Limited, a subsidiary of PQR Limited, decides to give a loan of 4,00,000 to its Human Resource Manager Mr. Shyam Kumar, 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 OEMR Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Ans: 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. Shyam Kumar is not a Key Managerial Personnel of the OEMR Limited. Further, he is drawing a salary of 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of 1000 each of OEMR Limited in which he is employed. Keeping the above facts and legal provisions in view, the decision of OEMR 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. Shyam Kumar, the HR Manager. It should have been restricted to 2,40,000 only.

ii. The loan to be given by OEMR Limited to its HR Manager Mr. Shyam Kumar is meant for purchase of partly paid shares.

Que 39 **Mtp 1 Nov 2020**

As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Ans: Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary company or can be appointed in only one subsidiary company.

It can be noted that **Section 13** of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Que 40 **Mtp 2 May 2021**

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend

the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

Ans: According to **section 2(45)** of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited 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:

(i) According to **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(ii) 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.

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.

Que 41 **Mtp2 May 2021**

State with reason whether the following statement is correct or incorrect:

(i) An annual general meeting can be held on a national holiday.

(ii) A company should file its annual return within six months of the closing of the financial year.

(i) An annual general meeting cannot be held on a national holiday. Under **section 96 (2)** of the Companies Act, 2013 every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a

National Holiday. A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.
Thus, the statement 'An annual general meeting can be held on a national holiday' is incorrect.
(ii) The statement is incorrect in terms of **section 92 (4)** of the Companies Act, 2013. **Section 92 (4)** states that 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, with such fees or additional fees as may be prescribed.

Que 42 **Mtp 1 Nov 2021**

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013.

Ans: Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of at least 21 clear days', before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.
Generally, general meetings need to be called by giving at least a notice of 21 clear days.
However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat
In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days' notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e., less than 95% members). Hence, such meeting cannot be said to be validity called.

Que 43 **Mtp 1 May 2022**

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

Ans: (i) According to **section 96** of the Companies Act, 2013, first annual general meeting of the company should be held within nine months from the closing of the first financial year. Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

(ii) According to proviso to **section 96(1),** the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

Que 44 **Mtp 1 May 2022, Past Paper Nov 2020**

The Board of Directors of Mines Limited, a listed company appointed Mr. Guru, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Guru was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) Appointment of Mr. Guru by the Board of Directors.

(ii) Re-appointment of Mr. Guru at the first AGM in the above situation.

(iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. ie., 4 years tenure.

Ans: As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas **Section 139(1)** of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per **section 139(2),** no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

(i) Appointment of Mr. Guru (as first auditor) by the Board of Directors is valid as per the provisions of **section 139(6).**
(ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.
(iii) As per law, auditor appointed shall hold office from the conclusion of 1 st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

Que 45 **Mtp 2 May 2022, Rtp Nov 2020**

Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.
Decide, as per the provisions of the Companies Act, 2013:
(i) Whether the contention of Amar is valid.
(ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held?
Ans: 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 affected.
Accordingly, the questions as asked may be answered as under:
(i) The contention of Amar shall be tenable, for the reason that the notice was not properly served.

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

Que 46 **Mtp 2 May 2022**

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:
(a) Quorum for the general meeting if the company has 800 members.
(b) Quorum for the general meeting if the company has 6500 members.
(c) Quorum for the general meeting if the company has 5500 members.
The articles of association have prescribed the quorum for the meeting to be 50.

Ans: According to **section 103(1)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:
(1) five members personally present if the number of members as on the date of meeting is not more than one thousand,
(2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
(3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.
The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting. Thus,
(a) If the company has 800 members, quorum shall be 5 members personally present.
(b) If the company has 6500 members, quorum shall be 30 members personally present.
(c) If the company has 5500 members, quorum shall be 30 members personally present.
However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

Que 47 **Mtp 1 May 2023**

Happy Limited received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

Ans: **Section 105(1)** of the Companies Act, 2013, provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, **section 105(4)** of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. Happy Limited refused to accept proxy on the ground that articles of the company provide filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Que 48 **Mtp 2 May 2023, Rtp May 2021**

Ganges Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2022. However, 10 days have passed since 31st August, 2022, but it has still not filed report on Annual General Meeting. The accountant of the company has approached you to advise them whether Ganges Limited is required to file report on Annual General Meeting?

Ans: According to **section 121**, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar within thirty days of the conclusion of AGM along with the prescribed fee.

Since, Ganges Ltd. is a listed company, hence it has to file a copy of report on annual general meeting with the Registrar within 30 days from 31st August, 2022.

Que 49 **Rtp Nov 2022**

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

Ans: The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register. As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the

joint holder attending the meeting as appearing in the chronological order in the folio. Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in chronological order in the register of members/ shareholders shall be entitled to vote.

Que 50 **Rtp Nov 2022**

Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e- voting period and the time of closing of remote e-voting.

Ans: Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

Que 51 **Past Paper Nov 2020**

PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present up to 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a private company?

Ans: According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited up to 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of **section 103.**

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of **section 103(1)(b),** in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

Que 52 **Past Paper Nov 2020**

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

(i) Whether the Company has complied due diligence in declaring interim dividend?

(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?

(iii) What are the penal consequences in case of failure to pay the interim dividend?

Ans: (i) According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or

at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to **section 8 (1)** of the Companies Act, 2013, a company having licence under **Section 8** (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) Penal consequences: According to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Que 53 **Past Paper Jan 2021**

A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

Ans: **Section 105** of the Companies Act, 2013 deals with the provisions of proxy for meetings. **Section 105(1)** of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. Further, **Section 105(4)** of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the

ground that articles of the company provide filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Que 54 **Past Paper Jan 2021**

Veena Ltd. held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Mohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Mohan Rao, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Mohan Rao and by whom?

Ans: 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 requisitions 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 of Veena Ltd. can be signed in the absence of Mr. Mohan Rao, by any director, authorized by the Board in this respect.

Que 55 **Past Paper July 2021**

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.
(iv) There shall be a maximum interval of 15 months between two AGMs.
Ans: (i) According to **section 96** of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.
Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.
(ii) According to proviso to **section 96(1),** the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.
(iii) According to **section 96**, subsequent AGM (i.e., second AGM onwards) of the company should be held within 6 months from the closing of the financial year.
Hence, the given statement is correct.
(iv) According to **section 96,** the gap between two annual general meetings should not exceed 15 months.
Hence, the given statement is correct, that there shall be a maximum interval of 15 months between two AGMs.

Que 56 **Past Paper Dec 2021**

Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:
(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?
(ii) AGM is going to be held on 07-09-2020. Then what will be the e- voting period and the time of closing?
Ans: (i) Joint shareholders must concur in voting unless the articles provide to the contrary. The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register. As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in

chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) Time period for e-voting: The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e- voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

Que 57 **Past Paper Dec 2021**

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitions have not given explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.

(iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.

Ans: (i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under **section 102** of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requisitions and the requisitions may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitions have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The notice shall be signed by all the requisitions or by a requisition duly authorised in writing by all other requisitions on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

Hence, it is imperative for joint holders (or by requisitions duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

(iii) According to **section 103(2)(b)** of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitions under **section 100**, shall stand

cancelled. Thus, if quorum is not present for the meeting called by requisitions, it shall stand cancelled and cannot be adjourned.

Que 58 **Past Paper May 2023**

A General Meeting of ABC Private Ltd was scheduled to be held on 15thApril, 2022 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2022 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?

Ans: A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of **section 105** of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. **Section 105(4)** provides that a proxy received 48 hours before the meeting will be valid. 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.

Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

Que 59 **Past Paper May 2023**

L Ltd. having 2,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ` 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial

Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.

When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co?

Ans: Special Notice: As per **section 140(4)** of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per **section 115** of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of 1 crore, and it received a notice from its 50 members holding paid-up capital of 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

*[**Note:** In the given question 50 members are holding paid-up share capital of 6 lakh. In fact, they are holding more than 1% of total voting power as the paid-up share capital of the company is 1 crore.*

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

Que 60 **Rtp Nov 2023**

The paid-up share capital of Golden Shoes Limited is ₹25,00,000 divided into 2,50,000 equity shares of ₹10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

Ans: Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

Chapter 8 Declaration & Payment of Dividend

Que 1 **Study Material**

For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

Ans- The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit.

Que 2 **Study Material**

Brix Shipyards Limited has earned a profit of ` 1,000 crores for the financial year 2018-19. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

Ans- The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any number of profits to the reserves.

Que 3 **Study Material**

Capricorn Industries Limited has a paid-up capital of ₹200 lakhs and accumulated Reserves of ₹240 lakhs. Loss for the year ending 31st March 2020 is ₹30 Lakhs. Dividend was declared at the following rates during the three years immediately preceding.

Year 1	**9%**
Year 2	**10%**
Year 3	**12%**

What is the maximum rate at which the company can declare dividend for the current year?

Ans- In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Let us apply the conditions:

Condition I: Average rate = $\frac{9+10+12}{3}$ = 10.33%

Therefore, the rate of dividend shall not exceed 10.33%. i.e., 10.3% of Paid-up Capital i.e., ₹200 lakhs = ₹20.6 lakhs.

Condition II:
Paid-up capital + Free reserves = ₹ (200+240) Lakhs
(Assuming all reserves are free) ₹440 Lakhs
10% thereof = ₹44 Lakhs
Less: loss for the year = ₹30 Lakhs
Amount available = ₹14 Lakhs
Hence, the quantum of dividend is further restricted to ₹14 lakhs
Condition III: Accumulated Reserves ₹240 Lakhs
Proposed withdrawal declaration of dividend ₹14 Lakhs
Balance of Reserves ₹226 Lakhs
This is more than 15% of paid-up capital (i.e 15% of ₹200 Lakhs) i.e. ₹30 lakhs.
Thus, the company can declare a dividend of ` 14 lakhs i.e. at a rate of 7% on its paid-up capital of 200 lakhs.

Que 4 **Study Material**

Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March, 2020, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2019-20, as per the provisions of the Companies Act, 2013.

Ans- The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years. However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.
- The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
- The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
- After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

Que 5 **Study Material**

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2022-2023. The company announced 28th September 2023 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 30th September 2023. Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been entered in the register of members on 18th June, 2023. Who will be entitled to the above dividend?

Ans- According to **section 123,** dividend shall be paid by a company only to the registered shareholder of such share.

Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e. Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan who is the registered shareholder on the record date.

Que 6 **Study Material**

The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2022-23. The same was approved at the Annual General Meeting of the company held on 25th June, 2023. Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2023, but the same were transferred by him to Mr. Raj, whose name was registered on 20th April, 2023 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

Ans- According to **section 123(5),** dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker. Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April, 2023. Since, Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June, 2023, he will be entitled to the dividend.

Que 7 **Study Material**

Mr. Alok, holding equity shares of face value of ` 10 lakhs, has not paid ` 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

Ans- Yes. As per clause (d) of Proviso to **Section 127**, where the dividend is declared by a company and there remains calls in arrears or any other sum due

from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to ` 80,000 is justified and therefore, no punishment is attracted.

Que 8 **Study Material/ Mtp1 Nov 2022/ Mtp1 May 2023**

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.

Ans- **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.

Que 9 **Study Material/ Mtp2 Nov 2021/ Rtp Nov 2021**

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.

Ans- 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). Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to 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 rupee 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.

Que 10 **Study Material**

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.

Ans- 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.

Que 11 **Study Material**

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.

Ans- (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.

Que 12 **Study Material/ Mtp Nov 2020/ Rtp May 2021**

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.

Ans- 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.

Que 13 **Study Material/ Mtp Nov 2020/ Mtp2 Nov 2022**

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.

Ans- 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.

Que 14 **Study Material/ Mtp1 May 2021/ Mtp2 Nov 2022**

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.

Ans- **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.

Que 15 **Study Material/ Mtp2 May 2021/ Mtp2 May 2022**

Alex limited is facing loss in business during the financial year 2022-2023. In the immediately 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 at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid?

Ans- 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 immediately 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.

Que 16 **Rtp May 2022**

Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020).

The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

Ans- As per second proviso to **Section 123(1)** of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

(b) The total amount to be drawn from such accumulated profits shall not exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(c) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

(d) The balance of reserves after such withdrawal shall not fall below 15% of its paid -up share capital as appearing in the latest audited financial statement.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

Que 17 **Rtp May 2021**

Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

Ans- As per the proviso to **section 127** of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e., 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

Que 18 **Mtp1 May 2021**

Kumar, holder of 5000 equity shares of Rs. 100 each of Vicky Limited did not pay final call of Rs. 10 per share. Vicky Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

Ans- As per the proviso to **section 127** of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, Vicky Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e., 5,00,000 x 10/100 = 50,000. Hence, call money of Rs. 50,000 not paid by Kumar can be adjusted fully from the entitled dividend amount of Rs. 50,000 payables to him.

Que 19 **Mtp1 Nov 2021**

The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of ₹10 lakhs has not paid an amount of ₹1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

Ans- The given problem is based on the proviso provided in the **section 127 (d) of the Companies Act, 2013**. As per the law where the dividend is declared by a company and there remain s calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹10 Lakhs and has not paid an amount of ₹1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹1.20 lakh towards dividend, out of which an amount of ₹1 lakh can be adjusted towards call money due on his shares. ₹20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above-mentioned provision, company can adjust sum of ₹1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

Que 20 **Past Paper Jan 2021**

Mr. R, holder of 1000 equity shares of ₹10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of ` 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013-

14. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.
Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.
Ans- According to **section 124** of the Companies Act, 2013:
(1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF) - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

(3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

(4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of **sub-section (3) of section 125** of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.
In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (₹2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹2,000 (declared in Annual General Meeting on 31.8.2014).

In terms of the above stated provisions, Mr. R should be advised as under:
(i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
(ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

Que 21 **Past Paper Nov 2020**

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:
(i) Whether the Company has complied due diligence in declaring interim dividend?
(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?
(iii) What are the penal consequences in case of failure to pay the interim dividend?
Ans- (i) According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to **section 8 (1)** of the Companies Act, 2013, a company having licence under **Section 8** (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) **Penal consequences:** According to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the

warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Que 22 **Past Paper Nov 2020**

AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:

1. Equity Share Capital (₹10 each) - ₹100 lakhs
2. General Reserve - ₹150 lakhs
3. Debenture redemption Reserve - ₹50 lakhs

The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard.

If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

Ans- In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

According to the said rule, the required conditions are:

Condition I: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

Condition II: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Paid-up capital + Free reserves = ₹(100+150) Lakhs (General reserves are free reserves) = ₹250 Lakhs

10% thereof = ₹25 Lakhs

Condition III: The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
The amount drawn as stated above = ₹25 Lakhs
Less: loss for the financial year 2019-2020 = ₹20 Lakhs
Amount available = ₹5 Lakhs
Hence, the quantum of dividend is further restricted to ₹5 lakhs.

Condition IV: The balance of reserves after such withdrawal shall not fall below 15% of
its paid-up share capital as appearing in the latest audited financial statement.

Accumulated Reserves	₹150 Lakhs
Proposed withdrawal declaration of dividend	₹5 Lakhs
Balance of Reserves	₹145 Lakhs

This is more than 15% of paid-up capital (i.e. 15% of ₹100 Lakhs) i.e. ₹15 lakhs.
Thus, the company can declare a dividend of ₹5 lakhs.
Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹5 Lakhs.

Que 23 **Past Paper July 2021**

ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrants to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

Ans- **Section 127** of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.
In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021). It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

Que 24 **Past Paper Dec 2021**

The Board of Directors of ABC Limited at its board meeting declared dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors.

Ans- According to **section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

The Board of Directors of ABC Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors diverted the total dividend to be paid to the shareholders for purchase of investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to the Unpaid Dividend Account.
2. The Board of Directors of ABC Limited has violated **section 127** of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions: (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee 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.

Que 25 **Past Paper May 2022**

ABC Ltd. has declared dividend of ₹2/- per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ₹10 face value each, on which ₹10,000 towards call money is due. Whether the dividend amount payable to him be adjusted against such dues as per the provisions of the Companies Act, 2013? Give reasons for your answer.

Ans- As per clause (d) of proviso to **section 127** of the Companies Act, 2013, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, ABC Ltd. can adjust the call money dues from Mr. Suresh of ₹10,000 against the dividend amount payable to him of ₹10,000 (5000 shares x ₹2 /- per share).

Que 26 **Past Paper Nov 2022**

A company has accumulated Free Reserves of ₹75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ₹12 lakhs. The Board proposes a payment of dividend of ₹30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?

Ans- In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of **Section 123** of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions of Rule 3:

Condition 1: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Calculations For Each Condition

Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year. Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.

Condition 2: As per the facts, the Board proposes a payment of dividend of ` 30 lakhs i.e., 30% on the paid-up capital.

So, the Paid-up Share Capital of the company = ₹100 Lakh

Paid-up Capital + Free Reserves = 100+ 75 = ₹175 Lakh

10% thereof = ₹17.5 Lakh

Hence the dividend to be declared is to be restricted to ₹17.5 Lakh.

Condition 3:

Here, Free Reserves = ₹75 Lakh

Proposed withdrawal for declaration of dividend ₹17.5 Lakh

Balance of Reserves = ₹75 Lakh- 17.5 Lakh = ₹57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ₹100 Lakh) i.e. ₹15 Lakh.

Thus, the company can declare a dividend of ` 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ₹100 lakh.

Hence, the proposal of company for payment of dividend of ₹30 lakh i.e. 30% on the paid-up capital in the current year in which it has earned a profit of ₹12 lakh, is invalid.

Que 27 **Past Paper May 2023**

ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in

immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013

Ans: Interim dividend: 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.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years.

Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Que 28 **Rtp Nov 2023**

The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	Dividend Declaration Date	Dividend Amount (₹)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value ` 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):-

(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?

(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

Ans: According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:

In case the dividend payable to a member is ₹100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (₹)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (₹)
800	25.08.2022	800×18%×29/365	11

(ii) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was ` 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment

Chapter 9 Accounts of Companies

Que 1 **Study material**

Can XYZ limited maintain its books of account on cash basis?

Answer The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and according to double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of account on cash basis.

Que 2 **Study material**

The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer **Section 129(2)** of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further **section 134(7)** provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of

a. Any notes annexed to or forming part of such financial statement;
b. The auditor's report; and
c. The Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable.

Que 3 **Study material**

Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can state that controls are adequate and operating efficiently?

Answer -Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not.

Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here, adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

Que 4 **Study material**

ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board 's report?

Answer-In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.

Que 5 **Study material**

ABC Ltd is a company with a turnover of more than ` 1000 crores in each of the preceding three financial years and have incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?

Answer-As per **section 135(1)** of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Que 6 **Study material**

Can an international organisation be engaged for implementation of CSR project? Answer-Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

Que 7 **Study material**

RELM Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of RELM Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, RELM Industries Limited has placed its audited financial statement including consolidated financial statement on its website. RELM Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its

financial statement audited under the company law of its country of incorporation. You are required to examine whether RELM Industries Limited has complied with the provisions of section 136?

Answer- No, RELM Industries Limited has not complied with the provisions of **section 136** because RELM Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of **section 136**.

The holding Indian listed company (RELM Industries Limited in this case) may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Que 8 **Study material**

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2021, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

Answer-Vandana Ltd. Would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per its accounting policies for the purpose of consolidation.

Further, as per the requirements of **section 137(1)** of the Companies Act 2013, Vandana Ltd. would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further, the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Que 9 **Study material**

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2022, was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the

Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer- In the present case, though AGM was not held, it ought to be held by 30 September 2022 under **sections 96** of the Companies Act, 2013.

Therefore, under the provisions of **section 137(2),** the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e., by 30 October 2022 along with such fees or additional fees as may be prescribed.

Que 10 **Study material (In continuation to above question)**

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2022 but the same were not adopted by the shareholders? Answer-Since the AGM has been held in time on 27 September 2022, the un-adopted financial statements along with the required documents under **sub-section (1) of section 137** shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

Que 11 **Study material**

Perfect 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 31st March 2023. However, for the financial year 2023-24, 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. Answer- In the given situation, 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.

Que 12 **Study material**

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.

Ans: 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.

Que 13 **Study material**

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?

Ans: 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.

Que 14 **Study material**

A Housing Finance Ltd. is a housing finance company having a paid-up share capital of 11 crore and a turnover of 145 crore 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.

Ans: 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, is exempted from filing its financial statement in XBRL mode.

Que 15 **Study material**

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.

Ans: 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.

Que 16 **Study material**

(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?

Ans: (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.

Que 17 **Study material**

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?

Ans: 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.

Que 18 **Study Material, Mtp 1 Nov 2020, Mtp 2 Nov 2021, Mtp 2 May 2023, Rtp May 2021**

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

Ans: As per **section 130** of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) The relevant earlier accounts were prepared in a fraudulent manner; or

(ii) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of 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.

Que 19 **Mtp 2 Nov 2022**

The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement.

Ans: Section 134(3)(c) of the Companies Act, 2013 provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a number of statements as prescribed in the sub section including Directors' Responsibility Statement.

Further section 134(5) states that the Directors Responsibility Statement shall state that:

(i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(ii) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;

(iii) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (iv) that the directors had prepared the annual accounts on a going concern basis; and (v) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and (vi) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Que 20 **Mtp 1 Nov 2020**

Whether a Company can keep books of Accounts in electronic mode accessible only outside India?

Ans: A Company has the option of keeping its books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Que 21 **Mtp1 May 2021, Mtp1 Nov 2021**

State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013.

Ans: As per the proviso to **section 127** of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, Vicky Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e., 5,00,000 x 10/100 = 50,000.

Hence, call money of Rs. 50,000 not paid by Kumar can be adjusted fully from the entitled dividend amount of Rs. 50,000 payables to him.

Que 22 **Mtp1 May 2021**

Green Limited is a company dealing in trading of spices. It has maintained its books of accounts under Single Entry System of Accounting. The company has recently hired a new account. The new accountant, Mr. Dubey, is doubtful that the accounts can be maintained under Single Entry System. Advise the company whether it is allowed to do so?

Ans: 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 Green Limited is not permitted.

Que 23 **Mtp2 May 2022**

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of accounts.

Ans: (i) Inspection by Directors

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

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

Assistance by officers and Employees

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

(ii) Period for preservation of books

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

preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.
In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.
As per proviso to **sub-section 5**, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Que 24 **Rtp Nov 2021**

Kim Private Limited was incorporated on 30th September 2016. It has a paid-up share capital of ₹45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020-21. The management of the company have approached you to advise them about the appointment of internal auditor. Advise them as per the provisions of the Companies Act, 2013.

Ans: According to **section 138** read along with Rules of the Companies Act, 2013, every private company having—
(A) turnover of 200 crore rupees or more during the preceding financial year; or
(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.
shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate. In the given question, the company has a paid-up capital of ₹45 crore and turnover of ₹250 crore for the financial year 2019-20. Since, the company is fulfilling the criteria of turnover (i.e., more than ₹200 crore), hence, it is required to appoint an internal auditor for the financial year 2020-21.

Que 25 **Rtp Nov 2022**

Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the

same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.

Advise, how would Dhiman Limited deal with the consolidation of such financial statements.

Ans: According to fourth proviso to **section 137(1)** of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of **section 136(1) and 137(1)** as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Que 26 **Rtp May 2023**

Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

Ans: Periodical Financial Results [Section 129A of the Companies Act, 2013]
The Central Government may, require such class or classes of unlisted companies, as may be prescribed, —

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. **Section 129A** clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Que 27 **Rtp May 2023**

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following: -

Sr. No	Particulars
1.	A member individually holding shares with face value of 800 which amounted to 0.16% of the total paid-up share capital.
2.	Two members jointly holding shares with face value of 1,600 which amounted to 0.32% of the total paid-up share capital.
3.	Forty-two members each holding individually shares with face value of 600 which amounted to holding 0.12% of the total paid-up share capital for each such member
4.	All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

Ans: In case of Nidhi company –

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less.

Accordingly, Upkaar Nidhi Ltd. would have sent notice and other relevant documents to only following category of members: -

(i) Two members jointly holding shares with face value of 1,600 which amounted to 0.32% of the total paid-up share capital

(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Que 28 **Rtp May 2023**

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	₹5.00 crore	₹3.75 crore
2021-22	₹7.00 crore	₹5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum

amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Ans: According to **section 135(1)** of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to **section 135(5),** the Board of every company referred to in **sub-section (1),** shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of **section 198**.

In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ₹7 crores, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹5 crores.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (₹5 crore + ₹7 crore)/2 = ₹6 crore

Minimum contribution towards CSR will be: 2% of ₹6 crore = 0.12 crore or ₹12 Lacs.

Que 29 **Past Paper Nov 2020**

Explain the following in brief with reference to Companies Act 2013:

(i) National Financial Reporting Authority (NFRA)

(ii) Corporate Social Responsibility (CSR) Committee

Ans: (i) National Financial Reporting Authority (NFRA)

According to **section 132** of the Companies Act, 2013, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(ii) Corporate Social Responsibility (CSR)Committee:
According to **section 135(1)** of the Companies Act, 2013, every company having
(1) net worth of rupees 500 crore or more, or
(2) turnover of rupees 1000 crore or more or
(3) a net profit of rupees 5 crore or more
during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under **sub-section (4) of section 149**, it shall have in its Corporate Social Responsibility Committee two or more directors.

Duties of CSR Committee [Section 135(3)]:
The CSR Committee shall-
(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
(c) monitor the CSR Policy of the company from time to time.

Que 30 **Past Paper Jan 2021**

The Board of Directors of Dilip Telelinks Ltd. consists of Mr. Choksey, Mr. Patel (Directors) and Mr. Shukla (Managing Director). The company has also employed a full time Secretary. The Profit and Loss Account and Balance Sheet were signed by Mr. Choksey and Mr. Patel. Examine whether the authentication of financial statements of the company is in accordance with the provisions of the Companies Act, 2013?

Ans: According to **Section 134(1)** of the Companies Act, 2013, the financial statement, 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. Choksey and Mr. Patel, the directors. In view of **Section 134(1)** of the Companies Act, 2013, Mr. Shukla, the Managing Director should have been one of the two signing directors.
Further, since the company has also employed a full- time Secretary, he should also sign the Balance Sheet and the Statement of Profit and Loss.

Que 31 **Past Paper Jan 2021**

The balances extracted from the financial statement of ABC Limited are as below:

Sr. No	Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (₹in crore)	Balances as on 30-09-2020 (Provisional in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21.

Ans: According to **section 135(1)** of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

Que 32 **Past Paper Dec 2021**

(i) Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss?

(ii) The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly explain any three matters to be furnished in the said statement.

Ans: (i) According to **section 129(3)** of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under **sub-section (2),** prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under **subsection (2).**

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Since, consolidation of accounts is to be done by the holding company (i.e., Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

(ii) Directors' Responsibility Statement: According to **section 134(5)** of the Companies Act, 2013, the Directors' Responsibility Statement **referred to in 134(3)(c)** shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;
(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Que 33 **Past Paper May 2023**

A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 2015- 16 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT.

Ans: Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for reopening of accounts—A company shall re-open its books of account and recast its financial statements, on an application made by the Central Government, or other competent authorities as prescribed under **section 130 (1)** of the Companies Act, 2013 to the NCLT to the effect that—
(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under **sub-section (1)** 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, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is validly filed to NCLT.

Chapter 10 Audit and Auditors

Que 1 **Study Material**

Modern Furniture Limited (MFL), despite not mandated by Section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee. Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

Ans: Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under **section 177,** but constituted by company, then also such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.

Hence, act of audit committee and board at MFL is legally valid.

Que 2 **Study Material**

Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

Ans: **Section 139(6)** of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Hence in the instant case, the appointment of Mr. Ganpati by the Managing Director himself is invalid due to violation of **Section 139(6) of the Companies Act, 2013.**

Que 3 **Study Material**

FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crores. During the year ended 31st March 2023, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case. Answer: The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfil their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the

Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under **section 447** of the Companies Act 2013.

Que 4 **Study Material**

Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2022 in which he accepted the assignment. Subsequently, in January 2023, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Ans: **Section 141(3)(c)** of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. **Sub-section (4)** of **Section 141** provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in **sub-sections (3) of Section 141,** shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

Que 5 **Study Material**

"Mr. Ashish", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ` 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of "XYZ Ltd."?

Answer: As per **section 141 (3)(d) (i)** an auditor is disqualified to be appointed as an auditor if he, or his partner is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr. Ashish is holding security of 900 in XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

Que 6 **Study Material**

"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ` 90,000/- Whether "Mr. P" is qualified for being appointed as an auditor of "ABC Ltd."?

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 holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the

relative of the auditor may hold the securities or interest in the company of face value not exceeding of 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ` 90,000 face value in ABC Ltd., which is as per requirement of proviso to **section 141(3)(d)(i).** Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Que 7 **Study Material**

"BC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of "Mr. C", is holding securities of "MWF Ltd." having face value of 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?

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 holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of 1,00,000.

In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e., partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to **section 141(3)(d)(i).**

Que 8 **Study Material**

"ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as auditors in 4, 6 and 10 companies respectively. i. Provide the maximum number of audits remaining in the name of "ABC & Co." ii. Provide the maximum number of audits remaining in the name of individual partner i.e., Mr. A, Mr. B and Mr. C.

Answer: In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

As per **section 141(3)(g)** of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than 100 crore.

As per **section 141 (3)(g),** this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60

companies' audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.
Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:
Total Number of audits for which the firm would be eligible = 20x3 = 60
Number of audits already taken by all the partners
In their individual capacity = 4+6+10 = 20
Remaining number of audits available to the firm = 40
With reference to above provisions, an auditor can hold more appointment as auditor (i.e., ceiling limit as per **section 141(3)(g)** - already holding appointments as an auditor). Hence
i. Mr. A can hold: 20 – 4 = 16 more audits.
ii. Mr. B can hold 20 - 6 = 14 more audits and
iii. Mr. C can hold 20-10 = 10 more audits.

Que 9 **Study Material**

MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded. During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded. Auditors are waiting for certain additional information – Director's report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer: In the given case, the requirement of the auditors regarding additional information i.e., Director's report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit this additional information.
Hence the auditor should conclude the work without delaying because of this additional information.

Que 10 **Study Material**

NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspicious

transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor deal with such matter?

Answer: As per **Section 143(12)** of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

Que 11 **Study Material**

Whether entire audit report need to read before the company in general meeting? Answer: No, as per **section 145** of the Companies Act 2013, qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Que 12 **Study Material**

Regarding the general meeting for which notice is served on auditor;

i. Whether auditor is mandatorily required to be attend the said general meeting?

ii. If yes, whether he is required to attend the meeting personally?

Answer: Answer to first part is yes, while no in case of second, because as per **section 146** of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.

Que 13 **Study Material**

Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139

Answer: No, because as per proviso to **section 148(3),** no person (or firm including LLP) appointed under **section 139** as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.

Que 14 Study Material

State the procedure for 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.

Ans: (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 up to the conclusion of the first AGM of the company.

(ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Que 15 **Study Material, Mtp 1 Nov 2020**

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.

Ans: 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 vest 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.

Que 16 **Study Material**

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.

Ans: 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.

Que 17 **Study Material**

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.

Ans: (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.

Que 18 **Study Material**

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.?

Ans: 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.

Que 19 **Study Material**

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.

Ans: (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 who's relative is a director or is in the employment of the company as director or 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.

Que 20 **Study Material, Mtp 2 May 2023, Rtp May 2021**

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?

Ans: 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.

Que 21 **Past Paper July 2021**

State the provisions of the Companies Act, 2013 regarding the signing of the Audit report by the Auditors of the company.

Ans: **Section 145** of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

(i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of **sub-section (2) of section 141** (i.e., in case of firm including LLP, only Chartered Accountants are authorised to act and sign).

(ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company

Que 22 **Mtp1 May 2021**

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.

Ans: **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, Vishal Ltd. has failed to communicate to the shareholder Mr. Ricky about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under **section 127** will be attracted.

Que 23 **Mtp2 May 2021**

Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:
(i) First auditor (ii) Subsequent auditor.

Ans: According to **section 2(45)** of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited 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:

(i) According to **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(ii) 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.
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.

Que 24 **Mtp 1 Nov 2021**

Mr. R brother of CA. Sana, a practicing-chartered accountant, acquired securities of Hot Ltd. having market value of 1,20,000 (face value 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd.

Ans: As per the provisions of **Section 141(3)(d)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.
However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].
In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of 95,000 in the said company, which is within the prescribed limit.

Que 25 **Mtp1 Nov 2021**

The Auditor of the company (other than government company) has resigned on 31st December, 2020, while the financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

Ans: The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under **section 139 (8)(i)** of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting

convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Que 26 **Mtp1 Nov 2021, Rtp Nov 2022**

Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013. Explain?

OR

Mr. Govind Ram is a partner and in- charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

Ans: According to **Section 139(2)** of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re - appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for reappointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re - appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

Que 27 **Mtp2 Nov 2021**

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for rupees 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita 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.

Ans: (i) 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 Lacs. In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lacs.

(ii) As per **section 141(3)(f),** an auditor is disqualified to be appointed as an auditor if a person who's relative is a director or is in the employment of the company as director or key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Que 28 **Mtp1 May 2022, Past Paper Jan 2021**

Aura Ltd. is a listed company having a paid-up share capital of 25 crore as at 31st March, 2021 and turnover of 100 crore during the financial year 2020-21. The Company Secretary has advised the Board of Directors that Aura Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

OR

X Ltd. is a listed company having a paid-up share capital of ` 25 crore as at 31st March, 2019 and turnover of ` 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that

X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

Ans: According to the provisions of **section 138** of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;

(2) every unlisted public company having-

(A)paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year;

(C) outstanding loans or borrowings from banks or financial institutions exceeding one

hundred crore rupees or more at any point of time during the preceding financial year;

or

(D) outstanding deposits of twenty-five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, Aura limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid-up share capital or turnover is applicable for unlisted public company).

Hence, the advice of the Company Secretary is not correct.

Que 29 **Mtp2 May 2022**

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd:

(i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of 2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.

(ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of 99,000

(iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

Ans: (i) As per **section 141 (3)(d)(i)** of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Hence, Maninder is disqualified to be appointed as an auditor in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)
(ii) As per **section 141(3)(d)(ii)** a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of 5 Lacs.
Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only 99,000.
(iii) As per **section 141(3)(h),** a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.
Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.

Que 30 **Mtp1 Nov 2022**

The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor.

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

Following are the exceptions to the above rule—

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

In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary

will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

Que 31 **Mtp1 Nov 2022**

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021- 22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

(1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.

(2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh.

Ans: (1) As per **section 141 (3)** of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.
Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.

(2) As per **section 141(3)(d)(ii),** an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Que 32 **Mtp 2 Nov 2022, Past Paper July 2021**

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013.

OR

AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019.

However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.

Ans: **Section 140** of the Companies Act, 2013 prescribes procedure for removal of auditors. Under **section 140 (1)** the auditor appointed under **section 139** may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of **section 140 (1) of the Companies Act, 2013 read with Rule 7** of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Que 33 **Mtp1 May 2023, Rtp Nov 2021**

The Board of Directors of Stamp Limited, a listed company appointed Mr. Chatterjee, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Chatterjee was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of

the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
(i) Appointment of Mr. Chatterjee by the Board of Directors.
(ii) Re-appointment of Mr. Chatterjee at the first AGM in the above situation.

OR

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
(i) Appointment of Mr. Teja by the Board of Directors.
(ii) Re-appointment of Mr. Teja at the first AGM in the above situation.

Ans: As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.
Whereas **section 139(1)** of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.
As per **section 139(2),** no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:
(i) Appointment of Mr. Chatterjee by the Board of Directors is valid as per the provisions of **section 139(6).**
(ii) Appointment of Mr. Chatterjee at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Chatterjee is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

Que 34 **Rtp Nov 2020**

New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 201 9. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of ` 1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013.

OR

Shekhar Limited appointed an individual firm, Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Kamala, wife of Mr. Suresh, invested in the equity shares having face value of 1 lakh of Shekhar Limited on 15th October, 2019. But Suresh & Company continues to function as statutory auditors of the company. Advice.

Ans: Disqualification of auditor: According to **section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company or 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. Reena, his wife held equity shares of New 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 2019 i.e., after the investment made by his wife in the equity shares of New Limited.

Que 35 **Rtp May 2022**

Abhiyogic Ltd. having 1,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ` 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.

Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.

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

(a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?

(b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been sent, then in such case, what was the responsibility(ies) of the company?

Ans: (a) As per **section 140(4)** of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per **Section 115** of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014: -

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of 1 crore, and it received a notice from its 60 members holding paid-up capital of 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

(b) As per Section 140(4) of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to

members of the company, the company shall, unless the representation is received by it too late for it to do so,—
(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.
However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.
Further, as per **Section 140(4)** of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.
Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so, required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Que 36 **Past Paper Jan 2021**

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company. Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013.

Ans: As per the provisions of **Section 141 (3)** of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company. In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

Que 37 **Past Paper July 2021**

KSR Limited, an unlisted company furnishes the following data:
(a) Paid-up share capital as on 31-3-2021 45 Crore.
(b) Turnover for the year ended 31-3-2021 175 Crore

(c) Outstanding loan from bank as on 3-3-2021 105 crore (110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 90 crores after repayment.

Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022?

Ans: According to the Companies (Accounts) Rules, 2014, every unlisted public company having-

(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year; or

(C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., 105 crores on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

Que 38 **Past Paper July 2021**

Johnson Limited goes for public issue of its shares. The issue was oversubscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013.

Examine who will be considered in default in the instant case?

OR

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?

(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

Ans: As per **section 39** of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under **sub-section (3) and (4),** 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.

As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: —

(i) whole-time director (WTD);

(ii) key managerial personnel (KMP);

(iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,

(vi) every director, in respect of a contravention of any of the provisions of this Act,

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

OR

As per **section 119** of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes.

Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.
(ii) As provision does not specify anything on authorizing anyone else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him.

Que 39 **Past Paper Dec 2021**

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:
(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.
(ii) Mr. Kamal is the auditor of XYZ Limited, which is a government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a government company?
Ans: (i) First auditor
(1) According to **section 139(7)** of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.
(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.
(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting. XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy
According to **section 139(8)** of the Companies Act, 2013,
(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.
(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Que 40 **Past Paper May 2022, Rtp Nov 2023**

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors1 as per the provisions of the Companies Act, 2013.

OR

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

Ans: **Section 142** of the Companies Act, 2013, provides for remuneration of auditors.

According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

OR

According to **section 147(5)** of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted

or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.
Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.
Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.
Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine.
With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.

Que 41 **Past Paper May 2023**

SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of `10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

Ans: 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 ASR Ltd. requested its Statutory Auditors, SSR & Co. 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 Auditors accept the assignment, following penal provisions as specified in **section 147** of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm
Liability of Audit firm [Section 147(5)]
Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent

manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under **section 447.**

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Chapter 11 Companies Incorporated Outside India

Que 1 **Study Material**

Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013.

Ans- Yes, as per 2(42) of Companies Act, 2013, 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 shall be considered as a foreign company. Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under **Section 380** of the Companies Act, 2013.

Que 2 **Study Material**

Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

(i) A company incorporated outside India having a share registration office at Mumbai.

(ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

Ans- **Section 2(42)** of the Companies Act, 2013 defines a "foreign company" as 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 **section 386** of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office.

Further, to qualify as a 'foreign company' a company must have the following features:

(a) it must be incorporated outside India; and

(b) it should have a place of business in India.

(c) That place of business may be either in its own name or through an agent or may even be through the electronic mode; and

(d) It must conduct a business activity of any nature in India.

(i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.
(ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India.

Que 3 **Study Material**

(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.
Ans- (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.

Que 4 **Study Material**

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.
Ans- (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 through 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 or 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 address of one or more person's 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.

Que 5 **Study Material**

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 along with the financial statements by the foreign company.

Ans- 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 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.

Que 6 **Study Material**

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.

Ans- According to **section 2(42)** of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner. According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(i) In the given situation, 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.

Que 7 **Study Material**

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.

Ans- 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.

Que 8 **Study Material**

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.

Ans- 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.

Que 9 **Study Material**

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.

Ans- 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.

Que 10 **Nov 2014**

X Inc is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the GST Officer having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the GST Officer on valid service of notice.

Ans: Service of notice on foreign company (Section 383 of the Companies Act, 2013): According to section 383 **of** the Companies Act, 2013, any process, notice, or other document required **to** be served on a foreign company shall be deemed to **be** sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies **Act**, 2013, and left at, or sent by post **to**, the address which has been so delivered to the Registrar or by electronic mode. Hence, the GST Officer may serve the show cause notice by following the above provisions.

Que 11 **CA Final May 2018**

Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter/Documents constituting the Company is in Mandarian Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?

Ans: According to Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014,

i. All the documents required **to be** filed with **the** Registrar by **the** foreign companies shall be in English language and where any **such** document is **not** in English language, there shall **be** attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

ii. Where **such** translation is made within India, it shall be authenticated by-

   a. an advocate, attorney or pleader entitled to appear before any High Court or

   b. an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India, and they shall be authenticated by the persons mentioned under the above Rules.

Que 12 **CA Final 2018**

Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Trans Asia Limited carries on business in India describing itself as a foreign company. Can it do so? State the actions that can be taken against the company for improper use or description as foreign company under the provisions of the Companies Act, 2013.?

Ans: Foreign Company [Section 2(42)]: "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

In the instant case, Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies **Act,** 1956 which is a subsidiary of Galilio Limited, a foreign company. Though Trans Asia Limited is a subsidiary of a foreign company but since it is registered in India, it is not a foreign company. Hence, it cannot describe itself as a foreign company.

Action against the **improper** use/description as foreign **co**: **As per** Rule 12 of the Companies (Registration **of** Foreign Co.) Rules, 2014, if any person or persons trade or **carry** on business in any manner under any name or title or description as a foreign company registered under the **Act or the** rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the **Act** and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

Chapter 12 The Limited Liability Partnership Act, 2008

Que 1 **Study Material**

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Ans: LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners **(Section 26 of the LLP Act, 2008).** The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital

Que 2 **Study Material**

Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under the LLP Act, 2008? Explain.

Ans: **Section 5** of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force

(b) he is an undischarged insolvent; or

(c)he has applied to be adjudicated as an insolvent and his application is pending.

Further, **Section (2)(1)(e)** provides that a **Body Corporate** it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

(i) an LLP registered under this Act

(ii) an LLP incorporated outside India; and

(iii) a company incorporated outside India, but does not include—

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate **(not being a company as defined in clause (20) of section 2 of the Companies Act, 2013**' or a limited liability partnership as

defined in this Act), which the Central Government may, by notification in the Official Gazette, specify on this behalf.
Therefore, HUF is not covered in the definition of body corporate and cannot be a partner in LLP.

Que 3 **Study Material**

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

Ans: According to **Section 7** of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Que 4 **Study Material**

Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of 10,00,000 against the LLP but the worth of the assets of LLP are only 7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of 3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

Ans: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of ` 3,00,000 from the
partners of Devi Ram Food Circle LLP.

Que 5 **Study Material**

M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhman Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s

Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

Ans: **Section 15** of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable; or

(b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999

Further, **section 17** provides, if the name of LLP is identical with or too nearly resembles to-

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999 then on an application of such LLP or proprietor referred to in clauses

(a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction. Following the above provisions, LLP need not change its name if its name resembles the name of a partnership firm. These provisions are applicable only in cases where the name resembles an LLP, company or a registered trade mark of a proprietor. Hence, M/s Vardhman Steels LLP need not change its name even if it resembles the name of partnership firm.

Que 6 **Study Material**

Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

Ans: According to **section 24(3),** where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

(a) the person has noticed that the former partner has ceased to be a partner of the LLP; or

(b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

Que 7 **CA Foundation Study Material**

Examine the concept of LLP.

Ans: Meaning – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited

liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of "limited liability partnership"

• The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
• The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
• Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
• Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
• LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Que 9 **CA Foundation Study Material**

Enumerate the various characteristics of the LLP.

Ans: LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

• Body Corporate
• Perpetual Succession
• Separate legal entity
• Mutual Agency
• LLP Agreement
• Artificial Legal person
• Common Seal
• Limited liability
• Management of business
• Minimum and maximum number of members.
• Business for profit only
• Investigation
• Compromise or Arrangement
• Conversion into LLP

• E-filing of documents
• Foreign.

Que 10 **CA Foundation Study Material Rtp Nov 2020, Rtp May 2021,Mtp2 Nov 2021, Mtp2 May 2022**

What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in an LLP?

Ans: Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to **section 7**.

According to section 7 of the LLP Act, 2008:

(i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

(ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

(iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.

Que 11 **CA Foundation Study Material**

What are the effects of registration of LLP?

Ans: Effect of registration (Section 14):

On registration, an LLP shall, by its name, be capable of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Que 12 **CA Foundation Study Material, Mtp Nov 2020, Past Paper July 2021, Mtp1 Nov 2021, Mtp1 May 2022, Rtp May 2022, Mtp2 Nov 2022, Mtp1 June 2023**

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Ans: LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (**Section 26** of the LLP Act,

2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Que 13 **CA Foundation Study Material**

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

Ans: Essential elements to incorporate Limited Liability Partnership (LLP) –
Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:
(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
(iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
(vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
(vii) LLP Name.

Steps to incorporate LLP:

1. Name reservation:
(i) The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
(ii) Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of an LLP business.

2. Incorporate LLP:

(i) After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
(ii) e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

3. LLP Agreement:

(i) Execution of LLP Agreement is mandatory as per **Section 23** of the Act.
(ii) LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Que 14 **Mtp May 2020, Rtp May 2020, Past Paper Nov 2020, Mtp1 May 2021, Past Paper Jan 2021, Mtp2 June 2023**

Enumerate the circumstances in which LLP may be wound up by Tribunal.

Ans: Circumstances in which LLP may be wound up by Tribunal (Section 64):
An LLP may be wound up by the Tribunal:
(a) if the LLP decides that LLP be wound up by the Tribunal;
(b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
(c) if the LLP is unable to pay its debts;
(d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
(e) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
(f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Que 15 **Rtp Nov 2021**

Differentiate between an LLP and a partnership firm?

Ans:

Basis	LLP	Partnership firm
Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body Corporate.
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.

Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
Annual filing of Documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.

Foreign partnership	Foreign nationals can become a partner in an LLP.	Foreign nationals cannot become a partner in a partnership firm.
Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

Que 16 **Rtp May 2020**

What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Ans: Change of name of LLP (Section 17 of LLP Act, 2008):

1. Notwithstanding anything contained in **sections 15 and 16**, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new name, is registered by a name which is identical with or too nearly resembles to—

(a) that of any other limited liability partnership or a company; or

(b) a registered trade mark of a proprietor under the **Trade Marks Act, 1999**, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

2. Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

3. If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter:

Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of **section 16**.

Que 17 **Past Paper Dec 2021**

State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008.

Ans: Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

(i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(ii) A document may be served on an LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

(iii) An LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

(iv) If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

Que 18 **Past Paper May 2022**

Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008.

Ans: Incorporation by registration (Section 12 of LLP Act, 2008):

(1) When the requirements imposed by **clauses (b) and (c) of sub-section (1) of section 11** have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by **clause (a)** of that sub-section has not been complied with, he shall, within a period of 14 days—

(a) register the incorporation document; and

(b) give a certificate that the LLP is incorporated by the name specified therein.

(2) The Registrar may accept the statement delivered under **clause (c) of sub-section (1) of section 11** as sufficient evidence that the requirement imposed by **clause (a)** of that sub-section has been complied with.

(3) The certificate issued under **clause (b) of sub-section (1)** shall be signed by the Registrar and authenticated by his official seal.
(4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate Limited Liability Partnership (LLP)
Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:
(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
(iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
(vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in **First Schedule of LLP Act, 2008** will be applied.
(vii) LLP Name.

Que 19 **Mtp2 May 2021, Past Paper Nov 2022**

Differentiate between a Limited Liability Partnership and Limited Liability Company.

Ans: Distinction between Limited Liability Partnership (LLP) and Limited Liability Company

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013
Members/ Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).

Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	**Private company:** Minimum – 2 members Maximum 200 members **Public company:** Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors public co. – 3 directors

Que 20 **Mtp1 Nov 2022, Rtp June 2023**

What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?

Ans: "Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: It means a Limited Liability Partnership—
(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
(iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

Que 21 **Rtp Nov 2022**

What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008?

Ans: Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

The accounts of LLP shall be audited in accordance with such rules as may be prescribed.

Chapter 1 The General Clauses Act, 1897

Que 1 **Study Material**

What is "Financial Year" under the General Clauses Act, 1897?

Ans: According to Section 3(21) of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April. The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, Year means calendar year which starts from January to December. Hence, in view of both the above definitions, it can be concluded that the Financial Year is a year which starts from the first day of April to the end of March.

Que 2 **Study Material**

What is "Immovable Property" under the General Clauses Act, 1897?

Ans: According to Section 3(26) of the GenAccording to Section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

(i) Land,

(ii) Benefits to arise out of land, and

(iii) Things attached to the earth, or

(iv) Permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits that arise out of the land and are attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Que 3 **Study Material/ MTP Nov 2020**

As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Ans: Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue of whether a whole time KMP of a holding company can be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company. It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Que 4 **Study Material**

A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

Ans:As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly addressing,

(ii) Pre-paying, and

(iii) Posting by registered post. A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181, a notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenable nor based upon sound exposition of law

Que 5 **Study Material/ MTP1 May 2021/ RTP May 2023**

X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.

Ans:Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

(i) Land

(ii) Benefits to arise out of land, and

(iii) Things attached to the earth, or

(iv) Permanently fastened to anything attached to the earth. It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to

the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.
In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Que 6 Study Material/ MTP2 Nov 2021/ MTP1 Nov 2022/ RTP May 2021

What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Ans: Meaning of Service by post" [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be affected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post. A letter containing the document to have been affected at the time at which the letter would be delivered in the ordinary course of post

Que 7 **Study Material/ MTP May 2020**

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice:
(i) The dates during which Komal Ltd. is required to pay the dividend?
(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to an unpaid dividend account?

Ans: As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient,for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and the last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).

(ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive)

Que 8 **Study Material/ MTP Nov 2020**

'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897

Ans: In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Que 9 **Study Material**

The Companies Act, 2013 provides that the amount of dividend remaining unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to an unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2022, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Ans: Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to". As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to an unpaid dividend account within the period of 7 days. 30th October, 2022 will be excluded and 6th November 2022 shall be included, i.e. 31st October, 2022 to 6th November, 2022 (both days inclusive).

Que 10 **Study Material/ MTP1 Nov 2021/ RTP Nov 2020**

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

(1) An Act of Parliament which has not specifically mentioned a particular date.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Ans:(1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date. Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the Gazette.

Que 11 **Mtp1 May 2022/ Past Paper Nov 2020/ Past Paper Jan 2021**

What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897.

Ans: "Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

Que 12 **Mtp2 May 2021**

Mr. R, an advocate, fraudulently deceived his client Mr. Chandan who was taking his expert advice on taxation matters. Now, Mr. R is liable to a fine for his fraudulent act both under the Advocates Act and the Income Tax Act, 1961. State the provision as to whether his offence is punishable under

both Acts. Give your answer as per the provisions of the General Clauses Act, 1897.

Ans: "Provision as to offence punishable under two or more enactments" (Section 26 of the General Clauses Act, 1897)

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Thus, Mr. R shall be liable to be punished either under the Advocates Act, 1961 or under the Income Tax Act, 1961, but shall not be punished twice for the same offence. He can be punished under any of the enactments if his offence is established.

Que 13 **Mtp2 May 2021**

Elucidate the term "Commencement" as per the General Clauses Act, 1897.

Ans: Section 3(13) of the General Clauses Act, 1897, defines the term "Commencement".

"Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai — AIR1970 sc 398).

Que 14 **Mtp1 Nov 2021**

Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example.

Ans: "Duty to be taken pro rata in enactments": According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

Que 15 **Mtp2 Nov 2021**

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2021, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Ans: Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).

Que 16 **Mtp1 May 2022/ Past Paper July 2021**

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) 'Things attached to the earth' have been held to be immovable property.

(ii) The word "bullocks" could be interpreted to include "cows".

Ans: (i) 'Things attached to the earth' have been held to be immovable property: This statement is valid. As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

(1) Land,

(2) Benefits to arise out of land, and

(3) Things attached to the earth, or

(4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition include 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Que 17 **Mtp2 May 2022**

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by-passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the directors of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

Ans: As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Que 18 **Mtp2 May 2022**

What is the meaning of the following as per provisions of the General Clauses Act, 1897?

(i) Movable Property

(ii) Person

Ans: (i) Movable Property: According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

(ii) Person: According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

Que 19 **Mtp1 Nov 2022/ Rtp Nov 2021**

Mr. Sridhar has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2022 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2022 or 21st August 2022?

Ans: Section10 of the General Clauses Act, 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sridhar to Mr. Mohan on 17th May 2022 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2022. Three days of grace are to be added. It falls due on 20th August 2022 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of section 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2022.

Que 20 **Mtp2 Nov 2022/ Rtp May 2021/ Past Paper Dec 2021**

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

OR

Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year

Ans: Financial Year: According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

Que 21 **Mtp1 May 2023/ Past Paper Jan 2021**

Yellow and Pink had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2022, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?

Ans: According to section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the given question, the court fixed the date of hearing of dispute between Yellow and Pink, on 29.04.2022, which was subsequently announced to be a holiday. Applying the above provisions, we can conclude that the hearing date of 29.04.2022, shall be extended to the next working day.

Que 22 **Mtp2 May 2023/ Past Paper Jan 2021**

The Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Ans: According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Que 23 **Rtp May 2022**

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by……." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

Ans: The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' have a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.

In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.

Here the word used "may" shall be read as "shall". Usage of word 'may' here make it mandatory for a company for the compliance of section 3 for its formation.

Que 24 **Rtp Nov 2022**

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Ans: According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals

new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

Que 25 **Past Paper May 2022/ Past Paper May 2023**

Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.

Ans: According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

Que 26 **Past Paper Nov 2020**

Define the term "Affidavit" under the General Clauses Act, 1897.

Ans: "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Que 27 **Past Paper Nov 2020**

Mrs. K went to a Jewellery shop to purchase diamond ornaments. The owners of jewellery shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?

Ans: In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellary Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per section 3 (22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Indian Contract Act, 1872 is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Que 28 **Past Paper Nov 2020**

There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897?

Ans: "Measurement of Distances" [Section 11 of the General Clauses Act, 1897]: In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Que 29 **Past Paper July 2021**

Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted.

Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

Ans: The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

Que 30 **Past Paper Dec 2021**

Give the definition of the following as per the General Clauses Act, 1897:

(i) "Rule"

(ii) "Oath"

(iii) "Person"

Ans: (i) Rule: As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath: As per section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Person: As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

(1) any company, or

(2) association, or

(3) body of individuals, whether incorporated or not.

Que 31 **Past Paper May 2022**

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be questioned?
(iii) Is MCA entitled to make suitable changes in the draft?
(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?
Ans: The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:
(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.
(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Que 32 **Past Paper Nov 2022**

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for `20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?
Ans: According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) Properly addressing
(ii) Pre-paying, and
(iii) Posting by registered post.
Case Laws
(i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned

at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

Que 33 **Past Paper Nov 2022**

What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

Ans: "Official Gazette" [Section 3(39) of the General Clauses Act, 1897]: 'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of India, or

(ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

Que 34 **Past Paper May 2023**

"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897.

Ans: "Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Even **Article 20(2)** of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Que 35 **Rtp Nov 2023**

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

Ans: By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

Chapter 2 Interpretation of Statutes

Que 1 **Study Material, Past Paper Dec 2021**

Explain the rule in 'Heydon's Case' while interpreting the Statutes quoting an example.

Ans: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.

This rule enables, consideration of four matters in constituting an Act:

(1) what was the law before making of the Act,
(2) what was the mischief or defect for which the law did not provide,
(3) what is the remedy that the Act has provided, and
(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible to it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object.

Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)

Que 2 **Study Material, Mtp1 May 2021, Mtp1 Nov 2022**

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

Ans: Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is

under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather than just or unreasonable. However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Que 3 **Study Material, Mtp 2 May 2021, Mtp 2 Nov 2021, Mtp 2 May 2023, Past Paper May 2022**

(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

(ii) Does an explanation added to a section widen the ambit of a section?

Ans: (i) Normally a Proviso is added to a section of an Act to accept something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narain Sons Ltd. v. Commissioner of Sales Tax AIR (1955) S.C. 765]

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonize and clear up any ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Que 4 **Study Material, Mtp2 May 2022**

Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of the contract. What rules of interpretation of deeds and documents would you apply while doing so?

OR

Radha Limited has entered into a contract with Gopal Limited. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Ans: The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding

circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there Is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will override the latter one.

Que 5 **Study Material, Rtp Nov 2022**

How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means (ii) Includes

Give one illustration for each of the above from Statutes you are familiar with.

Ans: Interpretation of the words "Means" and "Includes" in the definitions The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same. When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section. But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—Definition of Director [section 2(34) of the Companies Act, 2013]— Director means a director appointed to the board of a company. The word "means" suggests an exhaustive definition.

Definition of Whole-time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole-time employment of the company. The word "includes" suggests an extensive definition. Other directors may be included in the category of the whole-time director.

Que 6 **Study Material, Mtp 2 May 2021**

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Ans: Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form.

If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

Que 7 **Study Material, Mtp1 Nov 2021**

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Ans: Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law. This rule, however, is subject to some exceptions:

(i) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

(ii) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Que 8 Study Material, Mtp 2 May 2023, Rtp May 2022, Rtp May 2023

When can the Preamble be used as an aid to interpretation of a statute?

Ans: While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails. The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Que 9 Study Material, Mtp1 Nov 2021

Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.

OR

When can the 'dictionary definitions' be used as an external aid for interpretation of any of the word or expression of an enactment?

Ans: Dictionary Definitions: First we refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.

Further, judicial decisions laying down the meaning of words in construing statutes in parametria will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Que 10 **Study Material, Rtp Nov 2020**

Preamble does not override the plain provision of the Act. Comment. Also give suitable examples.

Ans: Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not override the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction. In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in **section 5** of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus…." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in **section 2** of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [Gullipoli Sowria Raj v. Bandar Pavani, (2009)1 SCC714].

Que 11 **Study Material, Rtp May 2021, Rtp Nov 2021**

At the time of interpreting a Statute what will be the effect of 'Usage' or 'Customs and Practices'?

Ans: Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative
approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpresest consuetude' (the custom is the best interpreter of the law); and

(ii) 'Contemporanea Expositio est optima et fortissima in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have

been at the time when they were enacted/written. Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Que 12 **Mtp1 May 2021**

Give the difference between interpretation and construction.

Ans: Difference between Interpretation and Construction- Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

When the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used in the same sense.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called 'construction', however, the two terms – 'interpretation' and 'construction' – overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

Que 13 **Mtp1 May 2021, Mtp2 Nov 2021**

Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example.

OR

Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example

Ans: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.

This rule enables, consideration of four matters in constituting an act:

(1) what was the law before making of the Act,

(2) what was the mischief or defect for which the law did not provide,

(3) what is the remedy that the Act has provided, and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety,

then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.
However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

Que 14 **Mtp1 Nov 2020**

Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

Ans: Mischieve Rule: Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.
It enables consideration of four matters in construing an Act:

(1) what was the law before the making of the Act;
(2) what was the mischief or defect for which the law did not provide;
(3) what is the remedy that the Act has provided; and
(4) what is the reason for the remedy.

Que 15 **Mtp1 May 2022, Mtp2 Nov 2022, Past Paper Nov 2020**

'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.

OR

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

Ans: Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e., akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be

borne in mind that nocitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.
For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).

Que 16 **Mtp1 May 2022**

Write short note on: (i) Proviso (ii) Explanation,with reference to interpretation of Statutes, Deeds and Documents.

Ans: (i) Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.
It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

(ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Que 17 **Mtp 1 May 2022, Mtp 1 May 2023**

Write short notes on the following in understanding definitions while interpreting statutes:
(i) Ambiguous definitions (ii) Definitions subject to a contrary context.

Ans: (i) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

Que 18 **Mtp 1 Nov 2022**

Enumerate when does the rule of Ejusdem Generis apply.

Ans: The rule of Ejusdem Generis applies when:

1. The statute contains an enumeration of specific words
2. The subject of enumeration constitutes a class or category
3. That class or category is not exhausted by the enumeration
4. General terms follow the enumeration; and
5. There is no indication of a different legislative intent.

Que 19 **Mtp2 Nov 2022, Past Paper July 2021**

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.

Ans: Impact of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole-time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole-time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole-time director.

Que 20 **Mtp2 Nov 2022, Past Paper Dec 2021**

In what way are the following terms considered as external aid in the interpretation of statutes: (i) Historical Setting (ii) Use of Foreign Decisions

Ans: (i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment.

We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Que 21 **Mtp1 May 2023, Past Paper Jan 2021**

Viraj, a director of the company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He res trains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Viraj is correct?

Ans: Rule of Literal Construction

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "*absoluta sententia expositore non-indigent*" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in **section 102** of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions

thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.
In the given question, Viraj (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.
Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Que 22 **Past Paper Nov 2020**

Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

Ans: Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.
It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

Que 23 **Past Paper Jan 2021**

What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?

Ans: External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to

Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.

Dictionary Definitions: Dictionary Definitions is one of the External Aids to interpretation. First, we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.

Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

Que 24 **Past Paper Jun 2021**

Whether Foreign decisions can be used for construing Indian Statute? Explain.

Ans: Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Que 25 **Rtp Nov 2023**

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

Ans: Without prejudice

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains……"

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative

Chapter 3 The Foreign Exchange Management Act, 1999

Que 1 **Study Material**

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of the Dubai branch?

Ans: Printex Computer being a Singapore based company would be a person resident outside India **[(Section 2(w)]. Section 2 (u)** defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, the Printex unit in Pune, being a branch of a company would be a 'person'. **Section 2(v)** defines a person resident in India. Under clause (iii) thereof a person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune Is owned or controlled by a person resident outside India, and hence it would be a 'person resident in India.' However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Que 2 **Study Material**

Mr. Sane, an Indian National desire to obtain Foreign Exchange for the following purposes:

(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii) US Dollar 100,000 for sending a cultural troupe on a tour of the U.S.A. Advise him whether he can get Foreign Exchange and if so, under what conditions?

Ans: Under provisions of **section 5** of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions

. **(i)** In respect of item ons, prior permission of Reserve Bank of India is requireNo.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw from the Foreign Exchange after obtaining such permission. In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorized Person as defined in **Section 2(c).**

Que 3 **Study Material**

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.

(ii) R wants to get his heart surgery done in the United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Ans:[1]Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.

[2] Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However, in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to the amount estimated by a medical institute offering treatment.

Que 4 **Study Material**

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

(i) M requires U.S. $5,000 for remittance towards hiring charges of transponders.

(ii) P requires U.S. $2,000 for payment related to call back services of telephones.

Ans: Under **section 5** of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the

Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

Accordingly,

(i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

(ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose.

Que 5 **Study Material**

Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 for Switzerland to pursue higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2021-2022 and 2022-2023?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Ans: Residential Status: According to **section 2(v)** of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year **[Section 2(v)(i)].**

However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland to pursue higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies. Mr. Suresh will be treated as person reside Residential Status:

According to **section 2(v)** of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year **[Section 2(v)(i)].** However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'.

RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to talent in India for Financial Year 2021- 2022 till 16th July 2021 and from 17th July 2021, he will be considered as a person resident outside India. However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI.

Further provision to Para I of Schedule III states that individuals may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Que 6 **Study Material**

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in the USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in the USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Ans: Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to **section 5** of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed. As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings

1. Transactions for which drawal of foreign exchange is prohibited,

2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and

3. Transactions which require RBI's prior approval for drawal of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. © The Institute of Chartered Accountants of IndiaHence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to USD 250,000 and no prior permission/ approval of RBI will be required. For amounts exceeding the above limit, authorized dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

Que 7 **Study Material**

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) US$ 120,000 for studies abroad on the basis of estimates given by the foreign university.

(B) Gift Remittance amounting US$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Ans:(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further provision to Para I of Schedule III states that individuals may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US $ 10,000: Under the provisions of **section 5** of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after

obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

Que-8 **CA Final MTP Nov-2022**

Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose. After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK' bank account, so she planned to purchase a second flat in the UK. Based on the above facts, answer the following questions:

(i) Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India

(ii) Whether Ruchika can purchase second flat in UK after returning to India?

Ans:

(i) Purchase of First Flat in UK : Section 6(4) of the FEMA, 1999 provides that a person resident in India may hold, own, transfer or invest inforeign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person **when he was resident outside India or** inherited from a person who was resident outside India. Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

(ii) Purchase of Second Flat : After returning to India and becoming the resident in India, Ruchika cannot buy another property in UK as mentioned in Section 6(4) of the FEMA.

Que-9 **Nov 20**

Under the auspices of the Foreign Exchange Management Act, 1999, (the Act) examine whether the given situations fall under "Current Account Transactions" or not as defined in the Act?

i. Mr. S, a resident in India, imports machinery from a vendor in UK for installing in his factory.

ii. An Indian resident, imports machinery from a vendor in US for installing in his factory on a credit period of 3 months.

iii. An Indian resident, transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York.

Ans:

i. An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

ii. An Indian resident imports machinery **from** a vendor in UK for installing in his factory **on** a credit period of 3 months. Under FEMA, it is a liability outside India. However, under definition of Current **Account** Transaction [S. 2(j)(i)], "short-term banking and credit facilities in the ordinary **course** of business" are considered as a Current Account Transaction. Hence import of machinery **on** credit terms is a Current Account Transaction.

iii. An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction

Que-10 **Final RTP May 2021**

A foreign tourist comes to India, and he purchases an antiques from a shop. He would like to pay US$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?

Ans: As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, **or** with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorized person, any payment by order or on behalf of any person resident outside India in any manner. Where any person in, or resident in, India receives any payment by order **or** on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall **be** deemed to have received **such** payment otherwise than through an authorized person

Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques **to** shopkeeper which as per section 3, is **not** permissible to any person **to** receive any payment **by** order **or on** behalf of any person resident outside India in any manner except received through an authorized person. Therefore, the Shopkeeper cannot accept cash as it will

be a receipt otherwise than through Authorized Person except where the shopkeeper has taken a money changers license to accept foreign currency.

Que-11 **CA Final May 2018**

In terms of the provisions of the Foreign Exchange Management Act, 1999 Mr. SAM is a person of India origin resident outside India. He wants to acquire some immovable properties in India not being agricultural property, plantation or a farm house. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the permitted sources, means and restrictions imposed in this regard. Also state the provisions where the acquisition will be in the form of gift or inheritance by Mr. SAM.

Ans: Relevant Provision: A person **of** Indian origin resident outside India may acquire immovable property in India **other** than an agricultural property, plantation, or a farm house.

Sources: In case of acquisition of immovable property, payment **of** purchase price, if any, shall be made **out** of

i. funds received in India through normal banking channels by way of inward remittance **from** any place outside India or
ii. Funds held in any non-resident account maintained in accordance with the provisions **of** the Act and the regulations made by the Reserve Bank.

Restriction: It is also provided that **no** payment of purchase price for acquisition **of** immovable property shall **be** made either by traveler's cheque **or** by currency notes of any foreign **country or any mode** other than those specifically permitted by this clause.

Acquisition in the form of gift: A person **of** Indian origin resident outside India may acquire any immovable property in India other than agricultural land/farm house/plantation property by way **of** gift from a person resident **in** India or **from** a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India.

Acquisition in the form of inheritance: A person **of** Indian origin resident outside India may acquire any immovable property, in **India** by way **of** inheritance **from** a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time **of** acquisition by him **or** the provisions of these Regulations or from a person resident in India.

Que-12 **Nov 2012**

Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds.

Ans: As per section 6(5), a person resident outside India may hold, own, transfer **or** invest in India currency, security **or** any immovable **property** situated in India if **such** currency, security **or** property was acquired, **held** or owned by such **person** when he **was resident in** India or inherited **from** a **person** who **was** resident in India.

Thus, **a** person resident outside India may hold, own **or** transfer any immovable property situated in India if such **property** is inherited from a person resident in India.

Accordingly, **Mrs.** Chandra is entitled to acquire as well as hold the **immovable property in** India inherited by her.

Regulation 8(a) **of** the Foreign Exchange Management [Acquisition **and Transfer** of Immovable property **in** India) Regulations 2018 states that a person referred to in sub-section (5) of Section 6 of the **Act, or** his successor shall not, except **with** the general **or** specific permission of **the** Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that **sub**-section.

Hence, **Mrs.** Chandra may sell the immovable property in India, but **she** can repatriate outside India the sale proceeds of such immovable property only with the general or specific permission of the Reserve Bank or India.

Que-13 **CA Final Nov 2010**

Examine with reference to the provisions of the Foreign Exchange Manage Act. 1999 whether there are any restrictions in respect of the following:

A person, who was resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by companies in U.S.A.?

Ans: As per Section 6(4), a person resident in India may hold, **own**, transfer **or** invest in foreign currency, **foreign security or** any immovable **property** situated outside India if such currency, security **or** property was acquired, held **or** owned **by** such **person** when he was resident outside India or inherited from a person **who** was resident outside India.

Hence, the USA Resident shall be entitled to hold the foreign securities even after he becomes a person resident in India.

Que-14 **Nov 2019**

ABC Limited hired the services of Mr. Taylor, a technician from Germany for the installation of a machinery. The company paid USD 40,000 for the services rendered by Mr. Taylor. Examine under the Foreign Exchange Management Act, 1999, whether payment of remuneration to foreign technician Mr. Taylor is a permissible transaction under the provisions of the said Act.

Ans: Remuneration payable to a foreign technician is a current **account** transaction. According to Section 5 **of** the Foreign Exchange Management Act, 1999 any person can sell or draw foreign exchange to or from authorized person if such or drawal is a current account transaction.
Reasonable restrictions on current account transactions can be imposed by the Central Government. Basically, all current account transactions are free unless specifically restricted by the Central Government.
Hiring of foreign national as technicians is permissible without restriction. There is **no** ceiling on salary which can **be** paid as **per** contract. Their salary can **be** remitted abroad after-tax deductions, contribution to **provident** fund and other deductions at source.

Que-15 **Jan 2021**

GOGU Limited, a resident company in India, has achieved a turnover of Rs. 20,000 crore during the financial year 2019-20. The paid-up share capital and Free Reserves of the company as on 31st March, 2020 as per the audited financial statements was Rs. 1500 crore and Rs. 500 crore respectively. The company is planning to make an investment of INR 7800 crore in an Overseas Joint Venture in Singapore. The company approached you whether it can make the desired investment under the terms of automatic route for direct investment during the financial year 2020-21. The equivalent currency in US $ comes to around USD 1.05 billion. Referring to the Foreign Exchange Management (Transfer of Issue of Any Foreign Security) (Amendment) Regulations, 2004 and notifications issued by the Reserve Bank of India, decide whether there is any restriction in the above investment.

Ans: Automatic **route for** direct investment or financial commitment outside India:
As per Regulation 6 **of the** Foreign Exchange Management (Transfer or Issue **of** Any Foreign Security) **(**Amendment**)** Regulations, 2004, an Indian Party has been permitted to make investment/ undertake financial **commitment** in overseas **Joint** Ventures (JV**) or** Wholly **Owned** Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].
Here, 'Indian Party' includes a company incorporated in India.
As per the facts of the question and provision of law, GOGU Limited (Indian party) will require prior approval of the Reserve Bank of India even though its total financial commitment is within the eligible limit under automatic route [i.e. {400% of (1500+500) = Rs. 8,000 crore}], because financial commitment is more than USD 1 billion.

Que-16

Mr. Ramesh of Nagpur wants to travel to Nepal and for this purpose proposes to draw foreign exchange. Specify-

i. **Can Mr. Ramesh draw any foreign exchange for his journey?**
ii. **What are the purposes for which foreign exchange drawal is not allowed for current account transactions?**

Ans

i. Rule 3 of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange (by any person) for the purpose of travel to Nepal and/or Bhutan. Therefore, Mr. Ramesh cannot draw any foreign exchange for journey to Nepal.

ii. Rule 3 read with Schedule I prohibits drawal of foreign exchange (by any person) for the following purposes

- Remittance out of lottery winnings.
- Remittance of income from racing/riding, etc., or any other hobby.
- Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- Payment of commission on exports under Rupees State Credit Route, except payment of commission up to 10% of the invoice value of export of tea and tobacco.
- Payment related to 'Call Back Services' of telephones.

- Remittance **of** interest income on funds held in Non-resident Special Rupee Scheme Account.

Que-17

Miss Shilpa is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Ans: Miss Shilpa stayed in India at Mumbai 'base' **for** more than 182 days in the preceding financial year. She is however **employed** in UK. She has **not come to** India **for** employment, business or circumstances which indicate her intention **to** stay for uncertain period. Under section 2(v) (B), such persons are not considered as Indian residents even if their stay exceeds 182 days **in** the preceding year. **Thus,** while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
If, however, **she** has **been** employed in Mumbai branch of British Airways, then **she** will **be** considered a **Person** Resident in India.

Que-18

Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Ans: Mr. X came to India **for** carrying on business. During FY 2019-20, he resided in India for less than 182 days. Since **he** has **not** fulfilled condition **of** staying in India **for** more than 182 days, he would normally be considered **PROI but** as Mr X has come for carrying on business in India, he falls under the second limb and will be considered as PRI w.e.f. 1st April 2020. Mr. X will be considered as a person resident in India' from 1st April 2020.
As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021. **If** he leaves India **for** the **purpose** of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention **to stay** outside India for an uncertain period, he would cease to be person resident **in** India **from** the date of his departure.
It may be noted that even if Mr. X is a foreign citizen, if he has **not** left India for any these purposes, he **would** be considered, **'person** resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from **1st** July 2021.