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LIST OF TOP 100 QUESTIONS➔ MAY 2024 ATTEMPT ONLY
Set-1-List of Quest-1 to Quest-20
Chapters Covered- Preliminary and Incorporation of Company
Weightage as per Exams -Approx 10 Marks

Quest-1	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 paid- up, 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?
Solution	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). **Conclusion:-** 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.**
Quest-2	Ram Pvt. Ltd. is the holding company of Laxman Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of Laxman 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.
Solution	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, 2023 of Laxman Pvt. Ltd., its turnover was to the extent of ` 1.80 crore, and paid-up share capital was ` 80 lakh. Though Laxman 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 (Ram Pvt. Ltd.). Conclusion:- Thus, we may conclude that the Contention of the Company Secretary is correct.
Quest-3	Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013?
Solution	As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants: (a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or (b) direct that liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit: Provided that before making any order under this sub-section the company shall be given a reasonable opportunity of being heard in the matter; and the Tribunal shall take into consideration the transactions entered into by the company.

	Also, the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.
Quest-4	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?
Solution	(1) 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. Conclusion: - 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. (2) 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. Conclusion:- Thus in the given case, the stated company may be wound up. (3) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

	Conclusion:- 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.
Quest-5	*Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year.* *1. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)?* *2. If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee?* *3. What would be the procedure for change on nominee and if any such change shall amount to alteration in Memorandum* *4. What would be the procedure for Withdrawal of consent by nominee* *Justify your answers with relevant provisions of the Companies Act, 2013.*
Solution	As per the provisions of the Companies Act, 2013 along with rule 3 and 4 of the Companies (Incorporation) Rules, 2014 Only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) – • Shall be eligible to incorporate an OPC • Shall be a nominee for the sole member. Case-1- *Mr. R eligible to be incorporated as a One-Person Company* In the given case, Mr. R is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Conclusion:- Thus, we may conclude that Mr. R is eligible to incorporate an OPC. Case-2- *If name of Mr. S in the Memorandum of Association as his nominee can be given* In the given case, Mr. S's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Conclusion:- We may conclude that S's name cannot be given as nominee in the memorandum since he is not an Indian Citizen. 3. Procedure for change in nominee The member may change the name of the person nominated by him **at any time for any reason including in case of death or incapacity to contract** and nominate another person (new nominee) after obtaining the prior consent of such another person in Form No. INC-3.

	Despite name of such other (old nominee) and another person (new nominee) specified in memorandum, any such change in the name of the person shall not be deemed to be an alteration of the memorandum. **Withdraw of Consent by Nominee-** Nominee may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company In this case, the sole member shall nominate another person as nominee within 15 days of the receipt of the notice and shall send an intimation of such nomination in writing to the Company, **along with the written consent of such other person** in Form No. INC-3.
Quest-6	*Alpha Ltd., A Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. 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.*
Solution	According to section 8 of the Companies Act, 2013, the Central Government may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. As per Section 8 of the Companies Act, 2013, the companies having licence under Section 8 of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting their objects Conclusion:- Thus, the proposed act of Alpha Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, to declare dividend, is not according to the provisions of the Companies Act, 2013.
Quest-7	*As at 31st March, 2018, the paid-up share capital of S Ltd. is ₹1,00,00,000 divided into 10,00,000 equity shares of ₹10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:* 1. *Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?* 2. *Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?* 3. *Can H Ltd. allot or transfer some of its shares to S Ltd.?*
Solution	As per Sec 19 of Companies Act 2013 No company shall, either by itself or through its nominees

	(i) hold any shares in its holding company, and (ii) no holding company shall allot or transfer its shares to any of its subsidiary companies, any such allotment or transfer of shares of a company made to its subsidiary company shall be void **Exceptions** (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or (Right to vote shall be available to subsidiary) (b) where the subsidiary company holds such shares as a trustee; or (Right to vote shall be available to subsidiary) (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. (No right to vote shall be available to subsidiary) Now, in the given case, The paid-up share capital of S Ltd. is ₹1,00,00,000 divided into 10,00,000 equity shares of ₹10 each. Of this, H Ltd. is holding 6,00,000 equity shares. Thus, we may conclude that H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013. **Conclusion:-** 1. S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19. 2. A subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd. 3. Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.
Quest-8	*Following are some of the securities, issued by different companies related with each other, as follows: -* **Company** | **Securities Issued** | **Remarks**

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

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.
In the context of aforesaid facts, answer the following question(s): -
1. *Whether the aforesaid companies can be considered as listed company(ies)?*
2. *Explain the relationship between the aforesaid companies?*

Solution

Mention about Sec 2(52) along with Rule 2A of the Companies (Specification of definitions details) Rules, 2014

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

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

3. **Sajagta (P) Ltd.** The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta

	(P) Ltd. shall not be considered as a listed company. **For relationship-Define Sec 2(87)** **(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.** Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd. **(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.** As per sub-clause (ii) to section 2(87), it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd. **(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.** Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd. **(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.** Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding- subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.
Quest-9	In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for ` 8 per share. All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.
Solution	Amount of various share capital Authorized share capital = ` 2,00,00,000 (2 crores) Issued capital = 7,00,000 x 10 = ` 70,00,000 Subscribed capital = 10,00,000 x 10 = ` 1,00,00,000 (1 Crore) Called-up capital = 7,00,000 x 8 = ` 56,00,000 Paid-up capital = 56,00,000 – (6000 x ` 8) = ` 55,52,000
Quest-10	List down some of the relaxations available to One person company under the companies Act 2013
Solution	**Relaxations available to an OPC** include: ♦ Not required to prepare a cash-flow statement with effect of section 2(40). ♦ The annual return to furnished under section 92 can be signed by the Director and not necessarily a Company Secretary, even abridged annual return may be prescribed. ♦ Further, following the similar line, section 134 provides it would suffice if one director

	signs the audited financial statements and abridged form of director report may be prescribed. ♦ Holding annual general meeting as required under section 96 is not necessary in case of OPC. Moreover, certain specific provisions related to general meetings and extraordinary general meetings, specified under sections 100 to 111 not applicable to OPC. ♦ Even relaxation is also there in convening board meetings section 173 requires an OPC to hold only one meeting of the Board of Directors in each half of a calendar year. ♦ Vide section 137, the OPC are allowed to file financial statements within six months from the close of the financial year as against 30 days.
Quest-11	Section 4 of companies Act impose certain restrictions on Name clause such as name shall not be identical or resemble to the name of any existing company. List out few of the instances where name of company shall be deemed as Resemble
Solution	a. Plural or singular form of words in one or both names (Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.) b. Type and case of letters, spacing between letters, and punctuation marks used in one or both names (ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.) c. Use of different tenses in one or both names (Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.) d. Slight variation in the spelling of the two names including a grammatical variation thereof (Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd) e. Use of different phonetic spellings including use of misspelled words of an expression (Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd) f. Complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English (National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.) g. Use of host name such as 'www' or a domain extension such as .net'. org', 'dot' or 'com' in one or both names (Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd. But Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.) h. The order of words in the names (Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.) i. Use of the definite or indefinite article in one or both names (Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd. But Isha Industries Limited

	is not the same as Anisha Industries Limited.) j. Addition of the name of a place to an existing name, which does not contain the name of any place; (If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd. But Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.) k. addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand (Thunder Services Ltd is same as Thunder 11 Services Ltd and One Thunder Services Ltd.)
Quest-12	Prescribe the procedure for conversion of Section 8 company into either Private Limited company or Public limited company
Solution	A company registered under section 8 of the companies Act 2013, may convert itself into company of any other kind only after complying with such conditions as may be prescribed in rule 21 and 22 of *the Companies (Incorporation) Rule 2014* as described below; a. A company shall pass a **special resolution** at a general meeting for approving such conversion b. An **explanatory statement** to notice of such general meeting must set-out the details on reason of such conversion. c. The company shall file an application in Form No. INC-18 with the **Regional Director** with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for conversion. Also attach the proof of serving of the notice served by **registered post or hand delivery**, to: ♦ the Chief Commissioner of Income Tax having jurisdiction over the company, ♦ Income Tax Officer who has jurisdiction over the company, ♦ the Charity Commissioner, ♦ the Chief Secretary of the State in which the registered office of the company is situated, ♦ any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.

	d. A **copy** of the application with annexures as filed with the Regional Director shall also be **filed with the Registrar**. e. The company shall, within a week from the date of submitting the application to the Regional Director, **publish a notice** at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC-19 and shall be published; • at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and • on the website of the company, if any, and as may be notified or directed by the Central Government. f. The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director g. On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case. h. Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director i. On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association and the Company shall thereafter file these with the Registrar (with declaration to adhere conditions if any, imposed by Regional Director) j. On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.
Quest-13	*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?
Solution	**<u>According to section 16 of the Companies Act, 2013</u>** **Situation of Rectification** Sometime through inadvertence, company is registered with a name which is identical with or too nearly resembles the name by which a company in existence or the name is identical with or too nearly resembling to a registered trade mark. **In this case, Central Government may issue a direction for rectification of name to company and** Company may rectify its name by adopting the following procedure: — 1. By passing an ordinary resolution, and 2. By obtaining the previous approval of the Central Government in writing **Time limit for Rectification** ▪ A registered trademark owner has to file an application for rectification of name, within 3 years of incorporation of company or change of name. ▪ In case of rectification of name due to similarity with registered trademark, rectification shall be done within 3 months **<u>In the given case</u>**, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. Conclusion:- Company cannot be compelled to change its name as application by registered trademark owner should have filed the same within 3 years **If company can change its name at its discretion** 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.
Quest-14	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.
Solution	Regarding the validity of Proposals w.r.t change of registered office by A Limited in the light of section 12 of the Companies Act, 2013: (i) In the first case, the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai. As per Section 12 of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid. (ii) In the second case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.
Quest-15	Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai. Mr. Parag signed partnership deed with Firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?
Solution	As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal. In the present case company has not neither given any written authority not affixed common seal of the authority letter. Conclusion: We may conclude that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.
Quest-16	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.
Solution	As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met. The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner. In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.
Quest-17	Shri Laxmi Electricals Ltd. (S) is a company in which Hanuman power suppliers Limited (H) is holding 60% of its paid up share capital. One of the shareholder of H made a charitable trust and donated his 10% shares in H and ` 50 crores to the trust. He appoint S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold shares in its holding company in this way?
Solution	According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Following are the exceptions to the above rule; (a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or (b) Where the subsidiary company holds such shares as a trustee; or (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company. In the given case, one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S can hold shares in H.
Quest-18	Ashok, a director of Gama Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company

	sent notice to him by ordinary mail under certificate of posting. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide: (i) Whether the contention of Ashok is valid. (ii) Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held?
Solution	According to section 20 of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under: (i) The contention of Ashok shall be tenable, for the 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.
Quest-19	The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. Borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.
Solution	**Given problem is based on doctrine of indoor management** ▪ Every person dealing with the company is presumed to have understood the contents of company's memorandum and articles of association. ▪ If he enters into a contract with the company which is contrary to the provisions of memorandum articles of association, then he will not get any right under such contract. ▪ **Such rule has one exception which is known as 'doctrine of indoor management'.** ▪ According to this doctrine, a person dealing with the company is not presumed to the knowledge of internal proceedings of the company ▪ This doctrine was first evolved in the case of ***Royal British Bank v Turquand*** ▪ However, benefit under this doctrine cannot be claimed in case of forgery as it was held in the case of **[*Rubben v Great Fingal Consolidated*]**

	Conclusion: Share certificate is not binding on company as it contained forged signatures. Thus, no title could be transferred to A even if he is a bonafide purchaser since as per the general rule forgery is nullity
Quest-20	Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months, M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free from his liability.
Solution	The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. This doctrine is important to persons dealing with a company through its directors or other persons. As such other person is entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Thus, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company

LIST OF TOP 100 QUESTIONS➔ MAY 2024 ATTEMPT ONLY
Set-2-List of Quest-21 to Quest-40
Chapters Covered- Management & Administrations of Company
Weightage as per Exams -Approx 6-8 Marks

Quest-1	With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ` 30 crores divided into 3 crores shares of ` 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss the possibility of calling a general meeting by giving shorter notice.
Solution	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— in the case of any other general meeting (i.e. other than annual 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. Thus, if the meeting is called after obtaining the consent from members holding at least ninety-five per cent of the paid-up share capital of the company, the meeting can be validly called at shorter notice.
Quest-1A	The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh shares of `10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.
Solution	In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent

	members holding shares worth Rs. forty lakh which works out to 80% (40,00,000/50,00,000 *100) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting *(i.e. shareholders holding shares worth ` 47,50,000)* must consent to shorter notice. Therefore, the EGM cannot be validly called and held.
Quest-2	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?
Solution	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 initialed 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 Moon Light Ltd. can be signed in the absence of Mr. Shreeram, by any director, authorized by the Board in this respect.
Quest-3	*Mr. Krish, a shareholder of ABC Ltd., has made a request to the company for providing a copy of minutes book of general meeting. His name is already entered in the register of members of the company. Whether the Mr. Krish is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013.*
Solution	In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company. As Mr. Krish, in the given case, is the member of ABC Ltd., so shall be entitled to receive a copy of any minute's book of general meeting.
Quest-4	*Kavita Ltd. scheduled its Annual General Meeting to be held on 11th March, 2020 at 11:00 A.M. The company has 900 members. On 11th March, 2020 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.?*
Solution	(i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000. (1) P1, P2 and P3 will be counted as three members. (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members. (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum. Thus, it can be concluded that the quorum for Annual General Meeting of Kavita 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 quorum requirement, and he reaches after 11:30 AM , the meeting will be adjourned as provided above.
Quest-4A	*PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general meeting to be held on 2nd September 2019 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.* *On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolution after discussions as per the agenda of the meeting given in 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?*
Solution	In the given case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103. Hence, the AGM conducted by PQ Limited after adjournment is valid. As per the provisions of section 103(1)(b), in case of a private company, two members personally

	present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.
Quest-4B	*The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.*
Solution	According to section 100 of the Companies Act, 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members. As per Section 103 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, in the given case, meeting shall stand cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.
Quest-4C	*Abbey Limited has 2300 members and the annual general meeting of the company is due to be held on 23rd February, 2017 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.*
Solution	**Steps in formation of answer for this case** 1. *Mention about the meaning of quorum u/s 103* 2. *Provide the limit of quorum as applicable incase of public limited company* 3. *Provide conclusion (As provided below)* **Conclusion:** In the above case, while the quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, however the same was absent at the time of deciding Agenda 4 & 5. Thus, we may conclude that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.
Quest-5	*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?*
Solution	1. **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. 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. 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.
Quest-6	*The Chairman of the meeting of a company received a Proxy 54 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, 2013 whether the Proxy holder can compel the Chairman to admit the Proxy?*
Solution	**Mention Section 105 of Companies Act, 2013,** **Time limit for submission of proxy form:** It should be submitted to the company 48 hours before the meeting. In case Article provides any further shorter period than it should be complied with **In given case,** chairman of the meeting of a company received a Proxy 54 hours before the time fixed for the start of the meeting, which he refused to accept on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. **Conclusion:** Any provisions contained in the Articles of a company that requires a longer period than 48 hours before a meeting of the company for depositing a proxy shall be void. Thus contention Proxy Holder may compel the Chairperson to accept such proxy form.
Quest-7	*M.H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M.H. Company Limited Complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain fully*
Solution	According to Section 102 an explanatory statement shall be annexed to every notice if it proposes any special business in upcoming meeting. Explanatory statement is the responsibility of BOD. If any notice is issued without providing such statement, then it shall be considered as Invalid Notice In given case, notice so issued shall be taken as invalid notice as it does not contain an explanatory statement

Quest-8	*Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.*
Solution	As a general practice, to avoid any confusion, the resolutions are generally moved separately in the annual general meeting. However, there is no restriction in Companies Act, 2013 stating that if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any. The only occasions, where law specifically requires a resolution to be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution. Thus, in the given case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.
Quest-9	Luxy Hairstylefs 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.
Solution	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.
Quest-10	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.
Solution	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 other 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.
Quest-11	*Big Fox Private Limited called its Annual General Meeting on 30th September, 2016 for laying down the financial statement for approval of its shareholders for the financial year ended 31st March 2016. However, due to want of quorum, the meeting could not take place and was*

	cancelled. The company has not filed the annual financial statements, or the annual return for the year ending March 2016, with the ROC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.
Solution	• As per the provisions of Section 92, every company has to file an annual return with the ROC in Form MGT-7 within 60 days of date on which annual general meeting was held or the date when it must have been held. • In given case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2016, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92
Quest-12	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.
Solution	As per Rule 18 (3) (v) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e- mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.
Quest-13	*Z Ltd i.e. a listed company submitted their Annual Return, however office of ROC refused to accept such Return stating that it has not been signed by authorized persons on behalf of company. In light of provisions of Companies Act, 2013 states* *1. When Annual Return shall be submitted* *2. In case of Listed Company, by whom its shall be signed* *3. Also prescribe the relevant form no*
Solution	Above case is based upon the provisions of section 92 of Companies Act, 2013 1. Every company shall file with the Registrar a copy of the annual return, within 60days 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 2. As per the provisions of this section, the annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified

	by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. 3. Every company shall prepare its annual return in Form No. MGT.7.
Quest-14	*The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X' a member, of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y before one month form the date on which the meeting was due. The name of Y could not be entered in the Register of Members as the application of transfer of shares was pending. Y attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not hold his shares for specified period as provided in the articles before the date of the meeting.* *State whether Y can exercise his voting right in the meeting? State also the grounds upon which Y may be excluded from exercising his voting rights in the meeting of the shareholders.*
Solution	As per Section 106 of Companies Act, 2013, voting right of members may be restricted in following circumstances:— (i) In case of nonpayment of Calls due on shares (ii) In case of non-payment of other dues against the members (iii)Where right of lien is exercised by the company in respect of shares **In given case:** Articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. **Conclusion:** we may conclude that A public limited company cannot impose any restriction on voting right of its members on any ground other than those specified under section 106. Since above ground of restriction is not covered under section 106, thus restriction so imposed shall be invalid ***Situation, where company is a private limited company*** Section 106 shall apply to a private company; unless otherwise specified in the articles of the company. Thus, situation would have been different, if ABC would have been a private limited company, since the Law allow private limited company to insert an additional condition through its Article.
Quest-15	*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?*

Solution	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.
Quest-16	*Dev Limited issued a notice for holding of its Annual General Meeting on 7th November, 2005. The notice was posted to the members on 16.10.2005. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:* *(i) Whether the meeting has been validly called?* *(ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?* *(iii) Can the short fall, if any, be condoned?*
Solution	Mention Section 101 of Companies Act, 2013 ***Based upon above provisions, we may conclude as follow:-*** i. In given case 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened. ii. Based upon the above calculation, notice falls short by 2 days. An AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than **ninety-five per cent of the members** entitled to vote at such meeting in writing **either before or during or even after the meeting**,
Quest-17	The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on 2nd October, 2022. Discuss whether the general meeting can be convened on the said date and place.
Solution	Meeting cannot be convened as proposed to be held by the requisitionists. As per Rule 17 (2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2022 is a National Holiday.
Quest-18	*In a General meeting of Alpha Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder*

	contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?
Solution	Refer Section 118 of the Companies Act, 2013 **Conclusion:** Thus, we may conclude that, 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
Quest-19	*The extra-ordinary general meeting of the company, Purple Banana Private Limited was due to be held on 23rd September 2016. However, due to want of quorum, the meeting was adjourned to a later date on 1st October 2016 and two resolutions were passed on that date. What would be the date of passing of resolution as passed on 1st Oct 2016*
Solution	**According to section 116 of the Companies Act, 2013,** where a resolution is passed at an adjourned meeting of— (a) a company; or (b) the holders of any class of shares in a company; or (c) the Board of Directors of a company, then, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date. Thus, in given case, said two resolutions shall be deemed to have been passed on the original date of meeting, i.e. 1st October 2016 and not on the earlier date.
Quest-20	*Ms. Emma gifted the shares purchased by her of the Company Bio-Optics Limited, to her sister Cathy. Emma had purchased these shares on the occasion of her birthday in February 2017. However, neither Emma nor Cathy were aware that they had to intimate about the transaction of transfer of such shares as a gift, to the company. Discuss the same in light of the provisions of section 89 of the Act.*
Solution	**Give reference to Section 89 of Companies Act, 2013** If any person fails, to make a declaration as required, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. ***In given case, since shares are gifted away, they become the property of the donee. Hence, the provisions relating to declaration of beneficial interest are not applicable.***
Quest-20A	*Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of 1,000 crores. According to financial statements as on 31st March, 2023, paid-up capital of company was 600 crores and free reserves were 650 crores. Registered Office of the company situated in New Delhi, but around*

	15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad. *MCL is planning to expand its existence throughout the country. For this purpose, Company has taken 200 crores term loan and 125 crores of Working Capital loan from Banks on 18th June, 2023. Charge was created on all the assets of company on that day for above loan of 325 crores, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.* *MCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22nd August, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plans.* *With reference to provisions of Companies Act, 2013, answer the following questions:* *(i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?* *(ii) Which type of Charge was created by Company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of Companies Act, 2013?* *(iii) Whether the notice given to convene AGM at shorter notice was in compliance of Companies Act, 2013? [5 Marks]*
Solution	1. Place of Maintainig Register of Members [Sec 88 of companies Act 2013] Every company shall keep and maintain Registeres as prescribed u/s 88 at the registered office of the company unless a special resolution is passed in a general meeting to place it □ at any other place within the city, town or village in which the registered office is situated or □ any other place in India in which more than 1/10th of the total members entered in the register of members reside. In given case, Company wants to maintain its Member's Register at Faridabad,Whereas company is having its Registered Office in New Delhi Conclusion:- Company may maintain its Member's Register at Faridabad provided it need to have an approval from members through Special Resolution 2. Given Case is Based on Provisions regarding Registration of Charge [Sec 77 of companies Act 2013]

	According to section 77 of the Companies Act, 2013, • it shall be duty of the company creating a charge, to register the particulars of the charge in prescribed form i.e. Form CHG-1, signed by the company and the charge holder along with such fees as prescribed, with the registrar within 30 days of creation. The Registrar may, • on being satisfied that the company had sufficient cause for not filing the instrument of charge, • within a period of 30 days of the date of creation of the charge, • allow the registration of the same after 30 days • but within a period of 60 days of the date of such creation of charge on payment of additional fee. Even if Charge could not be created within 60 Days, still ROC may allow creation of charge within a period of next 60 days on payment of Advelorum fees In the given case, Charge is created on 18th June, 2023 and the application for registration of charge was furnished on 18th August Since Charge was created on 18th June, thus Form no CHG-1 shall be filed with ROC :-Within 30 days i.e. till 18 July with prescribed fee :-Within next 30 days i.e. till 17th August along with Additional Fee :-Within next 60 days i.e. till 16th Oct along with Advelorum Fee Conclusion:- We may conclude that ROC may allow registration of charge subject payment of Advelorum fee. 3. Given case is based on provisions of Shorter Notice [Proviso to Sec 101 of companies Act 2013] General meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto :-in the case of an annual general meeting, by not less than 95% of the members entitled to vote thereat In the given case, MCL wants to convene its AGM on Shorter Notice after getting consent of 78% of members

	Conclusion:- Based on above provisions, we may conclude that Notice given for convening shorter notice if not in compliance of Sec 101, since consent of 95% of the members entitled to vote could not be obtained
Very Special Note	For exam purpose also go through the following concepts very carefully, as question is expected from them 1. Sec 90-Meaning of SBO 2. Sec 90-Procedure when company found some SBO 3. Content of Annual Return

LIST OF TOP 100 QUESTIONS ➔ MAY 2024 ATTEMPT ONLY
Set-3-List of Quest-51 to Quest-65
Chapters Covered- Shares+Prospectus+Allotment
Weightage as per Exams -Approx 6-8 Marks

Quest-51	Security is a wider term, not restricted to equity, preference, or debenture. Explain
Solution	As per section 2 (81), the term 'securities' means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 19563. The definition given thereunder provides, "Securities" include; (i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; (ia) Derivative; (ib) Units or any other instrument issued by any collective investment scheme to the investors in such schemes; (ic) Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 20024. (id) Units or any other such instrument issued to the investors under any mutual fund scheme. Explanation - For the removal of doubts, it is hereby declared that "Securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938. (ie) Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be; (ii) Government securities; (iia) Such other instruments as may be declared by the Central Government to be securities; and (iii) Rights or interests in securities.
Quest-51A MCQs	Which of following shall be considered as securities for purpose of section 23 of the Act; (i) Unit linked insurance policy (ii) *Actionable claim regarding mortgaged debt* (iii) *Securities issued by National Asset Reconstruction Ltd*

	Options *(a) (iii) only* *(b) Both (i) and (iii) only* *(c) Both (ii) and (iii) only* *(d) None of the (i), (ii), and (iii)*
Solution	*C*
Quest-52	Company's prospectus was given to a solicitor of the company and he forwarded it to one of his clients despite it was marked strictly private, who applied for share based upon 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?
Solution	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. (Refer **Nash Vs Lynde**)
Quest-52A	In case of Super-Fix-it Limited, some of members of a company offer part of their holding of shares to the public (in consultation with board of directors), wherein company took all actions on their behalf for carrying out the transaction. Company incur the expense of ` 3.2 lakh for carrying out such transactions, can company recover the amount so incurred in full from such members?
Solution	Mention Sec 28 Yes, members who offer whole or part of their holding of shares to the public, in consultation with board of directors, shall authorise 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 (Refer section 28(3).
Quest-52B	*After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalization of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. Comment.*
Solution	According to section 39 of Companies Act, 2013, Minimum subscription means receipt of an application for at least 90% of the shares issued. Section further states that no allotment shall be made unless the amount of minimum subscription has been subscribed and received by company Company shall keep the entire amount received on application with Scheduled bank and in case company failed in obtaining Minimum Subscription within 30 days, or such period as may be prescribed by SEBI, the amount received shall be returned within a period of fifteen days from the closure of the issue. In given case, the company has received 80% of the minimum subscription as stated in the

	prospectus. The company deposited the said amount in the bank but withdrew 50% of the amount **Conclusion: -**Based upon the above provision, we may conclude that allotment is in contravention of section 39 of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription. Therefore, in the present case X is within his rights refuses to accept the allotment of shares which has been illegally made by the company.
Quest-53	*A Limited i.e. company into manufacturing of organic chemical, recently have issued a prospectus to public, wherein they want this public money for acquiring various machinery to be used in their chemical manufacturing unit. However recently company has received a lucrative order from USA, where in customer was willing to enter into an agreement for 10 years, if company can provide them regular supply of dye chemical i.e. an object, which was outside their main object, since Directors were having enough experience in Dye chemical as well, thus they want to grab this opportunity with both hands.* *Now regarding the requirement of funds, they decide to utilize the amount acquired through public, wherein they are still left with 50% of fund as unspent.* *As an expert they approached you for appropriate suggestion and procedure to be adopted to accept said order*
Solution	Since company after raising money from public want to change their object from Organics Chemical to Dye Chemical, thus company can follow the procedure as specified in Section 27 of Companies Act, 2013 **According to the provisions of Section 27 of companies Act 2013:** Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot. The advertisement of the notice of resolution passed for varying the terms of any contract or altering the objects of the prospectus shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders. In addition, the company shall also place the notice on the website of the company, if any.
Quest-54	*XYZ Ltd issued a prospectus inviting the public for subscription of its equity share stating in it that company possesses good financial health and paying dividend to its members regularly @ 20% on equity share capital over past 5 years. The fact was, company was running in loss since past 3 years and it was paying dividend to its shareholders out of accumulated profits. Mr. Amit read the prospectus and bought 500 shares from company. Discover the mis- statement in prospectus, he wants to rescind the contract and claim the damages from the company. Referring to the provisions of Company Act 2013, decide whether Mr. Amit*

	will succeed. *What if shares were purchased from Stock Exchange and not from company*
Solution	**Meaning of misleading prospectus** (a) It contains any statement which is untrue, and (b) It omits any matter which is calculated to mislead **Liability in case of Mis-statement in prospectus** 1. **Criminal liability for misstatements in prospectus (Section 34):** Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447: **2.** Civil liability for misstatements in prospectus (Section 35) Company and every person who— (a) is a director of the company at the time of the issue of the prospectus; has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, (c) is a promoter of the company; (d) has authorised the issue of the prospectus; and (e) is an expert referred in section 26, shall, be liable to pay compensation to every person who has sustained such loss or damage. Based upon the facts of given case, we can conclude that prospectus so issued by the company is misleading to the extent that it failed to provide the material information that, company is paying dividend out of its accumulated profits. Thus, concerned officialof company shall be liable forcriminal and civil liability. **Conclusion:** Thus, we can conclude that Mr. Amit will succeed in a suit against company and contract shall be voidable at his option. He is entitled to rescind the contract within a reasonable time. *Situation if shares were purchased from Stock Exchange and not from company* **In this case, decision in the case of Peek v. Gurney shall apply wherein, It was held by the court that** the directors were not liable as the shares were not purchased on the basis of prospectus.
Quest-55	*Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:* *(i) ABC limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares.*

	Out of these four are qualified institutional buyers. *(ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.* *(iii) Being a public company can it issue securities in a private placement offers?*
Solution	Mention about Sec 42 Where a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus. Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly. (i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions. (ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer. In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers. (iii) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.
Quest-55A	*Mars India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of theses allotment in the light of the*

	provisions of the Companies Act, 2013.
Solution	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, such shares may be offered to any persons provided following conditions are satisfied: - 1. Any such issue shall be authorised by S/Res passed in general meeting of company 2. Price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.
Quest-55B	*Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹4,50,000. The company approaches you for advice with regard to the following* *(i) Is special resolution required to be passed?* *(ii) What is the time limit for completion of buy-back?* *What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?*
Solution	Section 68 of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares unless- (a) The buy-back is authorized by its articles; (b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where— (1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and (2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting; Section further provides that, every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board. Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid-up capital, security premium and its free reserves. As per the stated facts, Xgen Ltd. has a paid-up equity capital and free reserves to the extent of

	₹50,00,000. The company planned to buy back shares to the extent of ₹4,50,000. Referring to the above provisions, we may conclude that 1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves of the company, but any such buy back shall be authorized by the Board by means of a resolution passed at its meeting. 2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board. 3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid-up capital and its free reserves. The above buy-back is possible when backed by the authorization by the articles of the company.
Quest-56	*M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.* *(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.* *(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?*
Solution	As per section 94 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. (i) Thus, we may conclude that, Techno Ltd. can also keep the registers and returns at Kolkata 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 of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company. Any other person (other than specified above) may also inspect the Register of members of company on payment of prescribed fee Thus, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, unless he makes payment of prescribed fee
Quest-57	*What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?* *(i) A shareholder of the company who has shares of ₹ 10,000.*

	(ii) A creditor whom the company owes ₹ 999 only. *(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.*
Solution	Mention about Sec 71 (5) (i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee. (ii) A creditor whom company owes ₹ 999 cannot be appointed as a debenture trustee. The amount owed is immaterial. (iii) person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.
Quest-58	*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.*
Solution	Mention provision of Sec 54 along with Rule 8 of Companies (Share capital and debentures) Rules, 2014 We may conclude that 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)
Quest-59	*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 — 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:*

	1.Whether company can give bonus shares in the ratio of 1:3? *2. What if company decide to give bonus shares in the ratio of 1:2?*
Solution	Mention provisions of Sec 63 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 Thus, we may conclude (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., ½ 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.
Quest-60	*When is an Allotment of Shares treated as an irregular allotment? State the effects of an irregular allotment.*
Solution	The Companies Act, 2013 does not separately provide for the term "Irregular Allotment" of securities. Hence, one will 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 and 40. Irregular allotment therefore arises in the following instances: 1. Where a company does not issue a prospectus in a public issue as required by section 23; or 2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26(1), or the information given is misleading, faulty and incorrect; or 3. Where the prospectus has not been filed with the Registrar for registration under section 26(4); 4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or 5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or 6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013

	Effects of irregular allotment: The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act, 2013 does not mention that in case of an irregular allotment the contract is voidable at the option of the allottee. Under section 26(9) of the Companies Act, 2013 if a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both. Similarly in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time. Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39(5). Under section 40(5) any default made in respect of getting the approval to listing of securities in one or more recognized stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both. Hence, under various provisions of the Companies Act, 2013 stringent punishment has been provided for against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.
Quest-61	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?
Solution	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.
Quest-61A	A huge sums of money were collected under a document described as "project overview" by NRIs but shares not allotted in the proposed joint venture company instead the money was diverted to some off-shore companies controlled by the accused persons.
Solution	*Mention the provisions of Sec 36*
Quest-61B	Mr. Raju one of prospective investor under section 37 of this Act, sue the persons who authorise the issue of prospectus for the fraudulent misstatements they made in the prospectus. Mr. Raju also filed a complaint under section 420 of the IPC, 1860 and section 447 of this Act. Mr. Angad one of the authorised persons, plead that Mr. Raju did not took any share, hence he has not borne any sort of loss, therefore he cannot seek the remedies, for what he is asking for and they are not punishable under section 447, because fraud is not committed against Mr. Raju. Whether the persons who authorised the issue of prospectus punishable under section 447?
Solution	In this case, the persons who authorised the issue of prospectus shall be punishable under section 447 for the fraudulent misstatement, despite the fact that Mr. Raju had not borne any loss. Because wrongful gain or loss is not essential constituent of fraud under section 447.
Quest-62	The Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares as underwriting commission may be paid to the underwriters. The Board of directors decided to pay 5% underwriting commission. Can the Board of directors do so? State the provisions of law in this regard as stated under the Indian Companies Act, 2013.
Solution	**Mention Meaning of Underwriting Agreement along with other provisions of Sec 40** **Based upon the provision of above section, we can conclude** that the Board of Director's decision to pay 5% is not valid, since the payment cannot exceed 4% as provided in the Articles of the company.
Quest-63	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?
Solution	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.
Quest-64	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?

Solution	Mention about provisions of Sec 55 In view of the provisions of Section 55 , 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.
Quest-64A	OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ` 4,00,000 to its Human Resource Manage,r 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.
Solution	Mention about provisions of Sec 67 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.

Quest-64B	Mr. Nilesh has transferred 1000 equity shares of Perfect Vision Private Limited to his sister, Ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nilesh or Ms. Mukta within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?
Solution	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, 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 , the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company. In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.
Quest-64C	"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.
Solution	This Statement is not valid As per the provisions of Sec 68 of Companies Act 2013 No offer of buy-back shall be made within one year reckoned from the date of the closure of the preceding offer of buy back Where a company completes a buy-back of its shares or other specified securities, it shall not make further issue of same kind of shares or other specified securities within a period of six months.
Quest-65	Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued ` 1,00,000 convertible preference shares

(carrying right to vote) of ` 100 each and 10,00,000 equity shares of ` 10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:

(i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?

(ii) XYZ Private Limited is a public company as per the Companies Act, 2013?

Solution

(i) Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.

(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.

Provided that 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.

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

1. controls the composition of the Board of Directors; or
2. 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, total voting power in XYZ Private Limited is:

Particulars	Amount in `
Convertible Preference Shares (carrying voting rights)	1,00,00,000
Equity Shares	1,00,00,000
Total Voting Power	2,00,00,000

Cross Limited holds more than one- half of the total voting power [(` 10,00,000 equity shares+ ` 1,00,00,000 preference shares)/
` 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited.

Further, in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

LIST OF TOP 100 QUESTIONS➔ MAY 2024 ATTEMPT ONLY
Set-3-List of Quest-51 to Quest-65
Chapters Covered- Shares+Prospectus+Allotment
Weightage as per Exams -Approx 6-8 Marks

LIST OF TOP 100 QUESTIONS ➔ MAY 2024 ATTEMPT ONLY
List of Quest-65 to Quest-70
Chapters Covered- Deposits
Weightage as per Exams -Approx 6-8 Marks

Quest-66	The Promoters of J Limited contributed in the shape 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. What will be your answer in case the entire loan obtained from SIDCL is repaid?
Solution	According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit: Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions: (a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance; (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter. Hence, in the instant case, the unsecured loan contributed by promoters of J 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. In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.
Quest-67	NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions: (i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies

	Act, 2013? (ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?
Solution	(i) 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) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly: • It should be a public company. • It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore. • It has obtained the prior consent by means of a special resolution passed in general meeting. • The special resolution has been filed with the Registrar of Companies. • An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public. Tenure for which Deposits can be Accepted: 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. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013. (ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, 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

LIST OF TOP 100 QUESTIONS ➔ MAY 2024 ATTEMPT ONLY
List of Quest-65 to Quest-70
Chapters Covered- Deposits
Weightage as per Exams -Approx 6-8 Marks

	from others and further, the company shall disclose the details of money so accepted in the Board's report. In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.
Quest-68	*Answer the following citing relevant provisions of the Companies Act, 2013:* *(a) 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?* *(b) 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. Is this correct?*
Solution	(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. 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. (b) 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 not correct.
Quest-69	*Define the term 'Deposit' under the provisions of the Companies Act,2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not.,* *(i) ₹5,00,000/- raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India* *(ii) ₹2,00,00/- received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000/- under a contract of employment with the company in the nature of non-interest-bearing security deposit.* *Amount of ₹3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.*
Solution	According to section 2(31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does

	not include such categories of amount as prescribed in the Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India. As per Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers— (i) ₹5,00,000 raised by the Rishi Ltd. through issue of non- convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit. (ii) ₹2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest-bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit. (iii) ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
Quest-69A	*RS Ltd. received share application money of ₹50,000 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit. The share application money of ₹5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹50.00 Lakh shall be deemed to be 'Deposits' as on 30.07.2019 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.* *You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013*
Solution	Refer Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 Based on upon Rule, we may conclude as follow: - If such application money or advance is not refunded to the subscribers within 15 days from the

	date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹ 50 Lac as 'Deposits' on 31.07.2019. Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.
Quest-70	*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*
Solution	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 is ₹ 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 36 months.

Exception to the rule of tenure of six months: 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 10% 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 3 months from the date of such deposits or renewal thereof.
Maximum Amount of Deposits: maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.
For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.
Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.
For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (outstanding deposit under plan A) = 16.5 crores.

In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Quest-66	The Promoters of J Limited contributed in the shape 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. What will be your answer in case the entire loan obtained from SIDCL is repaid?
Solution	According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit: Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions: (a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance; (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter. Hence, in the instant case, the unsecured loan contributed by promoters of J 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. In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.
Quest-67	NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions: (i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

	(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?
Solution	(i) 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) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly: • It should be a public company. • It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore. • It has obtained the prior consent by means of a special resolution passed in general meeting. • The special resolution has been filed with the Registrar of Companies. • An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public. Tenure for which Deposits can be Accepted: 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. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013. (ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, 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, the said deposits by Mr. P Kishore shall not be treated as deposit.
Quest-68	*Answer the following citing relevant provisions of the Companies Act, 2013:* *(a) 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?*

	(b) 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. Is this correct?
Solution	(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. 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. (b) 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 not correct.
Quest-69	*Define the term 'Deposit' under the provisions of the Companies Act,2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not.,* *(i) ₹5,00,000/- raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India* *(ii) ₹2,00,00/- received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000/- under a contract of employment with the company in the nature of non-interest-bearing security deposit.* *Amount of ₹3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.*
Solution	According to section 2(31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India. As per Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers— (i) ₹5,00,000 raised by the Rishi Ltd. through issue of non- convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit. (ii) ₹2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-

	interest-bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit. (iii) ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
Quest-69A	*RS Ltd. received share application money of ₹50,000 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit. The share application money of ₹5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹50.00 Lakh shall be deemed to be 'Deposits' as on 30.07.2019 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.* *You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013*
Solution	Refer Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 Based on upon Rule, we may conclude as follow: - If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹ 50 Lac as 'Deposits' on 31.07.2019. Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Quest-70	*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*
Solution	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 is ₹ 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 36 months. Exception to the rule of tenure of six months: 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 10% 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 3 months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

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

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

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (outstanding deposit under plan A) = 16.5 crores.

In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Quest-70A

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.	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?
Solution	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 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 send 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. Conclusion:- 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.
Quest-70B	*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

	<table><tr><td>2020-21</td><td>` 5.00 crore</td><td>` 3.75 crore</td></tr><tr><td>2021-22</td><td>` 7.00 crore</td><td>` 5.25 crore</td></tr></table> *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.*
Solution	According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board. Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case, 1. Net Profit before tax of Red Limited for the FY 2021-22 is ` 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ` 5 crore. 2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.) Average Net Profit since incorporation: (` 5 crore + ` 7 crore)/ 2 = ` 6 crore Minimum contribution towards CSR will be: 2% of ` 6 crore = ` 0.12 crore or ` 12 Lacs.
Quest-70C	*The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the Income Tax Authorities to NCLT.*
Solution	As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a

	court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year. In the given instance, an application was filed for re-opening and re-casting of the financial statements of Sun Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year. Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2022-2023, is invalid.
Quest-71	*(i) Ravi Limited maintained its books of accounts under single Entry System of Accounting, is it permitted under the provisions of the Companies Act, 2013?* *(ii) State the person reasonable for complying with the provisions regarding maintenance of Books of Accounts of a company.* *whether a company can keep books of Accounts in electronic mode accessible only outside India.*
Solution	(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 accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of accounts must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted. (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 accounts etc. shall be: (a) Managing Director, (b) Whole-Time Director, in charge of finance (c) Chief Financial Officer (d) Any other person of a company charged by the Board with duty of complying with

	provisions of section 128. (iii) A Company have had the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule, (a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. (b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law. (c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. Hence, a company cannot keep books of Account in electronic mode accessible only outside India.
Quest-71A	*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 2017 -18 were placed at its annual general meeting held on 31st August, 2018. 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, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018.* *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?*
Solution	**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 unadopted 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, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM. Conclusion: Thus, we may conclude that Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.
Quest-71B	*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.*
Solution	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 rev iew 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.
Quest-71C	*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.*
Solution	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.
Quest-72	The Board of Directors of XYZ Company Limited at its meeting declared a 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 at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:

	(i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors? *(ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?*
Solution	According to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid within 30 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, is liable for the punishment under the said section. In the given case, the Board of Directors of XYZ Company Limited at its meeting decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days. Thus, based on above situation, we may conclude as follow: - (i) The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company. Consequences: The following are the consequences for the violation of above provisions: (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2years 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 18% p.a. during the period for which such default continues. If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence as per section 127 of the Companies Act, 2013.
Quest-72A	*A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15 as per the provisions of the Companies Act, 2013.*
Solution	**As per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014,** A company may declare dividend out of surplus subject to the fulfillment of the following conditions: (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 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 one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement; The amount so drawn shall first be utilised 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; (c) 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. In the given case therefore, the company can declare a dividend of 20% provided 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. Thus, in this case company shall put up the Dividend recommended by Board for the approval of the members at the Annual General Meeting since the authority to declare lies with the members of the company.
Quest-72B	*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.*
Solution	Mention about both Sec 124 and Sec 127 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: 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. 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.
Quest-73C	*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.*
Solution	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** 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 III: 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.
Quest-74	*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?*
Solution	1. According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. 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. 2. 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. 3. 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.
Quest-75	*You are required to examine with reference to the provisions of the Companies Act, 2013 the following issues pertaining to declaration and payment of dividend:* *(i) Brix Limited has earned a profit of ₹1,000 crore for the financial year 2016-17. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves of the company out of the profits earned. Can Brix Limited do so?* *(ii) Wilson Limited is facing loss in business during the current financial year 2016-17. In the immediately preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. Tomaintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Is the act of Board of Directors valid?* *(iii) The Director of Som Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the Annual General Meeting of the company held on 20th September, 2017. The Directors declared the approved dividends.* *Mr. Ninja was the holder of 1,000 equity shares on 31st March, 2017, but he has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend.* *Mr. Alok, holding equity shares of face value of ₹10 lakh 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?*
Solution	(i) The amount to be transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. The company is free to transfer any part of its profits to reserves as it deems fit. There is no restriction to transfer any specific amount (i.e. even no amount can be transferred) to the reserves before declaration of dividend. (ii) 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 [i.e. (8+10+12)/3 = 30/3 =10%]. Therefore, decision of Board of Directors to declare 12%

	interim dividend for the current financial year is not tenable. They can declare a maximum 10% interim dividend. (iii) cording to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Mr. Ninja, the holder of equity shares transferred the shares to Mr. Raj whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend. Yes, as per law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case the dividend can be lawfully adjusted by the company against any sum due to it from the shareholder. Thus, company can adjust sum of ₹1 lakh due towards call money on shares against the dividend amount payable to Mr. Alok.
Quest-75A	The Annual General Meeting of Angels 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. A, an equity shareholder, up to 25th July, 2022. Mr. A 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. A would succeed? Also, state the directors' liability in this regard under the Act.
Solution	Section 127 of the Companies Act, 2013 lays down the penalty for non-payment 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. A will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.
Quest-75B	*ABC Limited realized on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th*

	February, 2019 instead of 12th March, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.
Solution	As per the provisions of section 77 of Companies Act, 2013 It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation on payment of such additional fees as may be prescribed Provided further that if the registration is not made within the period specified, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed Thus, in given case, company can still opt for registration by submitting an application to ROC and on payment of additional fee as prescribed If the charge was created on 12th February, 2019 instead of 12th March, 2019 Still company can still opt for registration by submitting an application to ROC and on payment of advalorem fee as prescribed
Quest-76	*Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be 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 Company? Give your answer with respect to the provisions of the Companies Act, 2013.*
Solution	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. Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.
Quest-76A	*Rose (Private) Limited on 3rd April 2019 obtained Rs. 30 Lakhs working capital loan by offering its Stock and Accounts Receivable as security and Rs. 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*
Solution	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 favor 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.
Quest-76B	*Mr. Pam purchased a commercial property in Delhi belonging to ABC Limited after entering into an agreement with the company. At the time of registration, Mr. Pam comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of ABC Limited is correct?*
Solution	Mention provisions of Sec 80

	Thus, where any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Pam, therefore, ought to have been careful while purchasing property and should have verified beforehand that ABC Limited had already created a charge on the property. In view of above, the contention of ABC Limited is correct.
Quest-77	*The Board of Directors of Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as Statutory Auditor of Prism Ltd., taking into account the consequences, if any, of accepting this proposal?*
Solution	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 Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information on 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, it is advised that the Statutory Auditor not to take up the above stated assignment.
Quest-77A	*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:* 1. *Appointment of Mr. Chatterjee by the Board of Directors.* 2. *Re-appointment of Mr. Chatterjee at the first AGM in the above situation.*
Solution	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.
Quest-77B	*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?*
Solution	Mention provisions of Section 139(2) of the Companies Act, 2013 along with Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014 Since 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.
Quest-78	*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 responsibilities of the company?
Solution	1. Mention about Section 140(4) of the Companies Act, 2013 and Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014 Now in these case, 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. 2. As per Section 140(4) of the Companies Act, 2013: We may conclude that 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.
Quest-78A	*Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a 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*
Solution	*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.*
Quest-78B	*Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.*

	CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013: *(1) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during cooling-off period?* *(2) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?*
Solution	According to Section 139(2) of the Companies Act, 2013, Listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term. As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years. Applying the above provisions, (1) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling- off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company. However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period. (2) As per Section 138(1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company. Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/s Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.
Quest-79	Kesar Limited, an unlisted company furnishes the following data: Paid-up share capital as on 31st March 2024 ` 49 Crore.  Turnover for the year ended 31st March 2024 ` 100 Crore

	Outstanding loan from bank as on 3rd March 2024 is ` 102 crore (` 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 ` 95 crore after repayment. Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.
Solution	According to the Companies (Accounts) Rules, 2014, every unlisted public company having: • paid up share capital of ` 50 crore rupees or more during the preceding financial year; or • turnover of ` 200 crore rupees or more during the preceding financial year; or • 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 • 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, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ` 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.
Chapter - General Clause Act	
Quest-80	*M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M 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.*
Solution	"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) ngs 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, M 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.
Quest-80A	*"The act done negligently shall be deemed to be done in good faith." Comment with the help of the provisions of the General Clauses Act, 1897.*
Solution	In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897. 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.
Quest-80B	*Examine the validity of the following statements with reference to the General Clauses Act, 1897:* *Insurance Policies covering immovable property have been held to be immovable property.*
Solution	Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

Quest-81	*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?*
Solution	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.
Quest-81A	*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*
Solution	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.
Quest-81B	*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.*
Solution	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 affected by: 1. properly addressing, 2. pre-paying, and 3. 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. 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 affected.
Quest-82	*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 companies?*
Solution	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
Quest-83	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?
Solution	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.
Quest-83A	*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?*
Solution	*Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.* *This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.* *Sometimes, occasions may arise when a choice has to be made between two interpretations –* *one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.* *When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the* *disclosure.* *In the given question, 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.
Quest-83B	*Explain the following in context of use of definitional sections in Interpretation of Statutes:* *1. Definitions subject to a contrary context* *2. Ambiguous definitions*
Solution	*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.* *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.*
Quest-84	*Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.*
Solution	**Proviso:** proviso means to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. Distinction between Proviso, exception and saving Clause Proviso- 'Proviso' is used to remove special cases from general enactment and provide for them specially Exception- Exception' is intended to restrain the enacting clause to particular Cases Saving Clause- 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
Quest-84A	*Which are the different elements of Documents*

Solution	(i) Matter—This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive. (ii) Record—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description. (iii) Substance—This is the third element on which a mental or intellectual element comes to find a permanent form. (iv) Means—This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.
Quest-84B	*There are several provisions under the, Companies Act, 2013 which start with the words 'not withstanding' and 'without prejudice'. Explain the nature and significance thereof, applying the principles of Statutory Interpretation.*
Solution	The provision containing the word 'notwithstanding' which is also termed as termed as 'non-obstante clause' has an overriding effect on the other provision, i.e., such provision shall prevail over the other provision. It means, if there is any inconsistence or departure between the non-obstante clause and another provision, it is the non-obstante clause which will prevail over the other clause. Thus, a non-obstante clause restricts the operation and effect of all the contrary provisions. For example, Section 163 of the Companies Act, 2013 provides option to adopt principle of proportional representation for appointment of directors. The words 'without prejudice' are used in an Act as follows: An expression containing the words 'without prejudice to the generality of …' indicates that anything contained in the provision following such words is not intended to cut down the generality of the meaning of the preceding provision. It means a provision enacted 'without prejudice' to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconstant with such other provision. This view was upheld in the case of [Central Bank of India v State of Kerala]
Quest-85	*'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.*
Solution	The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act.

	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" [Gulli poli Sowria Raj v Bandaru Pavani]
Quest-86	*How will you understand whether a provision in a statute is 'mandatory' or 'directory'?*
Solution	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 into 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: (i) the nature of the thing empowered to be done, (ii) the object for which it is done, and (iii) person for whose benefit the power is to be exercised.
Quest-86A	*Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Sohel is correct?*
Solution	**Mention about Rule of Literal Construction** In the given question, Sohel (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Thus, 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
Quest-86B	Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)?
Solution	As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company: • 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; • intends to apply its profits (if any) or other income in promoting its objects; and • intends to prohibit payment of any dividend to its members
Quest-87	Explain interpretation of statute aid- 'Read the Statute as a Whole'.
Solution	It is the basic principle that construction of statute is to be of all its parts taken together and not of one part only. Any deed must be read as a whole in order to ascertain the true meaning of its several clauses and all such clauses shall be so interpreted so as to bring them into harmony with other provisions. **Example** If Section on an Act require notice shall be given, then a verbal notice would be sufficient. But if another section Provides that notice should be served an person, then it would obviously indicate that a written notice was intended.
Quest-87A	In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes.
Solution	Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts. **Example** Chapter X of Companies Act deals with "Audit & Auditor" through section 139 to section 148 Thus by looking at the chapter we may understand the Purpose & object of section 139 to section 148
Quest-88	Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.
Solution	According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who

	are individuals and at least one of them shall be a resident in India. Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners. In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.
Quest-88A	*Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.*
Solution	*Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]* *A LLP may be wound up by the Tribunal:* *(1) if the LLP decides that LLP be wound up by the Tribunal;* *(2) if, for a period of more than six months, the number of partners of the LLP is reduced below two;* *(3) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;* *(4) 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* *(5) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.*
Quest-89	A Listed company Arranged an AGM on 1st Sept, compute the date of dispatch of Notice
Solution	10th August
Quest-89A	Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrant to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 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?
Solution	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 30 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 30 days by the shareholders or not.

	In the given question, the dividend was declared on 31.07.2023 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd August, 2023). It is immaterial if Mr. A has received it on 5th September 2023 (i.e., after 30 days from 31.07.2023). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.
Quest-90	Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ` 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.
Solution	According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are non- resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.
Quest-90A	ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.
Solution	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. Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25-5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the

	general meeting.
Quest-90B	Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.
Solution	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. If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed (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.
Quest-91	Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ` one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated. (i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution. (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.
Solution	1. In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under: "In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting." Accordingly, Prakash and his friends must hold minimum $1/10^{th}$ of paid-up share capital (*i.e.* ` 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting. 2. The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under: (a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends. (b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated. (c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.

	(d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting. (e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.
Quest-91A	The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. 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. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.
Solution	According to first provision to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted 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 Orange Limited were adopted at the adjourned AGM held on 20th September, 2023 and filing of financial statements with Registrar was done on 29th September, 2023 i.e. within 30 days of the date of adjourned AGM. However, Orange Limited has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 17th August, 2023. Hence, Orange Limited has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Quest-91B	NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions: 1. Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013? 2. With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?
Solution	1. 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) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly: • It should be a public company. • It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore. • It has obtained the prior consent by means of a special resolution passed in general meeting. • The special resolution has been filed with the Registrar of Companies. • An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public. Tenure for which Deposits can be Accepted: 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. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013. 2. In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, 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, the said deposits by Mr. P Kishore shall not be treated as deposit.
Quest-92	Mohit is a creditor of ABC LLP. He has a claim of ` 10,00,000 against the LLP. However, the assets of the LLP are valued at only ` 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of ` 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?
Solution	A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 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 ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit can not claim his deficiency of ` 3,00,000 from the partners of ABC LLP.
Quest-92A	Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property?
Solution	According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, '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. In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.
Quest-93	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.
Solution	(i) 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 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. Thus, 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 will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.
Quest-93A	(i) As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai? (ii) 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. (iii) 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.
Solution	(i) In terms of the definition of a foreign company under section 2 (42) of the Companies

	Act, 2013 a "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 section 386 of the Companies Act, 2013**, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office. Thus, we may conclude that the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India (ii) **The Companies Act, 2013 *vide* section 380** requires 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. (iii) The Companies Act, 2013 lays down the governing provisions for foreign companies in 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 **<u>As per the provisions of Sec 392 of Companies Act, 2013</u>** Where a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees 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 twenty five thousand rupees but which may extend to five lakh rupees.
Quest-93B	Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. Joel Ltd. has recently established a share transfer office at New Delhi. (1) The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013. (2) State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian

	business.
Solution	In terms of the definition of a **foreign company under section 2(42) of the Companies Act, 2013** a "foreign company" means any company or body corporate incorporated outside India which: • Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and • Conducts any business activity in India in any other manner. **According section 386 of the Companies Act, 2013,** for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office. **Further, section 379 states** that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. **In the case given in the question, the following facts are given:** 1. Joel Ltd. was incorporated in London and has a place of business (share transfer office) in India, hence, it is a foreign company. 2. Its shareholding comprises of 25% held by Y who is a citizen of India and 30% by X Ltd. which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Joel Ltd. Therefore, although Joel Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, ***it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company***. *However, it may be noted that under section 379, the application of the Companies Act, 2013 on Joel Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.* The Companies Act, 2013 does not require a foreign company to file any documents in relation to its global business. ***Now, as per the provisions in relation to foreign companies, answers to given cases may be discussed as follow:—*** *1. Provide reference to provisions of Section 380 i.e. Documents to be submitted for incorporation* *2. Provide reference to provisions of Section 381 i.e. Accounts in relation to companies*
Quest-93C	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 State VAT Officer having jurisdiction, intends to serve show cause

	notice on the Foreign Company. As Standing Counsel for the department, advise the VAT Officer on valid service of notice.
Solution	In terms of the definition of a foreign company under section 2(42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which: • Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and • Conducts any business activity in India in any other manner. **Assumption:** It is assumed that X Inc is a foreign company within the meaning of section 379 of the Companies Act, 2013 Now based upon above assumption, provisions of Section 383 of the Companies Act, 2013 shall be attracted in given situation 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. Thus, we may conclude that VAT Officer may serve the show cause notice as per the above provisions.
Quest-93D	ABC Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the said Act, which can be levied on ABC Limited for its failure.
Solution	**As per the provisions of Sec 392 of Companies Act, 2013** Where a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees 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 twenty five thousand rupees but which may extend to five lakh rupees.
Quest-94	Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.
Solution	**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 subscrip-tions in securities in India or from citizens of India; (c) financial settlements, web based marketing, advisory and transactional services, data base 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. Looking to the above description, it can be said that being involved in business activity through telemarketing, Robertson Ltd., will be treated as foreign company.
Quest-94A	Examine and state whether the following Companies can be considered as 'Foreign Company' under the Companies Act, 2013: (i) A company which is incorporated outside India employs agents in India but has no place of business in India. (ii) A company incorporated outside India having shareholders who are all Indian citizens. (iii) A company incorporated in India but all the shares are held by foreigners. (iv) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.
Solution	As per Section 2(42) of the Companies Act, 2013, a 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. (i) A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. In other words establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business in India though employs agents in India. It will not be deemed to be a foreign company. (ii) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business

	in India. (iii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India. (iv) 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 inter-change** and other digital supply transactions (b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India (c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management, (d) Online services such as telemarketing, telecommuting, telelmedicine, education and information research. (e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise. Thus, we may conclude that, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.
Quest-94B	Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The Company has no established place of business in India. The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.
Solution	**As per Sec 389 of 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 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 ***According to the Companies (Registration of Foreign Companies) Rules, 2014,*** the

	following documents shall be annexed to the prospectus, namely: (a) any consent to the issue of the prospectus required from any person as an expert; (b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof; (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years; (d) a copy of underwriting agreement; and (e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.
Quest-95	In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company': (i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India. (ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the company. (iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by cloud computing for its client in India.
Solution	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. **Now, based on above definition read with rules, we may conclude as follows: -** (i) In the given situation, M/s Red Stone Limited

	• is registered in Singapore. • 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. Thus, mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013. (ii) In the given situation, M/s Blue Star is registered in Thailand. • It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. • Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. • Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013. (iii) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and • has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. • Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.
Quest-95A	Phil Health System Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the India business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the companies Act, 2013, advise the company on the following matters: *(i) Whether the accounts of the company pertaining to Indian business operations shall be audited? If yes, by whom?* *(ii) What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?* *(iii) What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?* *(iv) In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies?*
Solution	Since Phil Health Systems Incorporated (PHSI) is a foreign company. Following are the answer in line with said nature of the company: (i) According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered Accountants.

	(ii) The audited financial statements of Indian business operations of PHSI shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate i.e., latest by 30th September 2020. *Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months i.e. latest by 31st December 2020.* (iii) According to Section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013 (chapter XXII deals with 'Companies incorporated Outside India'), shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. *In the given case, non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI.* However, PHSI shall not be entitled to bring in any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract until the company has filed the financial statements. (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year i.e., by 30th May 2020, to the Registrar containing the particulars as they stood on the close of the financial year.
Quest-96	MNO Ltd., a foreign Joint Venture Company having its established place of business in India and following International Financial Reporting Standards (IFRS) and its financial statement being prepared in German language desires to know the following with regards to submission of its financial statements to the Registrar of Companies in India. Its area office is located at Mumbai: (i) Submission of financial statements in German Language (ii) Format of financial statements as per IFRS; (iii) How authentication of its financial statements is to be done? (iv) Whether the documents can be submitted at the Registrar's office at Mumbai?
Solution	(i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language. If the financial statements are in German language and not in the English language, a certified translation thereof in the English language shall be annexed and submitted to Registrar [Section 381]

(ii) Format of Financial statement as per IFRS:

Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:

Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

(iii) Authentication of translated financial statements [Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014]:

(1) 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.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of—

(a) the official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.

(3) 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.

(iv) 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. Hence, the documents of MNO Ltd. cannot be submitted at the Registrar's office at Mumbai.

Following assumptions drawn within the provided information:

1. With respect to part (iii), an answer has been given in reference to part (i) of the question. Here, authentication is being considered to be asked of translated financial statements (from German language to English Language) as nothing is specified in the question.

2. In order to answer part (iii) of the question, it may be considered in independent situation, then only the authentication of its financial statement can be answered according to the Companies (Registration of Foreign Companies) Rules, 2014. According to which 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 documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.]

Quest-97

Blue Star Inc. is a company incorporated in USA, four years back and has no established place of business in India. The company has entered into following contracts:-

Particulars	Contracts entered in	Material Contracts
F.Y. 2017-18	4	2
F.Y. 2018-19	6	1
F.Y. 2019-20	5	3
F.Y. 2020-21	3	4

Apart from above, one contract has been entered into with its manager. The company intended to offer its securities in India. For that purpose, the secretary of the company, Mr. Berry Christan prepared the prospectus along with annexing the required documents and got it registered. Expert's consent was issued in a separate statement, the reference of which was given in the prospectus.

Few application forms for securities of Blue Star Inc. were issued to prospective investors without the prospectus out of which one such form was issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc.

In the context of aforesaid case, please answer to the following questions:-

(i) Whether the expert's statement can be considered to be included in the prospectus?

(ii) What copy of contracts would have been annexed with the prospectus by Mr. Berry?

(iii) Whether it is valid on the part of Blue Star Inc. for issuing few application forms without prospectus?

Solution

(i) According to section 388(2) of the Companies Act, 2013, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

	In the given case, the reference of expert's consent statement was given in the prospectus. Thus, the expert's statement shall be deemed to be included in a prospectus. (ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely:- (a) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof; (b) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years. In the given case, during the preceding 2 years, i.e. F.Y. 2019 -20 and F.Y. 2020-21, respectively, the material contracts entered into by Blue Star Inc. are 3 + 4 = 7 and apart from it, one contract has been entered into with its manager. So, in total 8 copies of contracts would have been annexed with the prospectus by Mr. Berry. (iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388: Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities. Blue Star Inc. has, thus, violated provisions of section 387(3) by issuing few application forms without prospectus. However, the application form issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc. can be considered as valid as such a case is covered by the exception to the said sub-section.
Q-98	*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?*
Solution	According to section 16 of the Companies Act, 2013 if a company is registered by a name which, — • in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months. • is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

	Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable. In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name. As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark 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.
Q-99	*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.*
Solution	Regarding the validity of Proposals w.r.t change of registered office by A Limited in the light of section 12 of the Companies Act, 2013: (i) In the first case, the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai. As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid. In the second case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.
Q-100	*Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well.* *Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai. Mr. Parag signed partnership deed with Firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner.*

	Can the company deny its liability as a partner?
Solution	As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal. In the present case company has not neither given any written authority not affixed common seal of the authority letter. Conclusion: We may conclude that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

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