Addendum Sheet for Sept'24 & Jan'25 Students

This sheet covers Chapter-wise **EXTRA questions** of Nov'23 & May'24 exams, RTP May & Sept 24, MTP 1 and 2 of May & Sept 24 along with answers which needs to be solved over and above The Ultimate Solution QB Edition 4.

Chapter 1- Preliminary

Question 1

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 Rs. 1,00,000 convertible preference shares (carrying right to vote) of Rs. 100 each and 10,00,000 equity shares of Rs. 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?

[MTP May'24 – 5 marks]

Answer:

(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", 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 Rs.**
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 [(Rs. 10,00,000 equity shares+ Rs. 1,00,00,000 preference shares)/ Rs 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.

Chapter 3- Prospectus and Allotment of Securities

Question 1

The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ ₹100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31stJuly, 2022 Instead, during this interim period, the Company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the Company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company.

[Nov'23 - 5 marks]

Answer

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under private placement shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

It is provided that the monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:
(1) for adjustment against allotment of securities; or
(2) for the repayment of monies where the company is unable to allot securities.
In the instant case, application money from the members was received on 15th April, 2022 and company did not make an allotment of shares till 31st July, 2022 i.e. after expiry of the period of 60 days. Hence, the company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

Therefore, the objection raised by the members for non- allotment of shares/ non-refund of share application money within the statutory time limit is valid. However, their claim to pay interest @ 15% is not valid.

Also, the application money cannot be used for the payment of dividends by the company.

Question 2

Referring to the provisions of the Companies Act, 2013, answer the following queries:

(i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?
(ii) Explain the consequences of non-allotment of shares within the stipulated timeline.
(iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement?

[May 24 - 5 marks]

Answer:

(i) Rule 14 (1) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

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

Rule 14 (2) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014* has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

Chapter 6- Registration of Charges

Question 1

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

[MTP May 24 – 5 marks]

Answer

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

Crystallization of a Floating Charge

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

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

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

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed & is available for realization.

Question 2

Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'.

[MTP May'24 – ~~5~~ 3 marks]

Answer:

Inspection of Register of Charges and Instrument of Charges

As regards inspection, section 85 (2) of the Companies Act, 2013, states that the register of charges and the instrument of charges shall be open for inspection during business hours:

(1) by any member or creditor without any payment of fees; or

(2) by any other person on payment of prescribed fees, subject to such reasonable restrictions as the company may, by its articles, impose.

Chapter 7- Management and Administration

Question 1

Explain the following as per the provisions of the Companies Act, 2013:
(i) Abridged Form of Annual Return
(ii) Signing of Annual Return

[MTP May'24 – 5 marks]

Answer

(i) Abridged Form of Annual Return

In terms of Second Proviso to Section 92(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.
As per Rule 11 (1), OPC and small company shall file the annual return in Form No. MGT-7A.

(ii) Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.
In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Question 2

L k J Ltd. is a company having paid up share capital of Rs 12.50 crores with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act,2013 elucidate upon the following queries of the company:

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?
(ii) In case on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be fate of such adjourned meeting?
(iii) In case, where such meeting was called by the requisitionists under Section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

[May 24 – 5 marks]

Answer:

(i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.
If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
(b) the meeting, if called by requisitionists under section 100, shall stand cancelled

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either

individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.
In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.
Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

Question 3

Prateek Limited, an unlisted company, registered in the State of Arunachal Pradesh with 42 shareholders, wants to organize the Annual General Meeting of the company on 13th August 2024 which happens to be Raksha Bandhan, a day declared as a holiday by the Government of Arunachal Pradesh.
Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.

[MTP Sept 24- 5 marks]

Answer:

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

However, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, 'National Holiday' means and includes a day declared as National Holiday by the Central Government.

In the instant case, Prateek Limited, an unlisted company, can hold its AGM on 13th August 2024 which happens to be a holiday declared by the Government of Arunachal Pradesh and so, this is not a national holiday.

Question 4

Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013.

[MTP Sept 24- 5 marks]

Answer:

Persons entitled to receive the Notice of the General Meeting

According to section 101(3) of the Companies Act, 2013, the notice of every meeting of the company shall be given to:

(1) every member of the company, legal representative of any deceased member or the assignee of insolvent member;

(2) the auditor or auditors of the company;

(3) every director of the company.

Question 5

Enumerate the provisions of the Companies Act, 2013 in respect to the following:

(i) Time limit for filing of annual return when Annual General Meeting is held.

(ii) Time limit for filing of annual return when Annual General Meeting is not held.

[MTP Sept 24- 5 marks]

Answer:

Time limit for Filing of Annual Return

(i) A copy of annual return shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the Annual General Meeting (AGM) is held.

(ii) Where no annual general meeting is held in any year, it shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

Chapter 8- Declaration and Payment of Dividend

Question 1

Long Boots Ltd. A listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new production Manager Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of Rs. 50 lakhs after a gap of eight years during which profits were inadequate to distribute the same.

The dividend thus proposed is to met partially out of the current year profit of Rs. 16 lakhs. Accumulated profits during the past eight years were Rs 170 lakhs which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

[May 24 – 5 marks]

Answer

According to second proviso to section 123, where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of *the Companies (Declaration and Payment of Dividend) Rules, 2014.*

Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Under Rule 3 such declaration shall be subject to the following conditions:

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 immediately preceding three years.

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

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.

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid- up share capital as appearing in the latest audited financial statement.

In the given question, since Long Boots Ltd. current year profits of Rs. 16 lakh are insufficient to meet the dividend requirement of Rs. 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

Particulars	Amount (in Rs.)
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh

Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Fulfilment of Conditions mentioned in Rule 3

Conditions	Calculation		Met/ Not Met
I	This condition is not applicable the company hasnot declared any dividend in each of the three preceding financial year.		-
II	Paid-up share capital and freereserves	680+ 170	Met
		= 850 lakh (C)	
III	10% of (C)	85 lakh	Met
	Amount to be withdrawn accumulated profits i.e. 34 lakhsis less than (C)		
	The company has since made profit in the financial year inwhich dividend is declared.		
IV	Free Reserves (D)	170 lakh	Met
	Amount drawn for payment ofdividend (E)	34 lakh	
	Balance of reserves after suchwithdrawal (F) =(D)- (E)	136 lakh	
	15% of its paid up share capital(G)	102 lakh	
	(F) more than (G)		

In the given question, since all the conditions are met, hence Long Boots Ltd. has validly declared dividend.

Chapter 9- Accounts of Companies

Question 1

BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis.

You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the companies Act, 2013.

[May 24 – 5 marks]

Answer:

1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.
   It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.
   Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).
   Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-
   a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and
   b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

   As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

   Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

Question 2

Define the term 'Book of account' as per the Companies Act, 2013.

[MTP Sept 24- 5 marks]

Answer:

According to section 2(13) of the Companies Act, 2013, 'Books of account' includes records maintained in respect of:

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Chapter 10- Audit and Auditors

Question 1

XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:

1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of Rs.4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.
2. Mr. A's relative, Ms. C, has an outstanding debt of Rs.2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013.

[RTP Sept 2024]

Answer

According to section 141(3)(d)(ii) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lacs.

In this scenario:

1. Mr. A's partner, Mr. B, has a debt of Rs. 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of Rs. 2 Lacs from DEF Ltd., an associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is Rs. 6 Lacs (Rs. 4 Lacs + Rs. 2 Lacs), which exceeds the Rs. 5 Lacs threshold mentioned in the provision.

Therefore, Mr. A is disqualified from being appointed as the auditor of XYZ Ltd. under section 141(3)(d)(ii) of the Companies Act, 2013, as the combined indebtedness of his partner and relative surpasses the permissible limit.

Question 2

Stallworth Ltd. a listed company having a paid-up share capital of Rs.11 crores with a turnover of Rs. 100 crores had appointed an Audit Committee which recommended M/S ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the Chartered Accountants.

Discuss in the light of the Companies Act, 2013:

(i) The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?

(ii) The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company?

[May 24 – 5 marks]

Answer

According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.
If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Question 3

CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of Liberal Ltd. (a listed company) for past ten years as on 31st March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31st March, 2027) for SM & Company?

[MTP Sept 24- 5 marks]

Answer:

Section 139(2) of the Companies Act, 2013, provides that no listed company or a company belonging to prescribed classes of companies, shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

The proviso to section 139(2) provides that an audit firm which has completed its terms, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Further, it provides that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

In the given question, SM & Company has also completed its two terms of 5 years (i.e. 10 years in total). Thus, ML & Co. cannot be appointed as statutory auditor of Liberal Ltd. during cooling period because CA. Mudit was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2032. After 5 years, Liberal Ltd. is free to appoint ML & Co. as its statutory auditors.

Chapter 12- The General Clauses Act, 1897

Question 1

Explain the following with reference to the provisions of the General Clauses Act, 1897:
(i) Movable Property
(ii) Oath

[MTP May'24 – 4 marks]

Answer

(i) Movable Property

According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.
Thus, any property which is not immovable property is movable property. Debts, share, electricity are movable property.

(ii) Oath

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

Question 2

Mr. Chaggan Lal is an importer dealing in luxury perfumes. Recently, a new enactment was passed which imposes a duty of 15% on the value of luxury goods, including perfumes. Now Mr. Chaggan Lal has approached you to explain to him the provisions in relation to 'Duty to be taken pro rata in enactments' of the General Clauses Act, 1897. Also, help him to calculate the amount of duty on a Shipment of 100 bottles of perfumes, each valued at $50.

[RTP Sept 2024]

Answer

According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

The amount of duty would be= (100* 50) *15%= $750.

Question 3

Mr. M issued a cheque of Rs. 3,00,000 dated 31.12.2023 at 10 a.m. to Mr. N as a consideration towards the medical services provided by the later. Mr. N presented the above cheque on 31.03.2024 during the banking business hours. The cheque was dishonoured taking the plea that it was not presented within the requisite time of 3 months as provided under Section 138 of the Negotiable Instruments Act 1881.
Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid.

[May 24 – 2 marks]

Answer

As per the section 9 of the General Clauses Act, 1897, in case any legislation or Regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

The first day in series is 31.12.2023 and last day is 31.03.2024. Hence, applying the above provisions, 31.12.2023 is to be excluded and 31.03.2024 is to be included in calculation as per the General Clauses Act, 1897.

Since, the cheque has been presented within 3 months i.e. on 31.03.2024, it is eligible for honor and payment.
Hence, the plea of dishonouring the cheque is not valid.

Question 4

In 2022, the Central Government enacted the "Digital Communications Act" to regulate and manage digital communications across the country. The Act provides specific duties and responsibilities for the Director of Digital Communications, including the oversight of digital infrastructure, enforcement of regulations, and ensuring compliance with data protection standards.
In 2023, the Director of Digital Communications, Mr. Arjun Patel, was appointed to lead the implementation of this Act. However, in January 2024, Mr. Patel took a medical leave of absence for six months. During his absence, Ms. Priya Sharma, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director.
While Mr. Patel was on leave, a major data breach incident occurred involving a significant violation of the Digital Communications Act. Ms. Sharma took immediate action to investigate the breach, enforce penalties, and implement new compliance measures to prevent future incidents.
The actions taken by Ms. Sharma, while performing the duties of the Director, led to a legal challenge. The opposing party argued that only the Director, as specified in the Act, had the authority to enforce such penalties and measures, and that Ms. Sharma's actions were not valid.
Analyze the validity of Ms. Priya Sharma's actions in the context of the General Clauses Act, 1897, considering the provisions related to 'Official chiefs and subordinates'.

[MTP Sept 24- 4 marks]

Answer:

<u>Official Chiefs and subordinates</u>

According to section 19 of the General Clauses Act, 1897, a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

In the instant case, Ms. Priya, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director. Hence, the actions taken by Ms. Priya Sharma were valid.

Chapter 13- Interpretation of Statutes

Question 1

A clause that begins with the words "notwithstanding anything contained" is a clause, that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.

[Nov'23 – 4 marks]

OR

Imagine you are a legal advisor for a company drafting a new contract. One of the clauses in the contract states: "Notwithstanding anything contained in any other provisions of this agreement, the company reserves the right to terminate the agreement without notice if there is a breach of confidentiality by the employee." Explain to the management of the company the meaning of a non-obstante clause in legal documents and its effect on overriding other provisions with reference to decided case law.

[RTP Sept 2024]

Answer

A clause that begins with the words 'notwithstanding anything contained' is called a non-obstante clause. Unlike the 'subject to' clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah Vs. Pakari Lakshman)

A notwithstanding clause can operate at four levels.

S. No.	Clause	Effect
1.	Notwithstanding anything contained in another section or sub- section of that statute.	The clause will override such other section(s) / sub-section(s)
2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.
3.	Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will prevail over the other enactment.
4.	Notwithstanding anything contained in any other law for the time being in force.	The clause will override all other laws.

In conclusion, a non-obstante clause plays a crucial role in legal drafting by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty and consistency in judicial interpretation.

Question 2

In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes.

[MTP May'24 – 4 marks]

Answer

<u>Heading and Title of a Chapter</u>

If we glance through any Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles. These 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.

The headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section ranged under any particular heading.

They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.
It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble. But a heading cannot control or override a section.

Question 3
Explain the term "Generalia specialibus non derogant", in connection with Interpretation of Statutes.

[May 24 – 4 marks]

Answer
It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other. A specific rule will override a general rule. This principle is usually expressed by the maxim, "*generalia specialibus non derogant*".

However, this rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only then such natural meaning will prevail. The court shall not attempt an interpretation based on equity and harmonious construction.

Question 4
Write short note on:
(i) Proviso
(ii) Explanation,
with reference to interpretation of Statutes, Deeds and Documents.

[MTP Sept 24- 4 marks]

Answer:
Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.
It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.
The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Chapter 14- Foreign Exchange Management Act, 1999

Question 1

University of Oxford is one of the leading institutes of UK. In the month of May 2024, they are planning a cultural event in UK. The University has invited Ms. Kanika Tripathi and her group, an Indian artist to perform in the event.

Ms. Kanika Tripathi needs to withdrawal foreign exchange of USD 75,000 for the purpose of visit to UK for performing at cultural event of University of Oxford in UK. Advise whether she can withdraw Foreign Exchange and if so, under what conditions?

[MTP May'24 – 4 Marks]

Answer:

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

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

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

Question 2

Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

[MTP May'24 – 4 marks]

Answer:

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

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transactions included in Schedule II is remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.

Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Question 3

Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather, who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets.

[RTP Sept 2024]

Answer

Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), Mr. Arjun, being a resident in India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.

Clarifications under section 6(4) of FEMA

(i) Foreign Currency Accounts

- Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.

(ii) Income and Investments

- Income earned through employment, business, or vocation outside India while Mr. Arjun was a non- resident.
- Investments made abroad during his non-resident status.
- Gifts or inheritance received from a non-resident Indian.

(iii) Foreign Exchange and Income therefrom

- Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.

(iv) Utilization of Assets After Return to India

- Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.
- He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.

Question 4

Mr, L was employed as a fashion designer in Elegant Textile Ltd., a public limited company in Gurugram, India during the financial year 2023-2024. He had efficiently provided his services for 183 days during the above said period. On 01.04.2024 Mr. H the Human Resource Manager of Jeff Fashion Ltd., Paris (a foreign country) offered him a better employment opportunity in such company.

On 02.04.2024, Mr. L left India for taking up employment as a production controller at Jeff Fashion Ltd. In Paris. On 30.04.2024 he flew back to India for 10 day family function in Manali, India.

In light of the provisions of the Foreign Exchange Management Act,1999 elucidate: The residential status of Mr. L –

(i) On his return for attending the family function on 30.04.2024.

(ii) In case, instead of vacation, he joins an employment in an Indian company after arriving on 30.04.2024.

[May 24 – 4 marks]

Answer

According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

(i) In the given question, Mr. L will be treated as a person resident outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. in Paris, as he has gone out of India for or on taking up employment outside India.

His return to India for 10 days to attend a family function, will not alter his residential status.

(ii) Mr. L will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

Question 5

Explain the rules relating to the remittances made by persons other than individuals requiring approval of RBI as provided in Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued under the Foreign Exchange Management Act, 1999 in respect of the following:

(i) Commission to the agents abroad for sale of residential flats or commercial plots in India.

(ii) Remittances for consultancy services procured from outside India.

(iii) Remittances by way of reimbursement of pre-incorporation expenses.

[May 24 – 4 marks]

Answer

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India as provided under FEMA, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000:

(i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.

(ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in

respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression "infrastructure' shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.

(iii) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Question 6

Explain the meaning of term 'Foreign Exchange' as per the provisions of the Foreign Exchange Management Act, 1999.

[MTP Sept 24- 4 marks]

Answer:

According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Question 7

Explain the meaning of term 'currency' as per the provisions of the Foreign Exchange Management Act, 1999.

[MTP Sept 24- 2 marks]

Answer:

Currency

According to section 2(h) of the Foreign Exchange Management Act, 1999, 'Currency' includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Chapter 15- The Limited Liability Partnership Act, 2008

Question 1

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.

[MTP May'24 – 5 marks]

Answer:

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.

Question 2

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.

[MTP May'24 – 5 marks]

Answer:

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.

Question 3

XYZ LLP was registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a name that was later found to be identical to an existing company's name, XYZ OPC Pvt Ltd. This similarity was not noticed at the time of registration.

Explain the provisions of the Limited Liability Partnership Act, 2008, in respect of the following:

(i) When the name of LLP is identical.

(ii) Formalities with the Registrar of Companies after name change of LLP.

[RTP Sept 24]

Answer

According to section 17 of the LLP Act, 2008,

(i) Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to-

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

as likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,

Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

(ii) Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

Question 4

A dispute among the partners of Limited Liability Partnership (the LLP) jeopardized the stability of the business. Out of two partners, one due to quarrel, left the LLP. The other partner alone continued the business of the LLP. You are being expert in law is requested to explain the provisions governing the LLP being operated by a single partner and its winding up by the Tribunal as per the provisions of the Limited Liability Partnership Act,2008.

[May 24 – 5 marks]

Answer

According to section 6 of the Limited Liability Partnership Act, 2008,

(i) Every LLP shall have at least two partners.

(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

As per section 64 of the Limited Liability Partnership Act, 2008, the circumstances in which LLP may be wound up by Tribunal are:

(a) if the LLP decides that LLP be wound up by the Tribunal;

(b) if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;

(c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(d) if the LLP has made a default in filling with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Question 5

(i) Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act,2008.

(ii) Describe the consequences of making a false statement in any return, statement or other document under Section 37 of the Limited Liability Partnership Act,2008.

[May 24 – 5 marks]

Answer

(i) According to section 31 of the Limited Liability Partnership Act, 2008,

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

(2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(ii) According to section 37 of the Limited Liability Partnership Act, 2008,

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement:

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

Question 6

Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008.

[MTP Sept 24- 5 marks]

Answer:

Small limited liability partnership

According to section 2(1)(ta) of the Limited Liability Partnership Act, 2008, small limited liability partnership means a limited liability partnership:

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.