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Chapter 1 - Preliminary

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.1 to Q.7											
Past Exams	Q.14	Q.21 Q.26	No	No	No	No	No	No	Q.24	Q.13 Q.25	No	No
MTP	No	No	No	No	No	Q.14	Q.15	Q.14	No	No	Q.9	Q.8 Q.22
RTP	Q.17	No	Q.12 Q.17	No	No	Q.11	No	Q.10 Q.16	Q.18	Q.19	Q.20	No

Question 1

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

(a) 31st March, 2022

(b) 31st December, 2022

(c) 31st March, 2023

(d) 30th September, 2023

Ans: (c)

Question 2

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

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

b) The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company itcannot enjoy benefits of 'small company'.

c) Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited

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company has to maintain the norms applicable to a 'small company' continuously for two years so that,thereafter, it will betreated as a 'small company'.

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

Ans: (b)

Question 3

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

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

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

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

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

Ans: (c)

Question 4

Kaveri Goods Carriers Private Limited (KGCPL) issued 9% Non-convertible Debentures worth ₹ 10 lakhsand thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non- convertible debentures of ₹ 10 lakhs were listed. Which of the following options is applicable in the given situation:

a) KGCPL shall be considered as a listed company.

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

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

d) KGCPL shall be considered as a listed company only when minimum amount of listed

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privately placed non-convertible debentures is minimum ₹ 20 lakhs.

Ans: (b)

Question 5

"Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:

a) Control of at least 10% of total voting power

b) Control of at least 15% of total voting power

c) Control of at least 20% of total voting power

d) Control of at least 25% of total voting power

Ans: (c)

Descriptive Questions

Question 6

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capitalof ₹ 2 crore and turnover of ₹ 60 crore. Explain the meaning of the "Small Company" and examine thefollowing in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹ 30 crore?

Answer 6

Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means acompany, otherthan a public company,—

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

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

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

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

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rupees forty crores respectively.

(i) In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 2 crore and having turnover of ₹ 60 crore. Since only one criteria of share capital not exceeding ₹ 4 crore is met, but the second criteria of turnover not exceeding ₹ 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is ₹ 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Question 7

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

(a)	Directors and their relatives	50
(b)	Employees	15
(c)	Ex-Employees (Shares were allotted when they were employees)	10
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e)	Others	145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

Answer 7

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

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

It is further provided that -

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

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

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(i)	Directors and their relatives	50
(ii)	Directors and their relatives	5
(iii)	Others	145
	Total	200

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

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

Question 8

A Ltd. is holding 61% shares in B Ltd. and B Ltd. holds 51% in C Ltd. State which is the correct statement here:

(a) C Ltd. is the holding company to A Ltd.

(b) C Ltd. is the holding company to B Ltd.

(c) B Ltd. is the Subsidiary to C Ltd.

(d) Both B Ltd. and C Ltd. are subsidiary to A Ltd. **(MTP 1 Mark , Sep'22)**

Answer 8 : (d)

Question 9

"Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:

(a) Control of at least 10% of total voting power

(b) Control of at least 15% of total voting power

(c) Control of at least 20% of total voting power

(d) Control of at least 25% of total voting power **(MTP 1 Mark March '23)**

Answer 9 (c)

Question 10

Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with:

(a) Equity Shares

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(b) Preference Shares

(c) Sweat Equity Shares

(d) Redeemable preference shares **(RTP Nov 21)**

Answer 10 (c)

Question 11

Roma along with her six friends has got incorporated Roma Trading Ltd. in May 2019. She kept the paid-up share capital at ₹ 30 lacs. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below ₹ 2 crores. Advise whether the company can be treated as a 'small company'.

(a) Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 50 lacs and also its turnover has not exceeded the threshold limit of ₹ 2 crores.

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

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

(d) If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'. **(RTP Nov '20)**

Answer 11 (b)

Question 12

A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.(RTP May '19)

(a) There is no relationship between A Ltd. and C Ltd.

(b) C Ltd. is deemed to be the subsidiary of A Ltd.

(c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.

(d) C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.

Answer 12 (b)

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Question 13

A Public company may be formed by:

(a) Only two persons

(b) Not more than three persons

(c) Not more than Seven Persons

(d) Seven or more Persons : (PYP Nov'22)

Answer 13 : (d)

Question 14

New Private Ltd. is a company registered under the Companies Act, 2013 with a paid -up share capital of ₹ 70 lakh and turnover of ₹ 30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the New Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹ 15 crore and the capital is same as ₹ 70 lakh? (MTP 5 Marks Oct 21, MTP 6 Marks, Oct 20, PYP May '18 6 Marks, Old & New SM) (Same concept different figures MTP 6 Marks Apr'22)(PYP 5 Marks ,May '23)

Answer 14

Small Company: According to 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 crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

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

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

(1) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 70 lakh and having turnover of ₹ 30 crore.

Since both the criteria of share capital not exceeding ₹ 4 crores and second criteria of turnover not exceeding 40 crores is met it can avail the status of small company.

(2) If the turnover of the company is ₹ 15 crore, then both the criteria will be fulfilled and New Private Ltd. can avail the status of small company.

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Question 15

Kavya Ltd. has a paid up share-capital of Rs. 80 crores. Amjali Ltd. holds a total of Rs. 50 crores of Kavya Ltd. Now, Kavya ltd. is making huge profits and wants to expand its business and is aiming at investing in Amjali Ltd. Kavya Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of Amjali Ltd. (MTP 5 Marks ,March 21)

Answer 15

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

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

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

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

Since, Kavya ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of Kavya Ltd., it (Amjali Ltd.) is holding of Kavya Ltd.

Further, as per the provisions of section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

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

Question 16 (Includes concepts of Chap 7- Management & Administration)

AB Limited issued equity shares of ₹ 1,00,000 (10000 shares of ₹ 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition

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of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:

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

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

(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020? (RTP Nov '21)(Same concept different figures MTP 6 Marks , March '22)

Answer 16

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

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

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

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

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

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

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

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

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

Following are the answers to the questions:

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

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01

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08.2020), according to the exception to section 19.

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

Question 17

The paid-up share capital of Altar Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?(RTP May'19 & May'18)

Answer 17

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

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

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

Explanation. —For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub- clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd. However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.

Question 18

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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 2/3rddirectors 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 anothercompany 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):-

(a) Whether the aforesaid companies can be considered as listed company(ies)? (b) Explain the relationship between the aforesaid companies? (RTP May '22)

Answer 18

(a) According to section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognized stock exchange; Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

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(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities)
Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or (iii) both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Company Name	Analysis and Conclusion
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.
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.
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.

(b) According to section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
According to section 2(87) of the Companies Act, 2013, subsidiary company or subsidiary, in

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relation to any other company (that is to say the holding company), means a company in which the holding company—

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

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

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

Explanation—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub- clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries; As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding – subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.

It is given that Kleshrahit Ltd. has the power to appoint 2/3rd directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd.

Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that 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.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (p) Ltd.

Accordingly, 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.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (p) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively.

Accordingly, as per sub-clause (ii) to section 2(87) read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit

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Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.
(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.
It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity.
As per the notification dated 27th December 2013, Ministry (MCA) clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.
Accordingly, 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.

Question 19

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared. (RTP Nov'22)

Answer 19

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

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub- clause (i) to sub-clause (iv): Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a startup) may not include the cash flow statement.
In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

Question 20

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and the said company is not a start-up company.
In the context of aforesaid case-scenario, please answer to the following question(s):-
Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?
Provide your answer by analysing Sankul (P) Ltd. into following category of companies:-

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(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively. (RTP May '23)

Answer 20

According to section 2(10) of the Companies Act, 2013, Financial statement in relation to a company, includes— (i) a balance sheet as at the end of the financial year;

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

(iii) cash flow statement for the financial year;

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

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

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

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

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

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

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

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

So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013.

Question 21

Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in

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India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company. (PYP Nov'18,6 Marks) (Same concept different figures PYP Nov'19 2 Marks)

Answer 21

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.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "electronic mode",

means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

Question 22

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

(1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each.

There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹ 2,00,00,000.

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

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points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement? (PYP July '21 , 6 Marks)(MTP 6 Marks Oct '23)

Answer 22

(i) According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-

(A) paid-up share capital not exceeding four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees: Provided that nothing in this clause shall apply to a 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 totaling ₹ 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (₹ 50 lakhs) and turnover (₹ 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited can be categorised as a small company.

(ii) According to section 2 (40), Financial statement in relation to a company, includes—

a. a balance sheet as at the end of the financial year;

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

c. cash flow statement for the financial year;

d. a statement of changes in equity, if applicable; and

e. any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

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

Question 23

Define "Small Company". (PYP 2 Marks Dec '21)

Answer 23

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According to section (85) of the Companies Act, 2013, 'Small company' means a company, other than a public company,—

(i) paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

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

Provided that nothing in this clause shall apply to— (A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

As per the Companies (Specification of Definitions Details) Rules, 2014 , for the purposes of sub-clause (i) and sub-clause

(ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.

Question 24

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013? (PYP 3 Marks , May '22)

Answer 24

According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is -

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

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

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

In the given Question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company, though being a related parties.

Alternate Answer

According to section 2(76)(viii)(B) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is a subsidiary of a holding company to which it is also a subsidiary.

However, Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

In the given Question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the mentioned Notification, clause (viii) shall not apply with respect to section 188 to a private company. Therefore, D Private Limited and E Private Limited are not related parties

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for the purpose of section 188.

Question 25

Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

I. ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

II. CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

III. PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013. (PYP 5 Marks , Nov '22)

Answer 25

According to Section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognized stock exchange.

RULE 2A: According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities)
Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section

(3) of section 23 of the Act.

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.

(ii) CHG Limited is an unlisted company.

(iii) PRS Limited is an unlisted company.

Question 26

What does the term Financial Statements include in relation to a company under the

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Companies Act, 2013? Which companies need not prepare a cash flow statement? (PYP Nov'18,4 Marks)

Answer 26

According to section 2(40) of the Companies Act, 2013, Financial statement in relation to a company, includes—

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

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

(iii) cash flow statement for the financial year;

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

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement.

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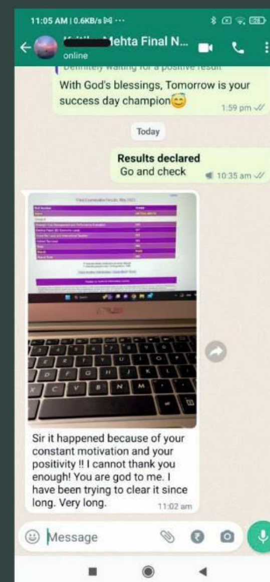

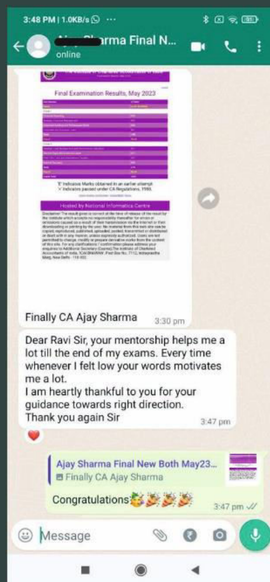

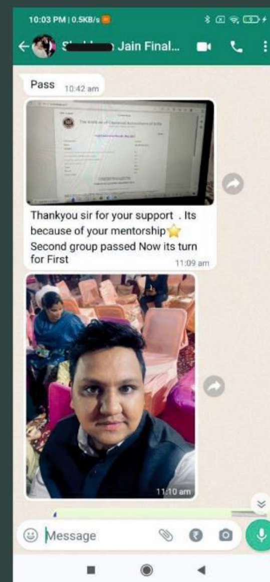

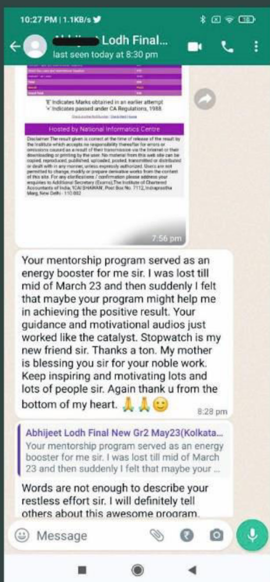

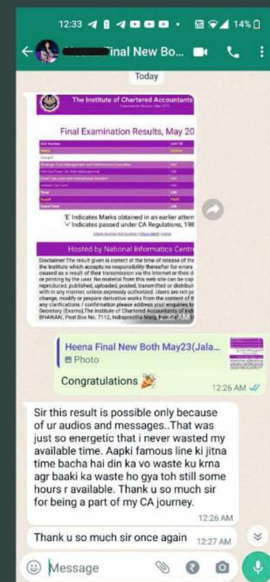

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Chapter 2 – Incorporation of Company and matters incidental thereto

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.1 to Q.23											
Past Exams	No	Q.69	Q.57 Q.67	Q.62	No	Q.68 Q.72	No	No	Q.73 Q.74	Q.75	No	Q.76
MTP	Q.44	Q.52 Q.58	Q.25 Q.26 Q.27 Q.28	Q.24 Q.34	Q.29 Q.45	Q.30 Q.46 Q.54	Q.31 Q.32 Q.33 Q.47 Q.48 Q.49	Q.5 0 Q.5 1	Q.35 Q.36 Q.37 Q.38 Q.53	Q.38 Q.39 Q.50 Q.53 Q.55 Q.56	Q.40 Q.41 Q.57 Q.70	Q.53 Q.69
RTP	No	Q.61	Q.42 Q.43	Q.59 Q.60	Q.63	No	Q.62	No	Q.64 Q.65	Q.66	No	No

1. Entrenchment enhance the protection. Modern Furniture Limited, an existing private company willing toinsert the provisions for entrenchment; it

(a) Can amend the article by passing an ordinary resolution
(b) Can amend the article by passing a special resolution
(c) Can amend the article agreed by all the members
(d) Can't amend article to made the provisions for entrenchment

Ans: (c)

2. Today, it's May 2023. Mr. Nilanjan Chattopadhyay a 24 years old Indian youngster, who returned back to India in January month of 2023 after completing his education in bio-nutrient and willing to form an OPC; but not sure about the requirements or pre-conditions regarding eligibility. He read some articles on provisions related to OPC and concluded;

(i) OPC can be formed by Indian Citizen only
(ii) He can't form OPC because in immediate previous year he was not resident in India
(a) Both the conclusions are valid
(b) None of the conclusion is valid
(c) First conclusion is invalid
(d) Second conclusion is invalid

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Ans: (d)

3. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of from the date of approval

(a) 90 days
(b) 60 days
(c) 30 days
(d) 20 days

Ans: (b)

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

(a) ₹ 1,11,000 and ₹ 1,11,000 respectively
(b) ₹ 50,000 and ₹ 1,11,000 respectively
(c) ₹ 1,11,000 and ₹ 50,000 respectively
(d) ₹ 50,000 and ₹ 1,00,000 respectively

Ans: (d)

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

(i) Alternation shall be made to every copy of MOA/AOA because these are considered as public document.
(ii) Alternation shall be made to every copy be it in electronic form or otherwise.
(iii) Penalty shall be rupees one thousand for every copy of the articles issued without such alteration.

(a) (ii) only
(b) (iii) only
(c) (ii) and (iii) only
(d) None of (i), (ii) and (iii)

Ans: (d)

6. The doctrine of indoor management is considered to be to the doctrine of constructive notice.

a. Exception b. Extension
c. Alternative d. Not related

Ans: (a)

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Theoretical Questions Answers

Question 7

XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office fromMumbai to Pune (within the State of Maharashtra, but from Mumbai ROC to Pune ROC). What formalities the company has to comply with underthe provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

Answer 7

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of Regional director.

Question 8

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

Answer 8

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedingsrelating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gonethrough all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled topresume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusingthe doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

(i) Knowledge of irregularity: In case an 'outsider' has actual knowledge of irregularity within the company, thebenefit under the rule of indoor management would no longer be available. In

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fact, he/she may well be considered part of the irregularity.

(ii) Negligence: If with a minimum of effort, the irregularities within a company could be discovered, the benefitof the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

(iii) Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Question 9

Alfa school started imparting education on 1st April, 2010, with the sole objective of providing education tochildren of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on30th March 2020, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

Answer 9

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects.

Section 8 companies are registered by the Registrar only when a license is issuedby the Central Government to them. Since, Alfa School was a Section 8 companyand it had started violating the objects ofits objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest,

direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then,

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notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Question 10

The object clause of the Memorandum of Vivek Industries Limited., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business, the management of the company has decided to take up the business of Food processing activity. The companywants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. Examinewhether the company can make such change as per the provisions of the Companies Act, 2013?

Answer 10

Alteration of Objects Clause of Memorandum

The Companies Act, 2013 has made alteration of the memorandum simpler andmore flexible. Under section13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirtydays from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Question 11

Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.

Answer 11

In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

(1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company,

(2) the subsidiary company holds such shares as a trustee, or

(3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

Question 12

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

Answer 12

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereofby sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of thebeneficial ownership may be served by such depository on the company by means of electronic or other mode.Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Question 13

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 resolutiononly. One of the directors said that they cannot make a provision against the Companies Act. You are required to advise the company on this matter.

Answer 13

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 amendmentin the articles agreed to by all the members of the company in the case of a private company and by a specialresolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, thecompany shall give notice to the Registrar of such provisions in prescribed manner.

In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

Question 14

Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised Rs. 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business

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has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from China are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act allow such change of object? If not, then what advise will you give to company. Ifyes, then give steps to be followed.

Answer 14

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Question 15

Manglu and friends got registered a company in the name of Taxmann advisory private limited. Taxmann isa registered trademark. After 5 years when the owner of trademark came to know about the same, it filedan application with relevant authority. Can the company be compelled to change its name by the owner oftrademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

Answer 15

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 whicha company had been previouslyregistered, it may direct the company tochange 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 theCentral Government withinthree years of incorporation of registration of the company, it may direct the company to change its name. Then the company shallchange its name by passing an ordinary resolution within 6 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade- mark is filing objection after 5 years of registration of

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

Question 16

Shri Laxmi Electricals Ltd. (S) is a company in which Hanuman power suppliers Limited (H) is holding 60% ofits paid up share capital. One of the shareholder of H made a charitable trust and donated his 10% shares in H and Rs. 50 crores to the trust. He appoint S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold shares in its holding company in this way?

Answer 16

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 subsidiarycompany shall be void.
Following are the exceptions to the above rule—

(a) where the subsidiary company holds such shares as the legal representativeof a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

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 concludethat in the given situation S can hold shares in H.

Question 17

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 whoever 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 apartner. Can the company deny its liability as a partner?

Answer 17

As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney

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to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

Question 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 andcontended 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 duringthe notice of the meetingand the meeting held?

Answer 18

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any memberby 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.

Question 19

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability companyto impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members

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as a usual procedure allowed under the Companies Act.
Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Answers 19

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare,religion, charity, protection of environment or any such other object;
(b) intends to apply its profits, if any, or other income in promoting its objects;and
(c) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or associationof persons to be registered as a limited liability company.
In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years andthereafter to dissolve the club and to distribute the surplus of assets over theliabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

Question 20 (True/False)
Statement – To be a promoter one necessarily be associated with the initial formation of the company.
Answer 20
False, one who subsequently helps company to keep going, raise fund & advice to board (other than inprofessional capacity) will equally be regarded as a promoter.

Question 21 (True/False)
Statement – Even a Non-Resident Indian can form and become member of OPC.
Answer 21
True, Rule 3(1) of The Companies (Incorporation) Rules, 2014.
Only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

Question 22 (True/False)
Statement – Members who knowingly operating the company for more than six months with less than the minimum number of members specified in Section 3(1) are severally liable for the payment of all debts contracted by the company during the period since the number of members was first reduced.
Answer 22

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– False, refer section 3A of the Act. Such members are liable severally for the payment of the whole debtsof the company contracted during that time (after elapse of six months)

Question 23
Highlight differences between the MOA and AOA

Answer 23
The key differences between the MOA and AOA includes;

1. Content - The memorandum contains the fundamental conditions as basis of incorporation. It lays down the parameters that define relation of company with outsiders. The Articles contain internal regulations of the company; hence regulate the relationship between company and the members and members inter se.
2. Supremacy - Memorandum cannot include any clause that is contrary to the provisions of the law, whereas the articles shall be subordinate to both the law and memorandum. Therefore, in case on conflict among the two, the MOA shall prevail.
3. Scope -Memorandum lays down the scope beyond which the activities of the company cannot go. An act done by a company beyond the scope of the memorandum are ultra vires and void. They cannot beratified even by all the shareholders. Articles provide for regulations inside scope established by MOA, hence acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.

MULTIPLE CHOICE QUESTIONS (MCQs)

Question 24
The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of from the date of filing of the special resolution. (MTP Oct'19, 1 Mark)
(a) 30 days (b) 60 days (c) 90 days (d) 6 months
Answer 24 : (a)

Question 25
Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise.
(a) A private limited company can have maximum of Rs. One crore as share capital.
(b) A private limited company can have maximum of Rs. Two crores as share capital.
(c) A private limited company can have maximum of Rs. Five crores as share capital.
(d) A private limited company can have unlimited share capital. (MTP March'19, 1 Mark)
Answer 25 : (d)

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Question 26

In Roopali Marketing Company Private Limited (Authorised capital 50,000 shares of Rs. 10 each and paidup share capital of Rs. 4,50,000), 1000 shares are jointly held by Abeer and Abheek; another 800 shares are jointly held by Seema and Srividya; and another 1200 are jointly held by Ramesh, Raksha and Rajneesh. Further, 42,000 shares are held by 193 individual persons in their individual capacity. Is it possible for the company to induct more persons?

a) The company is unable to induct more persons since it already has two hundred individual members.

b) The company can induct four more persons as members.

c) The company can induct another 20 persons (i.e. 10% of two hundred individual members) after seeking permission from the concerned ROC.

d) If the company does not want to seek permission of the concerned ROC, it can induct only 10 more persons (i.e. 5% of two hundred individual members). (MTP May'20,March'19, 2 Marks)

Answer 26 : (b)

Question 27

Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

(a) Latest by 20th July, 2018 (b) Latest by 27th July, 2018

(c) Latest by 4th August, 2018 (d) Latest by 4th September, 2018

(MTP March'19, 2 Marks)

Answer 27 : (b)

Question 28

Food lovers Inc. was incorporated as a one person company (OPC) on 1st September 2015 with paid up share capital of Rs. 25 lacs. This OPC wants to convert itself into a private limited company during the year ending on 31st March 2017. But the provisions of the Companies Act, 2013 prohibits an OPC from doing so before the expiry of a specified period. From the following options in which situation this OPC will mandatorily be converted into a private/public company even before expiry of such period—

a. After the expiry of two years from the date of its incorporation

b. Paid up share capital of the company is increased beyond fifty lakh rupees

c. The average annual turnover during the relevant period exceeds one crore rupees

d. If the application is filed with the ROC within 90 days of its incorporation as OPC, to be converted into a Private Limited company. (MTP April'19, 2 Marks)

Answer 28 : (b) (as per amendment answer is d)

(As per amendment the following Rule "No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average

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annual turnover during the relevant period exceeds two crore rupees" has been omitted.)

Question 29

Swastik Private Limited passed a Special Resolution to change its name to Swastik Darshan Private Limited on 30th May, 2019. Relevant MCA filing was done on due time and then Company got its new stationery printed on 1st July, 2019. However there was a delay in issue of Certificate and Company received new certificate on 20th August, 2019 which was issued on 10th August, 2019. Company wants to enter into a lease agreement for new premise. When they can do such agreement in new name of the Company?

(a) 30th May, 2019
(b) 1st July, 2019
(c) 20th August, 2019
(d) 10th August, 2019 (MTP 1 Mark May 20)

Answer 29 : (c)

Question 30

If a company changes its name; which of the following is most accurate:

(a) It is not allowed to use old name in any way
(b) New name should not be identical with old name
(c) Old name should be painted/printed for next 1 year along with new name
(d) Old name should be painted/printed for next 2 years along with new name (MTP 1 Mark Oct 20)

Answer 30 : (d)

Question 31

Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover was less than Rs. 2.00 crores and its paid up share capital was less than Rs. 50 Lacs. Advise.

(a) A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.
(b) If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and notin the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.
(c) The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.
(d) A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'. (MTP 2 Marks March 21 & Sep '23)

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Answer 31 : (c)

Question 32

Anu got incorporated 'One Person Company' with her sister Alpa as the nominee and about three years have passed satisfactorily. From time to time, Anu does a number of charitable works and is associated with three NGOs. In the meantime, her business under her OPC has also flourished. Now she is contemplating to convert the OPC either as a Section 8 company (i.e. formation of companies with charitable objects). Choose the correct option.

(a) Since company belongs to Anu, she has full discretion to convert the OPC either as a Section 8 company or as a private or public company

(b) Since the company was formed as a private company, the only option available with Anu is to convert it into a public limited company.

(c) There is specific prohibition on converting OPC into a Section 8 company; otherwise, it can be converted into a private or public company without any hindrance.

(d) Since Anu does a lot of charitable works there is no prohibition to converts his OPC into a Section 8 company (companies formed with charitable objects). (MTP 2 Marks April 21)

Answer 32: (c)

Question 33

If a company is registered by furnishing incorrect information then its winding up may be ordered by:

(a) Central Government

(b) Registrar of Companies

(c) National Company Law Tribunal

(d) Court (MTP 1 Mark April 21) Answer 33 : (c)

Question 34

L made an offer to MD of a company. MD accepted the offer though he had no authority to do so. Subsequently L withdrew the offer but the company ratified the MD's acceptance. State which of the statement given hereunder is correct:

(a) L was bound with the offer

(b) An offer once accepted cannot be withdrawn

(c) Both option (a) & (b) is correct

(d) L is not bound to an offer. (MTP 2 Marks Mar '19, Oct 19)

Answer 34 : (d)

Question 35

Kamya Ltd. is incorporated on 3rd January, 2021. As per the Companies Act, 2013, what will be the financial year for the company:

(a) 31st March, 2021

(b) 31st December, 2021

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(c) 31st March, 2022
(d) 30th September, 2022 (MTP 2 Marks March '22)

Answer 35 : (C)

Question 36

cannot be a subscriber to the Memorandum of Association and Articles of Association.

(a) A company
(b) Government
(c) Minor
(d) Major (MTP 1 Mark April 22)

Answer 36 : (c)

Question 37

In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles,

(a) By passing a special resolution
(b) With the consent of all the members
(c) By passing a special resolution and approval of the Central Government
(d) With the consent of all the members and approval of the Central Government (MTP 1 Mark April 22 & Sep '23)

Answer 37 : (b)

Question 38

Where a company is granted licence under section 8, it is not required to use the word even though it is a limited company:

(a) Guarantee company
(b) Limited Liability Partnership
(c) Limited or Private Limited, as the case may be
(d) Development Authority (MTP 1 Mark April 22, Sep'22)

Answer 38 : (c)

Question 39

The Best Dry Fruits Ltd was incorporated under the Companies Act, 1913. Whether the provisions of the Companies Act, 2013 shall apply on it:

(a) No, the provisions of the Companies Act, 2013 shall not apply on it .
(b) Yes, the provisions of the Companies Act, 2013 shall apply on it .
(c) The Companies Act, 1913 was enacted by the British Government, hence only an Act made by British Government shall apply on such company.
(d) Since, this company was incorporated by the British Government, hence the Companies Act of UK Govt shall apply. (MTP 2 Marks Sep'22)

Answer 39 : (b)

Question 40

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In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of from the date of approval

(a) 90 days
(b) 60 days
(c) 30 days
(d) 20 days (MTP 1 Mark April '23)

Answer 40 : (b)

Question 41

Today, it's May 2023. Mr. Nilanjan Chattopadhyay a 24 years old Indian youngster, who returned back to India in January month of 2023 after completing his education in bio-nutrient and willing to form an OPC; but not sure about the requirements or pre-conditions regarding eligibility. He read some articles on provisions related to OPC and concluded;

(i) OPC can be formed by Indian Citizen only
(ii) He can't form OPC because in immediate previous year he was not resident in India Choose the correct option:
(a) Both the conclusions are valid
(b) None of the conclusion is valid
(c) First conclusion is invalid
(d) Second conclusion is invalid (MTP 2 Marks April '23)

Answer 41 : (d)

Question 42

Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife?

(a) Since blood relation can only be appointed as nominee in case of OPC, Rajesh needs to appoint his son Rakshak.
(b) Rajesh can appoint his friend Ramnivas as nominee in his OPC
(c) Roopali is not agreeable to the proposal of Rajesh and hence, Rajesh cannot change her as the nominee
(d) Mr. Ramnivas can be appointed as nominee.(RTP May'19)

Answer 42 : (b)

Question 43

Vinay a me reservation application accompanied by requisite fee to the Registrar for forming company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.(RTP May '19)

(a) Latest by 20th July, 2018 (b) Latest by 27th July, 2018

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(c) Latest by 4th August, 2018 (d) Latest by 4th September, 2018 Question 21: (b)

Question 44

Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? (MTP Aug'18-6 Marks, MTP Mar'19-5 Marks, Old & New SM)

Answer 44

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the license and opportunity to be heard in the matter.

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

(iii) Where a license is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Question 45

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

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time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan. (MTP 6 Marks May 20)

Answer 45

Doctrine of Indoor Management: According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

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

Question 46

XYZ a One-Person Company (OPC) was incorporated during the year 2017-18 with an authorized capital of ₹ 45.00 lakhs (4.5 lakh shares of ₹ 10 each), The capital was fully subscribed and paid up. Turnover of the company during 2017-18 and 2018-19 was ₹ 2.00 crores and ₹ 2.5 crores respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2019-20. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

(i) If promoter increases the paid up capital of the company by₹ 10.00 lakhs during 2019-20. (ii) If turnover of the company during 2019-20 was ₹ 3.00 crores. (MTP 5 Marks Oct '20) (6 Marks April '19) (RTP May '19, PYP 4 Marks ,Nov '18)

Answer 46

As per Rule 3 of the Companies (Incorporation) Rules, 2014, no One Person Company (OPC) can convert voluntarily into any kind of company except a section 8 company

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of

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memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Question 47
Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company. (MTP 3 Marks March 21,MTP 5 Marks Nov 21, MTP 5 Marks Sep'22, Old & New SM)

Answer 47
Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.
Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Question 48
Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director. Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013. (MTP 6 Marks April 21)

Answer 48
As per the provisions of sub-section (3) of section 5 of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution are met or complied with.
Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.
Manner of inclusion of the entrenchment provision:
As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of

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entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.
Notice to the Registrar of the entrenchment provision:

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

Question 49

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013. (MTP 5 Marks April 21)

Answer 49

As per Section 10A of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(i) A declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(ii) The company has filed with the Registrar a verification of it registered office as provided in subsection (2) of section 12. Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company.

Question 50

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management.
Explain. (MTP 6 Marks Oct 21 & Sep '22)

Answer 50

Doctrine of Indoor Management
According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.
Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the

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company had gone through all these proceedings in a regular manner.
The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Question 51
What is the minimum number of persons required to form a Private company and a Public company. Explain the consequences when the number of members falls below the minimum prescribed limit.
(MTP 6 Marks Nov 21)

Answer 51
According to section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by—
(a) 7 or more persons, where the company to be formed is to be a public company;
(b) 2 or more persons, where the company to be formed is to be a private company; or by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to section 3A,
- If at any time the number of members of a company is reduced, in the case of a public company, below 7, in the case of a private company, below 2, and the company carries on business for more than six months while the number of members is so reduced, then
- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant (aware) of the fact that it is carrying on business with less than seven members or two members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after six months) and may be severally sued therefore.

Question 52
Mr. X, in association with his relative formed a company to promote education for the children of
poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of funds were contributed by public for the fulfilment of the benevolent object. However, on the compliant against the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child.
Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013. (MTP 6 Marks Oct '18)

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Answer 52

As per the Section 8 of the Companies Act, 2013, the Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest. Where a license is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Where a license is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013. However, an object for which both the Companies formed were promoting different objects. Accordingly, the order passed by the Central Government after the revocation of license, is not in compliance of the Section 8 of the Companies Act, 2013.

Question 53

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

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

(ii) Whether the company may be wound up?

(iii) Whether the Gully Gilli Danda Club can be merged with Stick Private Limited, a company engaged in the business of networking? (MTP 5 Marks March '22 & Oct '22 & Oct '23)(PYP July 21 5 Marks)

Answer 53

(i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity

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to be heard in the matter.

Hence, in the instant case, the Central Government can revoke the license given to Gully Gilli Danda Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)]. Hence, the stated company may be wound up.

(iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)]

In the instant case, Gully Gilli Danda Club cannot be merged with Stick Private Limited as the objects of both the companies are different and not similar.

Question 54

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013. Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013. (MTP 5 Marks Oct 20, PYP May '19 , 5 Marks, Old & New SM)

Answer 54

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members; the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

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Question 55

Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ₹ 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited.

As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited.

(MTP 6 Marks Sep'22 & March '23, RTP Nov '19, Old & New SM)

Answer 55

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

Question 56

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions. (MTP 6 Marks Oct'22, PYP 3 Marks Nov'20)

Answer 56

Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So, entrenchment means making something more protective.

Section 5 of the Companies Act, 2013 describes the provisions relating to entrenchment.

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

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resolution, are met or complied with.
Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
Notice to the registrar of the entrenchment provision [Section 5(5)]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Question 57
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? (MTP 4 Marks April '23, PYP Nov'19 5 Marks)

Answer 57
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,—
(i) the company shall be given a reasonable opportunity of being heard in the matter; and (ii) 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.

Question 58
Give answer in the following cases as per the Companies Act, 2013
(i) X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.
(ii) In continuation of above facts, Mr. R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the director of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd. (MTP Oct '18 ,7 Marks)

Answer 58

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As per section 2(84) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.
Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
Provided that this sub-section shall not apply-

(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 On the basis of the above provisions, following are the answers:

 (i) In the given case, X ltd. already holds shares in ABZ Ltd. before becoming its subsidiary. The given situations falls within the purview of the exceptions when such transfer of shares by holding company to its subsidiary is permissible. So this transfer of shares by ABZ Ltd. to X Ltd. is valid.

 (ii) This situation falls within the purview of exemption stating that such subsidiary company who holds such shares as the legal representative of a deceased member of the holding company, are entitled to hold the shares of the holding company. So Mr. N being the legal representative of the deceased member of the Holding company, was entitled for the holding of shares of ABZ Ltd.

Question 59

Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation. (RTP Nov'19)

Answer 59

According to section 3A of the Companies Act, 2013, If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor. Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

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Question 60

Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised Rs 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.

Does the Companies Act, 2013 allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed. (RTP Nov'19, Old & New SM)

Answer 60

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details in respect of such resolution shall also be published in the newspapers(one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change

;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC. Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Question 61

The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association. (RTP Nov'18)

Answer 61

Alteration in Articles of Association: Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

(1) Alteration by special resolution: Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

(2) Filing of alteration with the registrar: Every alteration of the articles and a copy of the order

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of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(3) Any alteration made shall be valid: Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

(4) Alteration noted in every copy: Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. [Section 15]

Question 62

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

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

(B) If Nisha maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? (RTP May 21, PYP Nov'19 2 Marks)

Answer 62

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

(A) No it is not mandatory for Nisha to withdraw her nomination as a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(B) Nisha can continue her nomination irrespective of her residential status.
As per amendment a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee for the sole member of an OPC

Question 63

Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. 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. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.(RTP May '20, Old & New SM)

Answer 63

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

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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 Register of Companies regarding entrenchment of articles.

Question 64

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company? (RTP May '22)

Answer 64

According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).

Also, a firm may be a member of the company registered under section.

Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Question 65

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May '22)

Answer 65

According to section 2(69) of the Companies Act, 2013, Promoter means a person:-

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(a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
(c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity. As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

Question 66

Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid? (RTP Nov'22)

Answer 66

As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-
(a) shall be eligible to incorporate a One Person Company (OPC);
(b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

Question 67

As at 31st March, 2018, the paid up share capital of S Ltd. is Rs 1,00,00,000 divided into 10,00,000 equity shares of Rs 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 :

(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?[PYP May'19,4 Marks]

Answer 67

The paid up share capital of S Ltd. is Rs 1,00,00,000 divided into 10,00,000 equity shares of Rs 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by

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virtue of section 2(87) of the Companies Act, 2013. In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second proviso to Section 19, 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.

(iii) 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.

Question 68

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

Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

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

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

(iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'. (PYP 6 Marks Nov 20)

Answer 68

As per section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent in such manner as may be prescribed. Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

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

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(i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

(ii) No it is not mandatory to withdraw nomination in the OPC as a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee for the sole member in an OPC

As per amendment only a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee for the sole member in an OPC

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

Question 69

The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013. (PYP 5 Marks Jan 21)(MTP 6 Marks Sep '23)

OR

The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. (PYP 6 Marks Nov 18, Old & New SM)

Answer 69

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. They can simply assume that all the required things were done properly in the company. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. The doctrine of indoor management was evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

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Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under
the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available in the circumstances where company does not make proper inquiry.

Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
The above doctrines have been well considered while framing the provisions of various Acts pertaining to the companies worldwide. The Companies Act, 2013 and the earlier Acts relevant for the Companies in India are no exception to the same.

Question 70

Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. 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 is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from· Pune to Mumbai under the authority of a Board· resolution.

(iii) 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. (PYP July 21, 5 Marks, MTP 4 Marks Mar'23)

Answer 70

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

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

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

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[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State.
In line section 12 (5) of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.]

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

Question 71

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

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

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

(C) If the company increases its paid up share capital by ₹ 30 lakhs in August, 2019, can it be converted in any other kind of company immediately? (3 Marks Dec '21)

Answer 71

(A) The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. Only a natural person who is an Indian citizen whether resident in India or otherwise-

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

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

As per amendment An OPC can be voluntarily converted to any kind of company except a section 8 company. Hence as per amendment of omission of Rule 7 there is no restriction to convert a one person company.

Question 72

S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and

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decide
(i) the validity of holding of shares by S Ltd. in H Ltd.
(ii) Allotment of Bonus shares by H Ltd. To S Ltd. (PYP 4 Marks Nov 20)

Answer 72
As per Section 19 of the Companies Act, 2013, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.
Therefore -
(i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-section (1) of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

Question 73
MNP Limited is a registered public company having the following:

i	Directors and their Relatives	18
ii	Employees	26
iii	Ex-Employees (Shares were allotted duringemployment)	15
iv	Members holding shares jointly (7 x 2)	14
v	Other Members	137

The Board of Directors of MNP Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise:
i. Whether the company can be converted into a private company?
ii. Whether existing number of members need to be reduced for the proposed private company? (PYP 6 Marks May '22)

Answer 73
According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having prescribed minimum paid- up share capital, and which by its articles, limits the number of its members to two hundred.
However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

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It is further provided that following shall not be included in the number of members -

(A) persons who are in the employment of the company; and
(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
Accordingly, total Number of members in MNP Limited are:

(i)	Directors and their relatives	18
(ii)	Joint shareholders (7x2)	7
(iii)	Other Members	137
	Total	162

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

Question 74
Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.(PYP 3 Marks May '22)

Answer 74
As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company:
(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.
(2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.
(3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Question 75
The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company

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by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(i) Whether refusal of document by the company is valid?
(ii) Whether Suresh can claim damages for it? (PYP 5 Marks Nov '22)

Answer 75

Serving of document to Company
In terms of Section 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

- registered post, or
- speed post, or
- courier service, or
- leaving it at its registered office, or
- means of such electronic or other mode as may be prescribed.

In the instant case, Suresh dispatches some document to AB Ltd. by courier whereas the AOA of said company provides that documents may be served upon the company only through Speed Post. AB Ltd. did not accept the documents on the ground that it is in violation of the AOA. Taking into account the above provision,

(i) Refusal of documents by AB Ltd. is not valid as sending of documents by courier to AB Ltd. is complying with the provisions given under section 20(1) of the Act.
(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, YES, he can claim the damages for any loss occurred to him.

Question 76

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance.
However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance. Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void? (RTP , Nov '23)

Answer 76

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.
According to section 6 of the Companies Act, 2013,'Save as otherwise expressly provided in this

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Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

In simple words, the provisions of this Act shall have overriding effect. It is also to be noted that section 6, starts with "Save as otherwise ....". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the articles of association will prevail and cannot be considered as void.

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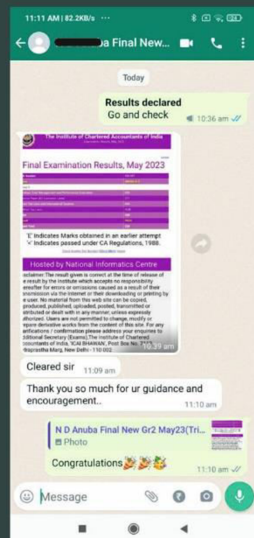

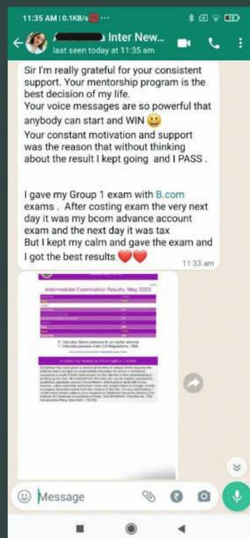

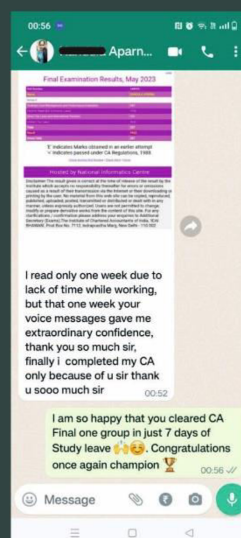

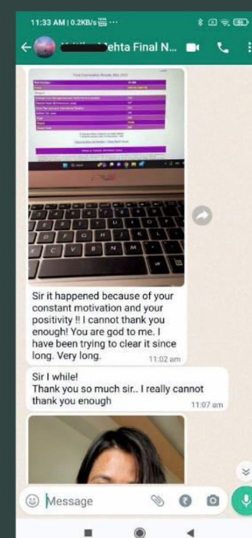

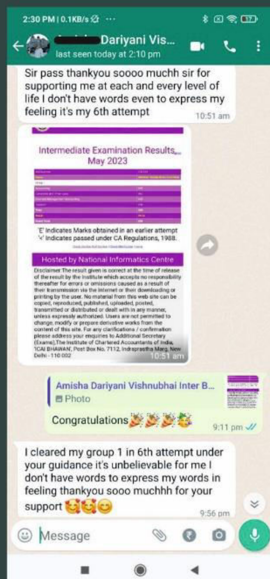

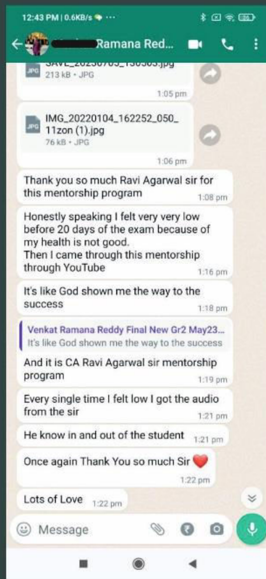

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Chapter 3
Prospectus and allotment of Securities

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.1 to Q.27											
Past Exams	Q.60	Q.59 Q.65	Q.58 Q.61	Q.57	No	No	No	No	Q.66	No	Q.67	No
MTP	Q.48	Q.45 Q.49	Q.35 Q.45 Q.46 Q.47	Q.28 Q.37 Q.44	Q.36 Q.50	Q.29	No	Q.30 Q.31 Q.32	Q.51 Q.52	Q.50 Q.53	Q.38 Q.54	Q.28 Q.29 Q.54
RTP	Q.58 Q.62	Q.55	No	Q.39	Q.50	Q.57	Q.42 Q.56	Q.40 Q.41	Q.57	No	No	Q.40 Q.43 Q.63

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

(a) 1st April, 16th April, and 12% respectively
(b) 1st May, 16th May, and 12% respectively
(c) 1st April, 16th April, and 6% respectively
(d) 16th April, 1st May, and 12% respectively

Ans: (b)

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

i. A statement of the net amount received or to be received as consideration for the securities to which the offer relates
ii. The persons making the offer were named in the prospectus as promoters of the company.
iii. The time and place at which the underlying contract for allotment may be inspected.

(a) i or ii only
(b) i or iii only
(c) ii or iii only

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(d) All of i, ii and iii

Ans: (b)

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

(a) No penalty, as application has been filed
(b) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh
(c) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh
(d) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh and/or Imprisonment upto one year.

Ans: (c)

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

(a) 15 days
(b) 21 days
(c) 30 days
(d) 1 month

Ans: (d)

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

(a) Any two directors including managing directors
(b) Majority of directors
(c) Majority of directors including proposed directors
(d) Every director or proposed director

Ans: (d)

6. **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

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(a) (iii) only
(b) Both (i) and (iii) only
(c) Both (ii) and (iii) only
(d) None of the (i), (ii), and (iii)

Ans: (c)

7. In case of variation in terms of contract or objects in prospectus, which of the followings statement are not true;
(i) Ordinary resolution shall be passed at general meeting
(ii) Notice given to shareholder shall also be published in two newspapers
(iii) Amount so raised can be invested only in equity share of prescribed class of companies.

a) (i) only
b) Both (i) and (ii) only
c) Both (i) and (iii) only
d) Both (ii) and (iii) only

Ans: (d)

8. An applicant who made application for allotment along with advance payment of subscription, if he expresses a desire to withdraw his application after changes reported in information memorandum came to his knowledge. The company;

a. May refund the monies at discretion of Board of Directors
b. Shall refund the monies after deducting the administrative charges within fifteen days
c. Shall refund all the monies received as subscription within fifteen days
d. Shall refund the monies after deducting the administrative charges within 30 days

Ans: (c)

c [Refer proviso to section 31(2). It is provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof].

Theoretical Questions Answers

Question 9

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

Answer 9

Irregular allotment: The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities andconsider the consequences ofnon- fulfillment of those requirements. In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23,

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26, 39 or 40. Irregular allotment therefore arises in the following instances:
1. Where a company does not issue a prospectus in a public offer as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for filing under section 26 (4); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribedby SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Question 10

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

Answer 10

Shelf prospectus – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Provisions relating to the issue of Shelf-prospectus are as under:

(1) Filing of shelf prospectus with the Registrar: According to section 31 (1), any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

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

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectusis required.

(2) Filing of Information Memorandum with the Shelf Prospectus:

According to Section 31 (2), a company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of thecompany as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

(3) Intimation of Changes: According to Proviso to Section 31 (2), where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the makingof any such change, the company or other person shall intimate the changesto such applicants and if they express a desire to withdraw their application, the

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company or other person shall refund all the monies received as subscription within fifteen days thereof.

According to Rule 10 of the Companies (Prospectus and Allotment of securities) Rules, 2014, the information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

(4) Information Memorandum together with the Shelf Prospectus is deemed Prospectus: According to Section 31 (3), where an information memorandum is filed, every time an offer of securities is made under sub- section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Question 11

The Board of Directors of Chandra Mechanical Toys Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer 11

As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.

It is provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

According to clause (c) of Section 26 (1), the prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Directors of Chandra Mechanical Toys Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with

Question 12

Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.

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Answer 12

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

under the Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:

(a) The payment of such commission shall be authorized in the company's articles of association;

(b) The commission may be paid out of proceeds of the issue or the profit ofthe company or both;

(c) The rate of commission in case of debentures, shall not exceed two and ahalf per cent (2.5%) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.

Thus, the underwriting commission in case of debentures is limited to 2.5%.

In view of the above, the decision of Unique Builders Limited to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid. The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issueor profits of the company.

Question 13

PQR Bakers Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures. Being a public company is it possible for PQR Bakers Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Answer 13

According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect

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to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.
In the given case PQR Bakers Limited, though a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.
However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.
In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

Question 14
How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:
(i) Minimum Amount stated in the Prospectus; and
(ii) Application Money payable on shares.

Answer 14
The Companies Act, 2013 by virtue of the provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum amount stated in the prospectus andthe application money payable in a public issueof shares as under:
Minimum amount stated in a prospectus [Section 39 (1)]
No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -
(i) the amount stated in the prospectus as the minimum amount has beensubscribed; and
(ii) the sums payable on application for such amount has been paid to and received by the company.
Application money: Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.
Further section 39 (3) provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.
Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid

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within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum. In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

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

Question 15

The Board of Directors of Reckless Investments Limited, having registered office at Mumbai, has allotted equity shares to the 550 investors of the company without issuing a prospectus. As no prospectus was issued, nothing was delivered to the Registrar of Companies, Mumbai for filing. Explain the remedy available to the investors in this regard.

Answer 15

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Further, where the limit crosses 200 investors the issue shall be deemed to be a public offer, as provided by Section 42. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the delivery of the prospectus to the Registrar for filing before its issue. In the given case, the company has violated the above provisions and therefore, the allotment made by it is void. The company will be required to refund the entire moneys received and will also be punishable under section 26 (9).

Question 16

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

Answer 16

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

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

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

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

(1) having consented to become a director of the company, he withdrew his consent before the

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issue of the prospectus, and that it was issued without his authority or consent; or

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

Therefore, in the present case the director cannot escape the liability by stating that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

Question 18

Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013. "The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters."

Answer 18

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less. In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e. Deal & Co.) is invalid.

Question 19 Illustration (True/False) (New)

Statement – The powers to administer the matters pertaining to redemption of preference share by listed company vested with the Securities and Exchange Board of India.

Answer 19

False (Refer Section 24(1)(a)

Question 20 Illustration (True/False) (New)

Statement – The matters specified under section 25(3) need to be stated in substitution of matters stated under section 26.

Answer 20

False [Section 25(3) provides three matters that need to be stated in addition to matters required to be stated in prospectus under section 26.]

Question 21 Illustration (New)

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

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filed suit for damages. Will this communication amount to an issue to the public and whether the provisions of the Act are attracted?

Answer 21

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 Lynde12)

Question 22 Illustration (True/False) (New)

Statement – The copy of prospectus submitted with registrar for filling need to be duly signed by majority of directors.

Answer 22

False

Under section 26(4) of the Act, the copy of prospectus submitted with registrar for filing shall be signed by every person who is named as either director or proposed director in such prospectus. Duly authorised attorney can sign in representative capacity.

Question 23 Illustration (New)

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?

Answer 23

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

Question 24 Illustration (New)

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

Answer 24

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

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

Question 25 Illustration (New)
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?

Answer 25
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.

Question 26 Illustration (New)
The Board of Directors of a company decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

Answer 26
Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.
Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the Articles.

Question 27 Illustration (New)
Ruhi and her brother Sohit were offered jointly 1000 equity shares of ₹ 100 each by Soumya Software Private Limited under the issue of shares on private placement basis. Offer-cum-application letter addressed to both containing their names as “Ms. Ruhi, Mr. Sohit”. From whose account the company is required to take subscription money for 1000 equity shares?

Answer 27

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

MULTIPLE CHOICE QUESTIONS (MCQs)

Question 28

Dwapar Equipment Finance Limited, a non-banking finance company (NBFC), is desirous of offering secured, redeemable, non-convertible 9% Debentures to the public in three or more tranches over a certain period of time. Which kind of prospectus it is required to issue so that its purpose is served and there arises no need to take out a fresh prospectus for second and subsequent offer of securities. (MTP 2 Marks Oct'19 & Oct '23)

(a) Deemed Prospectus. (b) Shelf Prospectus.
(c) Red Herring Prospectus. (d) Abridged prospectus.

Answer 28 : (b)

Question 29

When a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar:

(a) Three days before the delivery of the prospectus for registration
(b) At the time of delivery of the prospectus for registration
(c) Three days after the delivery of the prospectus for registration
(d) Five days after the delivery of the prospectus for registration (MTP 1 Mark Oct '20 & Sep '23)

Answer 29 : (b)

Question 30

A prospectus which does not include complete particulars of the quantum or price of the securities included therein is called:

(a) A deemed Prospectus
(b) A Shelf Prospectus
(c) An Abridged Prospectus
(d) A Red Herring Prospectus (MTP 1 Mark Oct '21)

Answer 30 : (d)

Question 31

The minimum amount of subscription in a public issue shall be received within days from the date of issue of prospectus.

(a) 30

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(b) 60
(c) 90
(d) 120 (MTP 1 Mark Oct 21)

Answer 31: (a)

Question 32

Which of the following statements is not true?

(a) in case of shares, the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.
(b) underwriting commission should not be more than the rate specified by the Article o f Association.
(c) in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.
(d) amount of commission may be paid out of profits of the company. (MTP 2 Marks Oct 21)

Answer 32 (c)

Question 33

Part of the capital for which application have been received from the public and shares allotted to them: (MTP 1 Mark Oct '19)

(a) Nominal capital
(b) Issued capital
(c) Subscribed capital
(d) Called up capital

Answer 33 (c)

Question 34

The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is:

Three days before the delivery of the prospectus for registration At the time of delivery of the prospectus for registration Three days after the delivery of the prospectus for registration e delivery of the prospectus for registration

Answer 34 (b)

Question 35

The paid up share capital of ABC Ltd. Is 5000000 shares of Rs. 200 each. 20% of its paid up share capital is held by 4 of its promoters, who wants to off load their holding by making an offer of sale to the public by issuing a prospectus. They want to authorise someone to take all actions and complete all formalities related to such offer of sale. From the following who can be authorised by them to do so—

(a) Any person who has agreed to fulfil all the formalities related to such offer of sale

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(b) Any one or more director of the company.
(c) Company itself whose shareholding they want to offload.
(d) Any competent officer of the company. (MTP Apr '19,2 Marks)

Answer 35: (c)

Question 36

Extra Limited is a growing Company and requires additional funds for expansion from time to time. They are following the same process for making an offer to public and then issue those shares. This is very time and energy consuming for them. Kindly advise them if there is any way out.

a) During first offer they shall file prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
b) During first offer they shall file prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
c) During first offer they shall file shelf prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
d) During first offer they shall file shelf prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required. (MTP 1 Mark May 20)

Answer 36 : (c)

Question 37

Being in need of further capital, Rimsi Cotton-Silk Products Limited opted to offer 50.00 lacs equity shares of Rs. 1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by serially numbered application form was sent to them after fulfillment of due formalities including passing of special resolution. One of the applicants, Rajan made a written complaint to the company highlighting the fact that the letter of offer was incomplete as well as illegal, for the same did not contain 'renunciation clause' though he wanted to exercise his 'right of renunciation' in favour of one of his son Uday. By choosing the correct option, advise the company in this matter. (MTP Oct'19, 2 Marks)

(a) As the 'Right of Renunciation' cannot be denied, the company needs to rectify its mistake by including the same in the letter of offer and the application form.
(b) The company is prohibited from providing 'Right of Renunciation' and therefore, the letter of offer and the application form need not include any such clause.
(c) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to twenty five percent of offering.
(d) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to fifty percent of offering.

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Answer 37 : (b)

Question 38

Which of the following statement is contrary to the provisions of the Companies Act, 2013?

(a) A private company can make a private placement of its securities.

(b) The company has to pass a special resolution for private placement.

(c) Minimum offer per person should have Market Value of ₹ 20,000.

(d) A public company can make a private placement of its securities. (MTP 2 Marks April '23, RTP May'21)

Answer 38 : (c)

Question 39

Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of Rs 50 crores should be stated as the minimum amount that needs to be subscribed by the prospective subscribers. The funds shall be raised in four instalments consisting of application, allotment, first call and second & final call. Advise the company by which instalment it should receive the minimum subscription stated in the prospectus.

(a) Along with amount subscribed as application money.

(b) Along with amount subscribed as final call money.

(c) Along with amount subscribed as first call money.

(d) Along with amount subscribed as second and final call money. (RTP Nov-19)

Answer 39: (a)

Question 40

A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:

(a) 5%

(b) 2%

(c) 2.5%

(d) 2.25% (RTP Nov 21)(MTP 2 Marks Sep '23)

Answer 40: (b)

Question 41

Krishna Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the

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company to them. Select the latest date by which the company must allot the shares against the application money so received.

(a) 9th November, 2019
(b) 24h November, 2019
(c) 9th December, 2019
(d) 8th January, 2020 (RTP Nov '21)

Answer 41 : (c)

Question 42

Which of the following statement is contrary to the provisions of the Companies Act, 2013? (RTP May 21)

(a) A private company can make a private placement of its securities.
(b) The company has to pass a special resolution for private placement.
(c) Minimum offer per person should have Market Value of ₹ 20,000.
(d) A public company can make a private placement of its securities.

Answer 42: (c)

Question 43

Newage Private Limited issued 9% Non-convertible Debentures worth ₹ 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed nonconvertible debentures of ₹ 10 lakh were listed. Which of the following options is applicable in the given situation:

(a) Newage Private Limited shall be considered as a listed company.
(b) Newage Private Limited shall not be considered as a listed company.
(c) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakh.
(d) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakh. (RTP Nov '23)

Answer 43 : (b)

Question 44

An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013. (MTP Oct'19,5 Marks, MTP Mar'18, 7 Marks, MTP Mar'21, 6 Marks, Old & New SM)

Answer 44

Yes, the Director shall be held liable for the false statements made in the prospectus under sections

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34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements.
The only situations when a director will not incur any liability for mis-statements in a prospectus are as under:

(1) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
(2) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that: having consented to become a director of the company, he withdrew his consent before the issue of and that it was issued without his authority or consent; or
was issued without his knowledge or consent, and that on becoming aware of its e a reasonable public notice that i was issued without his knowledge or

that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.
Therefore, in the present case the director cannot escape the liability by stating that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

Question 45
What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus? (MTP March'19,4 Marks, MTP Oct'18, 6 Marks, MTP Oct'21, 5 Marks)

Answer 45
(1) Meaning of Abridged Prospectus: - According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.
(2) Circumstances under which the abridged prospectus need not accompany the application forms: Section 33
(1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged

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prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

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

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

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

Question 46

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

(i) Minimum Subscription, and

(ii) Application Money payable on shares being issued? (MTP April'19, 5 Marks, MTP Oct'18, Apr'21, 6 Marks)

Answer 46

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

Minimum subscription [Section 39 (1)]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

(i) the amount stated in the prospectus as the minimum amount has been subscribed; and

(ii) the sums payable on application for such amount has been paid to and received by the company-

Application money: Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

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

Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum. In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

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

Question 47

Examine the validity of the following statement referring to the provisions of the Companies Act, 2013 and/or Rules: "The Articles of Association of X Ltd. contained a provision that upto 4% of issue price of' the shares may be paid as underwriting commission to the underwriters. The Board of Directors of X Ltd.
decided to pay 5% underwriting commission. (MTP April'19, 5 Marks, Old & New SM)

Answer 47

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the number of conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorized by the articles, whichever is less. In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Question 48

With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified (MTP March'18,6 Marks)

Answer 48

Under section 2 (70) of the Companies Act, 2013, "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which cannot be said to have bought shares on the basis of prospectus

X cannot bring action for deceit against the directors. Hence, X will not succeed. It was also held in

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the case of Peek Vs. Gurney that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

Question 49

Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013

(i) Mars India Ltd. owed to Sunil Rs. 1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs. 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. (MTP 5 Marks Mar'23)

(ii) The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the concerned Registrar of Companies. Explain the remedy available to the investors in this regard. (MTP Aug'18,7 Marks)

Answer 49

(i) Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
In the present case, 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, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

(ii) According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration (filing) of the prospectus with the Registrar before its issue.
In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 of the Act.

Question 50

Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. (MTP 5 Marks May 20, PYP 5 Marks Nov '22, RTP May '20, Old & New SM)

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Answer 50

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

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Alok will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any mis- statements in the rospectus under the following situations:

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

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

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

Question 51

Swati Limited is intending to issue its securities on private placement basis. Explain to the directors of the company, the provisions of the Companies Act, 2013, on the following matters:

(i) Meaning of Private Placement

(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment.' (MTP 5 Marks March '22)

Answer 51

(i) Meaning of 'Private Placement': As per Explanation I to section 42(3), the term "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer -cum-application, which satisfies the conditions specified in section 42.

(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment': A company making an offer or invitation under section 42 shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the

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company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

Question 52

ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013. (MTP 3 Marks March '22, PYP July 21, 3 Marks)

Answer 52

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

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

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

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

No further prospectus is required for issue of securities. [Sub-section (1)]

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

Question 53

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

Being a public company is it possible for Purple Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year? (MTP 6 Marks Oct'22, MTP 6 Marks Mar'21, PYP 5 Marks Dec '21, Old & New SM)

Answer 53

According to section 42 of the Companies Act, 2013 any private or public company may make private

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placement through issue of a private placement offer letter.
However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.
Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.
It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.
Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.
In the given case Purple Limited, though a public company can raise funds through private placement as provisions related to private placement allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.
However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.
In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

Question 54
Bheem Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share

application money shall be payable at ₹ 20 per share. The prospectus further reveals that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Bheem Ltd. received an amount of ₹ 20,00,000 on share application. Bheem Ltd., then proceeded for allotment of shares.
Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013. (MTP 6 Marks April '23 & Sep '23, PYP 6 Marks Jan '21)

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Answer 54

As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013.

According to section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-

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

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

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

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

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

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

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares. Consequently, Bheem Ltd. shall be required to refund the application money to the ts in the prescribed manner within the stipulated time frame.

Question 55

Prakhar share capital by issuing Equity Shares in different stages over a certain period of time company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus? (RTP Nov'18)

Answer 55

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue

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of a further prospectus

(1) According to Section 31 of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—

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

(B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus. Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

Question 56

Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein. (RTP May 21)

Answer 56

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

(i) the objects,

(ii) the liability of members and the amount of share capital of the company,

(iii) the names of the signatories to the memorandum,

(iv) the number of shares subscribed for by the signatories, and (v) the capital structure of the company.

Question 57

The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013. (RTP May '22, RTP Nov 20, PYP Nov '19 ,4 Marks, Old & New SM)

Answer 57

As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be

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specified by the Securities and Exchange Board in consultation with the Central Government.
Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.
According to clause (c) of section 26 (1), the prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.
Accordingly, the Board of Plum Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

Question 58
Kapoor Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act,2013. (RTP May'18, PYP 2 Marks May'19, Old & New SM)

Answer 58
Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:
(a) The payment of such commission shall be authorized in the company's articles of association;
(b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
(c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.
In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid. The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

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Question 59

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act,2013. (PYP Nov'18,6 Marks, Old & New SM)

Answer 59

Shelf prospectus – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Provisions relating to issue of Shelf-prospectus:

(1) Filing of shelf prospectus with the registrar: According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-
(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) Filing of information memorandum with the shelf prospectus: A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

(3) Intimation of changes: Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(4) Memorandum together with the shelf prospectus shall be deemed to be a prospectus: Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Question 60

TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013. (PYP May'18,6 Marks)

Answer 60

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are

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as follows: Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
Conditions for the payment of commission:

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;
3. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars - a. the name of the underwriters;

the rate and amount of the commission payable to the underwriter; and
the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

5. No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question 61

Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013. (PYP May '19 , 4 Marks, Old & New SM)

Answer 61

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

1. Where a company does not issue a prospectus in a public 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); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 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

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recognized stock exchanges under section 40 of the Companies Act, 2013.

Question 62

RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allotee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not? (3 Marks Dec '21, RTP May'18)

Answer 62

According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.
Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) of section 35, shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
In the given question, the non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made. Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Question 63

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

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

(ii) The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.
The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013. (PYP 4 Marks Jan 21)(MTP 5 Marks Sep '23)

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Answer 63

As per the provisions of sub-section (2) of section 42 of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.
It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.
According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.
Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

(i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.
The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct.

(ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year.
Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

Question 64

Johnson Limited goes for Public issue of its shares. The issue was over subscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act. State, who are the persons considered as officers in default under the Companies Act, 2013. Examine who will be considered in default in the instant case? (PYP July'21,5 Marks)

Answer 64

As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under subsection (3) and (4), the company and its officer who is in default shall be liable to a penalty, for

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each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director (WTD);
(ii) key managerial personnel (KMP);
(iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
(vi) every director, in respect of a contravention of any of the provisions of this Act,
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

Question 65

Discuss the provisions relating to private placement of shares under the Companies Act, 2013. (PYP 5 Marks Nov 18)

Answer 65

"Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Requirements of offer or invitation for subscription of securities on private placement: [Section 42]

(1) Issue of private placement offer letter: According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.
(2) Offer/invitation to number of persons: The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be

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prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Offer/ invitation made to more than the prescribed number of persons : If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

(3) No issue of fresh offer/ invitation: No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
   (i) have been completed, or
   (ii) that offer or invitation has been withdrawn, or
   (iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)

(4) Offer / invitation treated as public offer: Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

(5) Payment of amount: All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) Time for allotment of securities: A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)

   Default in allotment of securities: Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion 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:

   Separate Bank Account: Provided that 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—
   (a) for adjustment against allotment of securities; or
   (b) for the repayment of monies where the company is unable to allot securities.

(7) Offers made to the persons whose name is recorded : All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

(8) No publication required: No company offering securities under this section shall release any

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public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) Filing with the registrar: Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) In contravention of the section: If a company makes an offer or accepts monies in contravention of this section-

Persons liable	**Penalty**
Company, Promoters and Directors	• May extend to the amount involved in the offer or invitation, or • Two crore rupees- whichever is higher
Company	• Shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Question 66

The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013? (PYP 5 Marks May'22)

Answer 66

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

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

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

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

(2) Filing with the registrar: A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

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

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

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Question 67
MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generies with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology department. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. (PYP 5 Marks, May '23)

Answer 67
Remedy against the company: Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.
In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, section 35 also mentions punishment prescribed by section 36 i.e., punishment for fraud under section 447.
Circumstances when an expert is not liable: An expert will liable for any misstatement in a prospectus under the following situations:
Under section 26 (5): It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or
Under section 35 (2) (b): It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
Under section 35 (2) (c): As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment there under.

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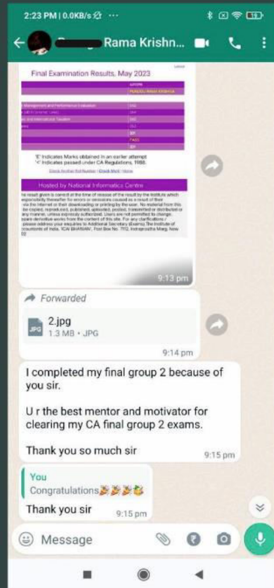

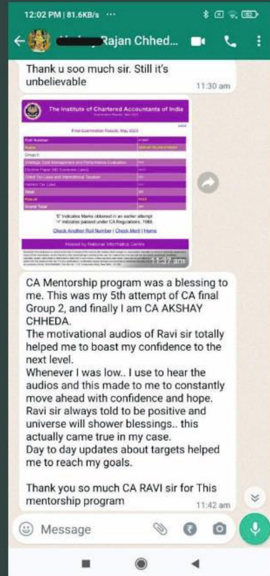

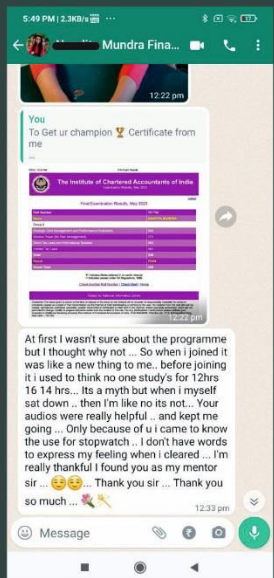

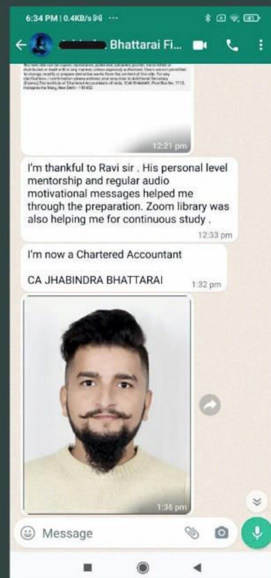

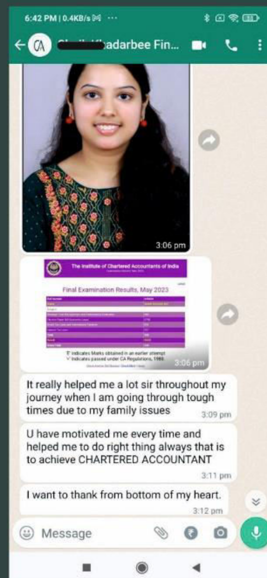

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Chapter 4
Share Capital and Debentures

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.46 to 74											
Past Exams	Q.23 Q.24 Q.30	Q.6	Q.22 Q.36 Q.37	Q.25 Q.26	No	Q.27	No	NO	Q.31	Q.32 Q.33	Q.34	No
MTP	Q.2	Q.3	Q.9 Q.15	Q.9	Q.1 Q.5	Q.4 Q.38	Q.10 Q.39	Q.7 Q.8	Q.40 Q.41	Q.13 Q.42	Q.14 Q.28 Q.43	Q.28 Q.29
RTP	Q.9 Q.19	Q.16 Q.17 Q.18	Q.44 Q.45	Q.12	Q.4	Q.14	Q.14	Q.5 Q.6 Q.7	Q.11	Q.20	No	Q.11 Q.35

Question 1
Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of Rs. 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.? (MTP May'20, March'19,6 Marks, RTP May '19, Old & New SM)

Answer 1
Sweat equity shares of a class of shares already issued.

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

(i) the issue is authorized by a special resolution passed by the company;

(ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(iii) where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders. Data Limited can issue Sweat equity

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shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

OR

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

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

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

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the

following conditions are fulfilled, namely—

(a) the issue is authorised by a special resolution passed by the company;
(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

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

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

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.
(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Alternate Answer

Issue of Sweat Equity Shares

As per section 53, a company shall not issue shares at a discount, except as provided in section 54.
Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

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Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.
Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—
(a) the issue is authorised by a special resolution passed by the company;
(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, as defined in notification number G.S.R. 127(E) dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, it may issue sweat equity shares not exceeding fifty percent of its paid up capital up to ten years from the date of its incorporation or registration. A company which is not a start-up company shall not issue sweat equity shares for more than fifteen per cent of the existing equity paid-up share capital in a year or shares of the issue value of rupees five crore, whichever is higher, provided that the issuance of sweat equity shares in the company shall not exceed twenty-five per cent, of the paid-up equity capital of the company at any time.
As per the aforesaid notification number G.S.R. 127(E) dated the 19th February, 2019 an entity shall be considered as a Start-up, if it is incorporated as a private limited company (as defined in the Companies Act, 2013).
Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment. Accordingly, in the given instance,

(i) Size of issue of sweat equity shares i.e., 30% to be issued by a start-up entity would be appropriate. However, Innovative Ltd. being a public company cannot assume the status of a start-up entity. Hence, the decision of the company to issue 30% sweat equity shares to a class of directors and employees was not within the prescribed limit. Hence, the size of issue of sweat equity shares of the company was not appropriate.
(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Question 2

Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions. (MTP March'18,6 Marks)

Answer 2

Issue of Further Shares: According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to –

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(i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
(ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
(iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Since, in the given case Dhyan Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, Dhyan Dairy Ltd., if it is authorised by a special resolution, may issues shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Question 3

Write short notes on the following in respect of the provisions of the Companies Act, 2013:

(i) Creation of debenture redemption reserve account.

(ii) Appointment of 'Debenture Trustee' by a company. (MTP Aug'18,6 Marks)

Answer 3

(i) Creation of debenture redemption reserve (DRR) account: According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the company except for the redemption of debentures.
(ii) Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with the prescribed rules.

Question 4

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 30,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. (MTP Oct'20, Aug '18 ,6 Marks, RTP May '20, Old & New SM)

Answer 4

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section

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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 Key Managerial Personnel;

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

(c) The shares to be subscribed must be fully paid shares

Section 2 (51) of the Companies Act, 2013 defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer, such other officer, not more than one levePl baegloew 72

the directors who is in whole-time employment, designated as key managerial personnel by the Board; and such other officer as may be prescribed.

In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of Rs. 30, 000 per month and loan taken to buy 500 partly paid up equity shares of Rs. 1000 each in OLAF Ltd.

Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons:

i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs. 1.8 Lakhs.

ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Question 5

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. (MTP 5 Marks May 20, RTP Nov '21)

Answer 5

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

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North

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Staffordshire Railway Co.).
In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.
However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

Question 6

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

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

Directors of the company seeks your advice in following cases:

(i) Whether company can give bonus shares in the ratio of 1:3?
(ii) What if company decide to give bonus shares in the ratio of 1:2? ? (MTP 6 Marks Oct 21, PYP Nov'18 2 Marks)

Answer 6

Issue of bonus shares: As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account:
Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.
Accordingly:
(i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.

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(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.

Question 7

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. (MTP 6 Marks Nov 21, RTP Nov'21)

Answer 7

Sweat Equity Shares are governed by section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to section 54, the company can issue sweat equity shares to its director and permanent employees of the company. According to proviso to rule 8 (4), a start up company, [as defined in notification number G.S.R.127(E), dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India], may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.
According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non- transferable for a period of three years from the date of allotment.
Hence in the above case, the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment (as not five years, as given in the question).

Question 8

Mr. Nirmal has transferred 1000 equity shares of Perfect Private Limited to his sister Ms. Mana. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nirmal or Ms. Mana within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company? (MTP 5 Marks Nov 21, Old & New SM)

Answer 8

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.

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Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company. According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.
In this case, as the company has not sent even a notice of refusal, Ms. Mana being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Question 9
Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? (MTP March '19, 5 Marks, MTP Oct'19, 6 Marks, RTP May'18)

Answer 9
The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares. Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.
Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved; In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Question 10
Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares? (MTP 5 Marks April 21)

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Answer 10

Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, section 67 (3) of the Companies Act, 2013, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership. Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

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

Question 11

"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. (MTP 3 Marks March '22 & Oct '23, PYP July 21 , 3 Marks)

Answer 11

According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

Question 12

The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered. (MTP Oct'19,4 Marks, Old & New SM)

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Answer 12

Alteration of Capital: Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

(i) increase its authorized share capital by such amount as it thinks expedient;

(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination

(iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum

(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of section 13 of the Companies Act, 2013.

Question 13

Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. Th e Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

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

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

(MTP 5 Marks Oct'22, PYP 3 Marks Nov'20)

Answer 13

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

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

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

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

Question 14

Bhuj Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2023 showed the following position:

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

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. (6 Marks April '23 & March '18 , 6 Marks) (SM May 22)(RTP (May 21 & Nov 20)

Answer 14

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

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;
(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid- up;
(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

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For the issue of bonus shares Bhuj Cement Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid- up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 15

Walnut Limited has an authorized share capital of 1,00,000 equity shares of Rs 100 per share and an amount of Rs 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. (RTP May'19, MTP 6 Marks March '23, Old & New SM)

Answer 15

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

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

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

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

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

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

Question 16

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders? (RTP Nov'18)

Answer 16

Issue of Further Shares: Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

(a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to

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such conditions as may be prescribed.

(b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

(c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Question 17

Grow more Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Grow more Limited as to obtaining consent from the shareholders in relation to variation of rights. (RTP Nov'18)

Answer 17

According to section 48 of the Companies Act, 2013-

(1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three- fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(2) No consent for variation: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

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Question 18

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard? (RTP Nov'18)

Answer 18

Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

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

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed. Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

Question 19

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy- back of shares can be financed? (RTP May'18)

Answer 19

In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares. Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

(a) Free reserves or
(b) Security Premium account or
(c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

Question 20

What are provisions of the Companies Act, 2013, relating to the appointment of 'Debenture

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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. (RTP Nov'22, PYP 4 Marks Dec '21)(MTP 4 Marks Oct '23)

Answer 20

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-

(1) beneficially holds shares in the company;
(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon; Thus, based on the above provisions answers to the given questions are as follows:

(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) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures, cannot be appointed as a debenture trustee

Question 21

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹ 10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the

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action of the Company reducing the share capital without confirmation of the Tribunal is invalid.
In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.(5 Marks) (May '22)

Answer 21
According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital. According to the given facts, in the said Question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.
Accordingly, in the light of the stated facts, following shall be the Answers:

(i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.

(ii) According to section13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

Question 22
Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.
(PYP May'19,5 Marks)

Answer 22
Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

(i) its free reserves; or

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(ii) the securities premium account; or
(iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
(a) through any subsidiary company including its own subsidiary companies; or
(b) through any investment company or group of investment companies; or
(c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy- back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements)

Question 23

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

(PYP May'18,4 Marks)

Answer 23

Refusal for Registration of transferred/transmitted securities: According to Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved; In the instant case, Harsh, can make an appeal before the tribunal for

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remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Question 24

Xgen Limited has a paid-up equity capital and free reserves to the extent of Rs 50,00,000. The company is planning to buy- back shares to the extent of Rs 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?

(iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back? [PYP May'18,3 Marks]

Answer 24

Section 68(2) 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 or other specified securities 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;

Time limit for Completion of Buy Back: As per section 68(4), 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 under sub-section (2).

Ratio of aggregate debts: 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 and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of Rs 50,00,000. The company planned to buy back shares to the extent of Rs 4,50,000. Referring to the above provisions, the answers will be as follows:

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 (50,00,000x10/100= 5,00,000) of the company, but such buy back must 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.

Question 25

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X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them.
The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.? (PYP Nov'19,5 Marks)

Answer 25
According to section 62 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 shall be offered—
(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-
(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen day or such less number of days as maybe prescribed (added as per amendment) and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis- advantageous to the shareholders and the company.
In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Question 26
XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the

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light of the provisions of the Companies Act, 2013, (i) Decide, whether the company's proposal is in order.
(ii) What will be your answer if buy back offer date is revised from January 5th, 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above? (PYP Nov'19,5 Marks]

Answer 26

(i) In the instant case, the company's proposal is not in order due to the following reasons:

(A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

(B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

(C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to section 68(2)]

(D) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Question 27

The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:
Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.
Conversion of 30 Lakhs partly paid up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹ 2 per share.
State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013. (PYP 5 Marks Nov 20)

Answer 27

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

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

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

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

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

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

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

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

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

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

(ii) Alteration of Share Capital:

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

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

1. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
2. A company shall within 30 days of the shares having been consolidated, converted, subdivided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

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

Question 28

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized? (PYP 5 Marks Jan 21)(MTP 6 Marks March '23 & 5 Marks Sep '23)

Answer 28

When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issues shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount. However, as per the provisions of section 53 of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.

As per the provisions of sub-section (1) of section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account".

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

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

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

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

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

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

Question 29

The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of ₹ 3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of ₹ 40,000 per month, to buy 500 partly paid-Up equity shares of ₹ 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013. (PYP 2 Marks Jan 21)(MTP 4 Marks Sep '23)

Answer 29

As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per the provisions of section 67(3)(c) of the Companies Act, 2013, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than

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its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

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

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

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

Question 30

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. (PYP 6 Marks May 18)

Answer 30

Conditions for the issue of equity shares with differential rights (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014): No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(1) the articles of association of the company authorizes the issue of shares with differential rights;

(2) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.

(3) However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(4) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(5) the company is having consistent track record of distributable profits for the last three years;

(6) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

(7) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or

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debentures or payment of dividend;

(8) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

(9) However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good. Page 85

(10) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Question 31

SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013? Can the company include the dividend unpaid in the above issue of redeemable preference shares?(PYP 3 Marks May '22)

Answer 31

(i) According to section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

a. with the consent of the holders of three-fourths in value of such preference shares, and

b. with the approval of the Tribunal on a petition made by it in this behalf,

(ii) issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

(iii) Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

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

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

Question 32

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

	₹
Authorised Share Capital:	
1,00,000 Nos. of Equity Shares of ₹100 each Subscribed and	
Paid-up Share Capital:	**1,00,00,000**
40,000 Nos. of Equity Shares of ₹ 100 each, fully paid-up.	**40,00,000**
Share Premium Reserve	**50,00,000**
General Reserve	**30,00,000**
Balance in Profit and Loss Account	**20,00,000**
Capital Reserve (profit on sale of Fixed Assets)	**30,00,000**
8% Non-Convertible Debentures	**30,00,000**

9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period) 20,00,000 Shortterm Cash Credit Loan from XYZ Bank Limited 50,00,000

(On hypothecation of stock and receivables of the Company, repayable on demand)

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

(i) The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?

(ii) What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares? (PYP 6 Marks Nov '22)

Answer 32

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

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

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

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of the shareholders through a special resolution:

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

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.
Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

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

Here, Short– term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.
Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = ₹ 90,00,000.
Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹ 90,00,000.
II. Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.
Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

Question 33

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹100

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each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to ₹10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013? (PYP 6 Marks Nov '22)

Answer 33

According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

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

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

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to ₹ 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable. The company has to alter its memorandum in its general meeting as per the procedure contained in Section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Question 34

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

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

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of ₹ 10 each, fully paid-up) ₹ 2,00,00,000

(iii) Free Reserves ₹ 50,00,000

(iv) Securities premium account ₹ 25,00,000

(v) Capital Redemption Reserve ₹ 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue. (PYP 5 Marks, May '23)

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Answer 34

Conditions for bonus shares

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

(i) its free reserves;

(ii) the securities premium account; or (iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

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

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

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of ₹ 1,00,00,000 (i.e. half of ₹ 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. ₹ 1,00,00,000 (₹ 50,00,000+ ₹ 25,00,000 + ₹ 25,00,000). Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 35

Shree Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹ 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the stock market and requested the company to reduce the face value of each share to ₹ 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable, as per the provisions of the Companies Act, 2013. (RTP Nov '23)

Answer 35

According to section 61(1)(d) of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in i ts general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however,

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that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived. Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in section 61(1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Shree Limited, in the Annual General Meeting requested the company to reduce the face value of each share (from ₹ 100 to ₹ 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

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

MULTIPLE CHOICE QUESTIONS (MCQs)

Question 36

Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been received by the company. In the given circumstances, advise as per the provisions of the Companies Act, 2013:

(a) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh

(b) Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.

(c) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh

(d) Corrupt Limited will give the shares back to Mr. Suresh (MTP March'19, 2 Marks)

Answer 36: (d)

Question 37

The Authorized share capital clause of LMN & Co. ltd. consisted of Preference share capital and Equity share capital both. With regard to equity share capital, the article of association of the company has given authorization to issue differential equity shares. Apart from authorization by the Articles, from the following strike out the condition, which is not mandatory to comply with—

(a) Such issue of shares must be authorized by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be

(b) The company must have consistent track record of distributable profit for the last five years.

(c) The company has no subsisting default in the payment of the declared dividend to its shareholders.

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(d) The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares .(MTP April'19, 2 Marks)

Answer 37 : (b)

Question 38

Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Which of the following options is best suited in such a situation:

(a) Prithvi Cements Limited can issue debentures carrying voting rights if an ordinary resolution is passed permitting such issue.

(b) Prithvi Cements Limited can issue debentures carrying voting rights if a special resolution is passed permitting such issue.

(c) Prithvi Cements Limited can issue debentures carrying voting rights if it mortgages land and buildings worth two times the amount of such debentures.

(d) Prithvi Cements Limited cannot issue debentures carrying voting rights. (MTP 1 Mark Oct 20)

Answer 38 : (d)

Question 39

In a company if any change of right of one class also affects the right of other class, then:

(a) A resolution should be passed in general meeting in this case

(b) Company need not to do anything else

(c) Written consent of three fourth majority of that other class should be obtained

(d) A resolution in joint meeting of both the classes should be passed (MTP 1 Mark March 21)

Answer 39 : (c)

Question 40

Shares issued by a company to its directors or employees at a discount or for a consideration other than cash for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called are known as:

(a) Equity Shares

(b) Preference Shares

(c) Sweat Equity Shares

(d) Redeemable preference shares (MTP 1 Mark March '22)

Answer 40 : (c)

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Question 41

Goals Limited, a listed company has authorised share capital of ₹ 25,00,000 (issued, subscribed and paid up capital of ₹ 20,00,000). The company has planned to buy back shares worth ₹ 10,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?

(a) ₹ 2,00,000
(b) ₹ 5,00,000
(c) ₹ 6,25,000
(d) ₹ 8,00,000 (MTP 2 Marks March '22 & Sep '23)

Answer 41: (b)

Question 42

A Private Company cannot issue securities:

(a) By way of rights issue
(b) By way of bonus issue
(c) By way of private placement
(d) By issue of Prospectus in Public (MTP 1 Mark Sep'22)

Answer 42 : (d)

Question 43

Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?

(a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
(b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
(c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
(d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange. (MTP 2 Marks March '23)

Answer 43 : (c)

Question 44

A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:

(a) The articles of association of the company shall authorize issue of shares with differential rights;
(b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
(c) The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;

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(d) The company shall have consistent track record of distributable profits for the last three years; (RTP May'19)

Answer 44 : (c)

Question 45

Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise.

(a) A private limited company can have maximum of Rs One crore as share capital.
(b) A private limited company can have maximum of Rs Two crores as share capital.
(c) A private limited company can have maximum of Rs Five crores as share capital.
(d) A private limited company can have unlimited share capital. (RTP May'19)

Answer 45: (d)

46. Sarvodhaya Urban Nidhi Limited has ₹ 14 Crore and ₹ 6 Crore as paid-up equity and preference share capital respectively. Balance in retain earnings account is ₹ 2.4 Crore. Equity share capital having face value of ₹ 10 each, while preference share has face value of 100 each. Mr. Surya and Mr. Chandan own11,20,000 and 5,60,000 shares respectively. In context of resolution placed before the company which directly affect the rights attached to his preference shares, the voting right of Mr. Surya and Mr. Chandan in percentage term shall be:

(a) 8% and 4% respectively
(b) 5.6% and 2.8% respectively
(c) 5% and 2.8% respectively
(d) 5% and 2.5% respectively

Ans: (c)

47. In a litigation regarding title of shares, a share certificate issued in physical form by Modern Furniture Limited, an unlisted private company that doesn't have a common seal submitted as evidence of the title. The same shall be clear and convincing evidence of title, if signed by;

i. two directors
ii. two directors, out of which one shall be managing director
iii. two directors and the Company Secretary, wherever the company has appointed a Company Secretary
iv. a director and the Company Secretary, wherever the company has appointed a Company Secretary

(a) By i or iii only
(b) By i or iv only
(c) By ii or iii only

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(d) By ii or iv only

Ans: (b)

48. Mr. Bahu has received a notice from Mahishmati Private Limited on 2nd March, 2023 intimating that Mr. Bali has submitted a transfer deed duly signed by him for transfer of 1000 partly paid shares (₹ 8 paid-up out of Face Value of ₹ 10 per share) in his (Mr. Bahu) name. Mr. Bahu as transferee must raise his objection to the proposed transfer of partly paid shares latest by

(a) 9th March, 2023
(b) 16th March, 2023
(c) 17th March, 2023
(d) 31st March, 2023

Ans: (c)

49. Section 67 of the Companies Act, 2013 impose a restriction on public company from giving any financialassistance whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. Star Engineering limited which is not covered by any of exemptions specified under said section, contravene the restrictive provisions stated above. Every officer of the company who is in default shall be liable for;

a. Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees
b. Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees or Imprisonment for a term which may extend to three years or both
c. Fine which may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both
d. Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees and Imprisonment for a term which may extend to three years

Ans: (d)

50. Modern Furniture an unlisted company receive a request for issue of duplicate share certificate. Complete documents in this regards submitted with the company on 30th December 2022. Modern furniture shall issue the duplicate share certificates by:

a. 29th January 2023
b. 13th February 2023
c. 28th February 2023
d. 29th March 2023

Ans: (d)

51. DBS Chemicals Limited issue ordinary share of different classes. DBS planned to vary rights of one the class wherein there were only 105 holders. 100 out of 105 holders own 0.5% shares of that class, whereas each of remaining 5 holders hold 10% shares of that class.

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Presuming 100 holder who own 0.5% shares already signed/authorised the consent letter sanctioning the variation, how many holdersout of such 5 need to authorise the said letter to approve the variation.

a) 0
b) 1
c) 3
d) 5

Ans: (c)

52. Buy-back with board resolution is allowed, if amount involved is

a. Not exceeding twenty five percent of the total paid-up equity capital and free reserves of the company
b. Not exceeding twenty five percent of the total paid-up equity capital
c. Not exceeding ten percent of the total paid-up equity capital and free reserves of the company
d. Not exceeding ten percent of the total paid-up equity capital

Ans: (c)

Theoretical Questions Answers

Question 53

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV

Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

Answer 53

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings. As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRSCompany Ltd., which held a major portion of its equity shares. It is

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to be noted that under the CompaniesAct, 2013, SV Company Ltd. did not have any legal authority to do so.
Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of Section 62 (1)
a. as well as Articles of the issuing company.

Question 54
The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

Answer 54
Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:
(i) increase its authorized share capital by such amount as it thinks expedient;
(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination.
(iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;
(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration, along with an altered memorandum. The capital clause of memorandum, if authorised by the articles, shall be altered by passing an ordinary resolution as per Section 61 (1) of the Companies Act, 2013.

Question 55
Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to act in the said matter?

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Answer 55

Jurisdiction of Court, now Tribunal under the Companies Act, 2013: According to Section 56 (4) of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

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

In this case, the jurisdiction binding on the company is that of the State in which the registered office of the company is situated i.e. Mumbai. Hence, the Court at Delhi is not competent to act in the matter.

Question 56

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs. 10,00,000 (10,000 preference shares of Rs. 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

Answer 56

According to Section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- with the consent of the holders of three-fourths in value of such preference shares, and
- with the approval of the Tribunal on a petition made by it in this behalf,

issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs. 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

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Question 57

Trisha Data Security Limited was incorporated on 1st August, 2019 with a paid- up share capital of Rs. 200 crores. Within such a small period of about one year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just about a year old.

Answer 57

Sweat equity shares of a class of shares already issued. According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

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

(ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just about a year old because no such minimum time limit of 2 years in operations is specified under Section 54.

Question 58

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

Answer 58

Amount lying to the credit of Securities Premium Account is required to be utilised for certain prescribed purposes. According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this Section, apply as if the securities premium account were the paid-up share capital of the company.

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The securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
(e) for the purchase of its own shares or other securities under section 68.

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
(c) for the purchase of its own shares or other securities under section 68.
(d) Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Question 59

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of Rs. 40,000 per month, to buy 500 partly paid-up equity shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer 59

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

(a) The employee must not be a director or Key Managerial Personnel;
(b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
(c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of Rs. 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of Rs. 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 Rs. 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

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have been restricted to Rs. 2,40,000 only.

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

Question 60

Shilpi Developers India Limited owed to Sunil Rs. 10,000. On becoming this debt payable, the company offered Sunil 100 shares of Rs. 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013

Answer 60

Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Question 61

What are the provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

(i) A shareholder who has no beneficial interest.

(ii) A creditor whom the company owes Rs. 499 only.

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

Answer 61

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

(i) beneficially holds shares in the company;

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

Thus, based on the above provisions answers to the given questions are as follows:
(i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
(ii) A creditor whom company owes Rs. 499 cannot be appointed as a debenture trustee. The amount owed is immaterial.
(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Question 62

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

Answer 62

The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument

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of transfer was delivered to the company.

Question 63

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

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

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Answer 63

According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;
(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid- up;
(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

For the issue of bonus shares Shankar Portland Cement Limited will require reserves of Rs. 50,00,000 (i.e. half of Rs. 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 64

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State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

Answer 64

According to Section 68 (6), where an unlisted public company has passed a special resolution under Section 68 (2) (b) or the Board has passed a resolution under item (ii) of the proviso to Section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

Question 65 Illustration

Can a company have only preference share capital?

Answer 13

It may be noted that while a company may have only equity share capital but it cannot have only preference share capital. This is because preference shareholders have certain 'preferential rights' over the equity shareholders.

Thus, in the absence of equity share capital, there cannot be preferential share capital5

Question 66 Illustration

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

Answer 66

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.24

Question 67 Illustration

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

Answer 67

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

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Question 68 Illustration T&F
A company that incorporated and commenced the business on 9th Nov 2022, can issue sweat equity share only after 8th Nov 2023.

Answer 68
False. Currently there is no condition prescribed by section 54 (1) regarding age of company.

Question 69 Illustration
T&F Notice of refusal to register transfer of shares by private company shall be sent only to the transferee within 30 days, stating reasons of refusal therein.

Answer 69
False, notice of refusal shall be given to both transferee and transfer or under section 58(1).

Question 70 Illustration
What shall be length of period specified by notice of offer of further issue for giving acceptance?
Answer 70
Notice of offer of further shares shall specify the time period within which the offer must be accepted. The time period should not be less than 15 days or such lesser number of days as may be prescribed but not exceeding 30 days from the date of the offer
Note – Rule 12A inserted in the Companies (Share Capital and Debentures) Rules, 2014, provides the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer.

Question 71 Illustration True/False
Bonus share can be issued to partly paid shares in proportion to paid-up value.
Answer 71
False, Bonus shares can only be issued against fully paid, the partly paid- up shares, if any outstanding on the date of allotment, are made fully paid-up.

Question 72 Illustration True/False
Passing an ordinary resolution is sufficient where the buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company.
Answer 72
False, such buy-back has to be authorised by the Board resolution passed at its meeting.

Question 73 Illustration True/False
CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.
Answer 73
False, the capital redemption reserve account may be applied by the company, in paying up unissued

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shares of the company to be issued to members of the company as fully paid bonus shares.

Question 74 Illustration

If interest to debenture holder remain un-paid for two years then they may vote on resolution affecting their interests.

Answer 74

False, no debenture holder can never assume voting right, unless their debenture is converted in equity as per terms of issue. Though similar provision exist in case of preference dividend remain unpaid for two year to preference shareholder.

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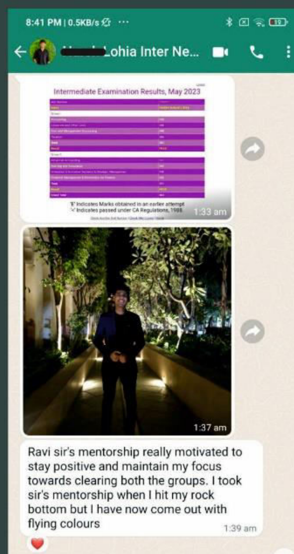

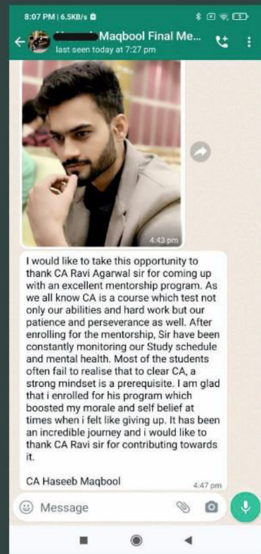

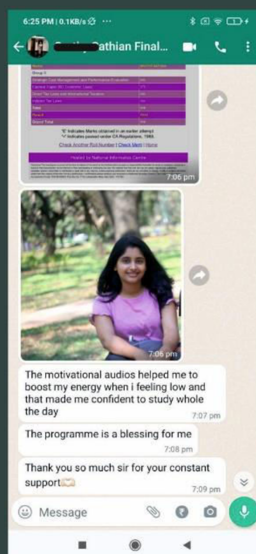

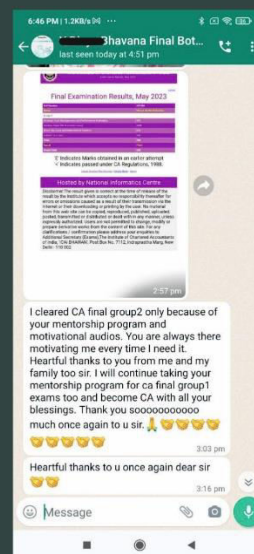

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Chapter 5 – Acceptance of deposits by Companies

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.32 to Q.46											
Past Exams	Q.20	Q.16	Q.13	Q.17	No	Q.18	No	No	Q.21	No	No	No
MTP	No	No	Q.1	Q.22	Q.2	No	Q.3 Q.4 Q.23	Q.5 Q.6 Q.24	Q.7 Q.8 Q.25 Q.26	Q.9 Q.10 Q.28 Q.29 Q.30	Q.11	Q.10 Q.31
RTP	No	No	Q.12	No	No	Q.13	No	No	Q.14	No	Q.15	No

Question 1

ABC Limited having a net worth of Rs. 120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'. (MTP March'19,4 Marks, PYP 3 Marks Jan 21 & Old & New SM)

Answer 1

According to section 76 (1) of the Act, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'. Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Question 2

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

(i) Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.

(ii) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time? (MTP 4 Marks May '20)

Answer 2

I. In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report. In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of Rs. 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

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

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance or renewal of deposit from public shallnot apply to it. In other words,it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Question 3

NIM Private Limited is engaged in the business of manufacturing household plastic goods. The books of accounts of the company provides that aggregate of its paid-up capital, free reserves and security premium account is Rs. 35.00 lacs. The company intends to accept deposits from its members to the extent of Rs. 35.00 lacs. Advise the company whether it can do so. Support your answer as per the provisions of the Companies Act, 2013. (MTP 4 Marks March '21)

Answer 3

As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the

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Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT- 3.
In the given question, since NIM Private Limited is a private company hence it may accept monies to the extent of Rs. 35.00 lacs as deposits from its members.

Question 4

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. State, with reasons, whether the following statement is 'True or False'? (MTP 2 Marks April 21, Old & New SM, RTP May'23)

Answer 4

As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.
Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

Question 5

Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognized stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment. (MTP 4 Marks Oct 21)

Answer 5

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause

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(ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹ 1,50,000.

Question 6

Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act,
2013 read with the 'Acceptance of Deposits' Rules, 2014. (MTP 5 Marks Oct 21)

Answer 6

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

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any material pecuniary relationship with the company;

(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

(e) is related to any person specified in clause (a) above.

Question 7

The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not ? (MTP 4 Marks March '22, PYP 4 Marks July '21)

Answer 7

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 Green Limited will not be regarded as deposit as the unsecured loan is brought because of the

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stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

Question 8

Comment quoting relevant provisions of the Companies Act, 2013, whether the following amounts received by a company will be considered as deposits or not:

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

(ii) Textile Traders Limited received a loan of ₹ 30,00,000 from R who is one of its directors. (MTP 4 Marks April 22)

Answer 8

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) In terms of Rule 2 (1)(c)(x), any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit, shall not be treated as deposit. ₹ 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ₹ 1,50,000, as a non- interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c), for the amount received is more than his annual salary of ₹ 1,50,000.

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

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

Question 9

Sasha Private Limited received ₹ 3,00,000 from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift. Decide as per the relevant provisions of the Companies Act, 2013, whether the said amount received by the company will be considered as deposits or not.(MTP 4 Marks Sep'22)

Answer 9

According to sub-clause (viii) of Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014,

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any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company, is not considered as deposit.
The director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report. ₹ 3,00,000 received by Sasha Private Limited, from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mothe r as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c).
Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'. As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

Question 10
Rashmika Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.
The share application money of ₹ 5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.
You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013. (MTP 4 Marks Oct'22 , 5 Marks Sep '23 & Oct '23 PYP 5 Marks Jan'21)

Answer 10
According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:
Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;
It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.
Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.
In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit. Further, on 30.07.2021 the company

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adjusted the amount of Rs. 5 Lakhs received from Mr. Kumar (a customer of the company), by way of book adjustment towards the dues payable by him to the company.
In the light of the facts of the question and provisions of Law:

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2021.
(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakh adjusted against payment due to be received from Mr. Kumar, cannot be treated as refund.

Question 11

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits. (MTP 4 Marks March '23, Old & New SM)

Answer 11

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

(a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance:
However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.
(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;
(c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
(d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
(e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
(f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
(g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

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However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

Question 12

Ashish Ltd. having a net-worth of Rs 80 crores and turnover of Rs 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members. (RTP May'19)

Answer 12

Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in subsection (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of Rs 80 crores and turnover of Rs 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Question 13

State, with reasons, whether the following statements are true or false?

(i) XYZ Private Limited may accept the deposits from its members to the extent of ₹ 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 60.00 Lakh.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account. (RTP Nov 20, PYP 2 marks May '19, Old & New SM)

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Answer 13

(i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
Therefore, the given statement of eligibility of XYZ Private Ltd. to accept deposits from its members to the extent of ₹ 60.00 lakh is True.

(ii) 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 of the company.
Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

Question 14

Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹ 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit? (RTP May '22)

Answer 14

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

Question 15

Answer the following citing relevant provisions of the Companies Act, 2013:
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? (RTP May 23)

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Answer 15

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.

Question 16

State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies? (PYP Nov'18,6 Marks, Old & New SM)

Answer 16

Acceptance of deposit by company from its members: As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—
By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular; Depositing such sum which shall not be less than 20% of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";
Providing such deposit insurance in such manner and to such extent as may be prescribed;
Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.
Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. Exemptions to Private Limited Companies In case of private company - Points (a) to (e) above shall not apply to private Companies- which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or which is a start-up, for five years from the date of its incorporation; or which fulfils all of the following conditions, namely:-
It is not an associate or a subsidiary company of any other company;
if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and such company

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has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Question 17

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) Rs 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 recognized stock exchange as per applicable regulations made by Securities and Exchange Board of India.

(ii) Rs 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of Rs 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.

(iii) Amount of Rs 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. (PYP Nov'19 & May '23 6 Marks, Old & New SM)

Answer 17

Deposit: According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

(i) In the first case, where Rs 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 in terms of sub-clause (ixa) of the said rule.

(ii) In the second case, Rs 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of Rs 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 in terms of sub-clause (x) of the said rule, 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) In the third case, amount of Rs 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 in terms of sub-clause (viii) of the said rule. 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.

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Question 18

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. (PYP 6 Marks Nov 20)

Answer 18

(i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

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

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

₹ 70 crores Free Reserves: ₹ 20 crores Securities premium: ₹ 20 crores Total: ₹ 110 crores Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹ 100 crores.

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

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed

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ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be 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.

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

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

Question 19

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

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

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

(iii) The turnover of Y Ltd. is ₹ 400 crore as per last audited financial statement and net worth is ₹ 50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013? (PYP 5 Marks Dec '21)

Answer 19

(i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received ₹ 20.00 lacs

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from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ₹ 25.00 lacs. Hence, the amount of ₹ 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short- term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(2) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

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

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

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

Question 20

Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013. (PYP 6 Marks May 18, Old & New SM)

Answer 20

Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

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However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.
The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee - is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; has any material pecuniary relationship with the company;
has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; is related to any person specified in clause (a) above.
No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.
However, in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Question 21
Explain the provision relating to 'Credit Rating' which an 'Eligible Company' should follow to raise public deposits as per the Companies Act, 2013.(PYP 2 Marks May'22, Old & New SM)

Answer 21
Obtaining of Credit Rating: The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 read with Rule 3(8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time.
Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety, shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

Multiple Choice Questions (MCQs)
Question 22
No deposits are repayable earlier thanfrom the date of such deposits or renewal thereof. (MTP 1 Mark, Oct'19)

(a) 3 months (b) 6 months (c) 9 months (d) 12 months

Answer 22: (a)

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Question 23

A com deposit trust deed at least ----- days before issuing the circular or circular in the

(a) 7

(b) 14

(c) 21

(d) 28 (MTP 1 Mark April 21)

Answer 23 : (a)

Question 24

Amit Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.

(a) Four years from the financial year in which the latest entry is made in the Register.

(b) Six years from the financial year in which the latest entry is made in the Register.

(c) Eight years from the financial year in which the latest entry is made in the Register.

(d) Ten years from the latest date of entry. (MTP 1 Mark Nov 21, Mar'22)

Answer 24: (c)

Question 25

Varsha Limited decides to raise deposits of ₹ 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lacs. Which of the following options best describe such deposits:

(a) Fully secured deposits (except a small portion)

(b) Unsecured deposits

(c) Partially secured deposits

(d) These cannot be classified as deposits (MTP 1 Mark April 22)

Answer 25 : (b)

Question 26

What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?

(a) 12 months

(b) 24 months

(c) 36 months

(d) 48 months (MTP 1 Mark April 22)

Answer 26 : (c)

Question 27

K Limited decides to raise deposits of ₹ 10.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 5.00 lakh. Which of the following options best describe such deposits:

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(a) Fully secured deposits (except a small portion)
(b) Unsecured deposits
(c) Partially secured deposits
(d) These cannot be classified as deposits (MTP 1 Mark Sep'22, Apr'23)

Answer 27 : (c)

Question 28

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

(a) 9%
(b) 14%
(c) 18%
(d) 24% (MTP 1 Mark Sep'22, Apr'23 & Oct '23)

Answer 28 : (c)

Question 29

Red Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.

(a) Four years from the financial year in which the latest entry is made in the Register.
(b) Six years from the financial year in which the latest entry is made in the Register.
(c) Eight years from the financial year in which the latest entry is made in the Register.
(d) Ten years from the latest date of entry. (MTP 1 Mark Oct'22)

Answer 29 : (c)

Question 30

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

(a) 9%
(b) 14%
(c) 18%
(d) 24% (MTP 1 Mark Oct'22)

Answer 30 :(c)

Question 31

Wood Apple Limited accepts deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office, is complete. State the minimum period for which it should mandatorily be preserved in good order.

(a) Four years from the financial year in which the latest entry is made in the Register.
(b) Six years from the financial year in which the latest entry is made in the Register.
(c) Eight years from the financial year in which the latest entry is made in the Register.
(d) Ten years from the latest date of entry. (MTP 1 Mark Oct '23)

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Answer 31 : (c)

32 Varsha Limited decides to raise deposits of ₹ 20.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lakh. Which of the following options best describe such deposits:

(a) Fully secured deposits (except a small portion)
(b) Unsecured deposits
(c) Partially secured deposits
(d) These cannot be classified as deposits

Ans: (b)

33 What is the maximum tenure for which a company can accept or renew deposits from its members aswell as public?

a. 12 months
b. 24 months
c. 36 months
d. 48 months

Ans: (c)

34 Fin Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.

a. Four years from the financial year in which the latest entry is made in the Register.
b. Six years from the financial year in which the latest entry is made in the Register.
c. Eight years from the financial year in which the latest entry is made in the Register.
d. Ten years from the latest date of entry.

Ans: (c)

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

(a) 9%
(b) 14%
(c) 18%
(d) 24%

Ans: (c)

36 As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company isnot permitted to accept from public or renew the same deposits (whether secured or unsecured) whichis repayable on demand or in less than months. Further, the maximum period of acceptance of deposit cannot exceed months. But, for the purpose of meeting anyof its short- term requirements of funds, a company may accept or renew deposits for

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repayment earlier than months subject to certain conditions.

(a) six, thirty six, six

(b) three, twenty four, three

(c) six, sixty, six

(d) three, sixty, six

Ans: (a)

Theoretical Questions Answers

Question 37

Answer the following citing relevant provisions:

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

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

c. **Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of ₹ 10 each. His wife**

Answer 37

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

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.
In view of the above, the contention of Mr. Sambhav that the term loan of ₹ 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose otherthan repayment of deposits.
Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.
In view of this provision, Sanjiv can deposit ₹ 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

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Question 38

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

Answer 38

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

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

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

(b) the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is less; and

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

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

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

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

Question 39

Enumerate the amounts which when received by a company in the ordinary courseof businessare not to be considered as deposits.

Answer 39

According to Rule 2 (1) (c) (xii), following amounts if received by a company in the course of, or for the purposes Page 116 of, the business of the company, shall not be considered as deposits:

(a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated withina period of three hundred and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedingsbefore any court of law, the time limit of three hundred and sixty-five daysshall not apply.

(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

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(c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
(d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
(e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as perwritten agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice orfive years, from the date of acceptance of such service whichever is less;
(f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
(g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;
However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money istaken, then the amount received shall be deemed to be a deposit under these rules.
Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiryof fifteen days from the date they become due for refund.

Question 40
State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

Answer 40
Acceptance of deposits by a company from its members: As per section 73 (2)of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits fromits members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely—
(a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars insuch form and in such manner as may be prescribed;
(b) Filing a copy of the circular along with such statement with the Registrar within 30 days before thedate of issue of the circular;
(c) Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;
(d) Omitted

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(e) Certifying that the company has not committed any default in the repaymentof deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed sincethe date of making good the default; and

(f) Providing security, if any for the due repayment of the amount of deposit orthe interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non- payment and for such other orders as the Tribunal may deem fit.

Exemption to certain private companies:

Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

(A) which accepts from its members monies not exceeding one hundred per centof aggregate of thepaid-up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:

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

(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at thetime of accepting deposits under this section.

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

Question 41

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

Answer 41

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

- One or more trustees for depositors need to be appointed by the company for creating securityfor the deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonableprominence to the effectthat the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing thecircular or circular in the form of advertisement.
- No person including a company that is in the business of providing trusteeship services shall be

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appointed as a trustee for the depositors, if the proposed trustee:

(a) is a director, key managerial personnel or any other officer or an employee of the company orof its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or asubsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by thedeposits or interest thereon;
(e) is related to any person specified in clause (a) above.

- No trustee for depositors shall be removed from office after the issue ofcircular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Question 42
What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

Answer 42
The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.
As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.
Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non- Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

Question 43
Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company Rs. 30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.
(ii) Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its

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directors. Advise whether it is a deposit or not.

(iii) City Bakers Limited failed to repay deposits of Rs. 50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

(iv) Shringaar Readymade Garments Limited wants to accept deposits of Rs. 50.00lacs from its members for a tenure which is less than six months. Is it a possibility?

(v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

Answer 43

(i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty- five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue)in a single tranche, from a person, it shall not be treated as deposit.
In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of Rs. 30.00 lacs shall not be considered as deposit.

(ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.
In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30.00 lacs from her. Further, it is assumed that she had furnished to the company attime of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or depositsfrom others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.
If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

(iii) By not repaying the deposit of Rs. 50.00 crores and the interest due thereoneven after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- Punishment for the company: City Bakers Limited shall, in addition tothe payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crores.
- Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less thanrupees twenty- five lakhs but which may extend to rupees two crores.

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Further, if it is proved that Swati had contravened such provisions knowinglyor wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities,she will be liable for action under section 447 (Punishment for fraud).

(iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits(whether secured orunsecured)
which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit Page 119

cannot exceed thirtysix months. However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(ii) such deposits are repayable only on or after three months from the date of such deposits orrenewal. In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits ofRs. 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid- up share capital, free reserves and securities premium account and further,such deposits shall be repayable only on or after three months from the date of such deposits.

(v) According to section 73 (1) of the Act, no company can accept or renew deposits from public unlessit follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public. However,Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.
In the given case, it is assumed that Diamond Housing Finance Limited is registered with the NationalHousing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewalof deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Question 44

ABC Limited having a net worth of Rs. 120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'.

Answer 44

According to section 76 (1) of the Act, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore

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rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.
However, an 'eligible company', which is accepting deposits within the limits specified under section180 (1) (c), may accept deposits by means of an ordinary resolution.
According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.
ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'. Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Question 45

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

(i) Rs. 5,00,000 raised by Rishi Confectionaries Limited through issue of non- convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchangeas per the applicable regulations made by the Securities and Exchange Board of India.

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

(iii) Rs. 3,00,000 received by a private company from one of the relatives of a Director. The said relativehas furnished a declaration that the amount was received by him from his mother as a gift.

Answer 45

Deposit: According to Section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of Page 120 amount as may be prescribed in consultation with the Reserve bank of India.
Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) Rs. 5,00,000 raised by Rishi Confectionaries Limited through issue of non- convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub- clause (ixa) of Rule 2 (1) (c).

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(ii) Rs. 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of Rs. 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of Rs. 1,50,000.

(iii) Rs. 3,00,000 received by a private company from one of the relatives of aDirector. When the relativefurnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of aprivate company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or depositsfrom others. Thus, the amount given to the private company out of gifted moneyby one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

Question 46

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

(i) ABC Private Limited may accept deposits from its members to the extent of Rs. 50.00 lakhs, if the aggregate of its paid-up capital, free reserves and security premium account is Rs. 50.00 lakhs.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital,free reserves and security premium account.

Answer 46

(i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as onthe date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3. Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of Rs.50.00 lakh is 'true'.

(ii) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company isnot eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

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

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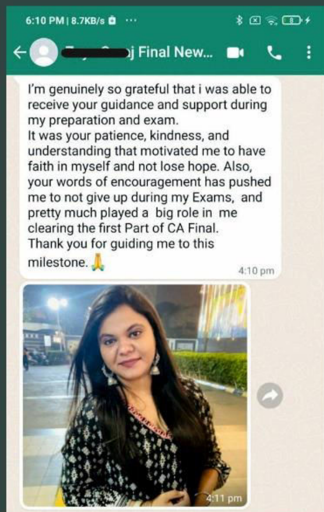

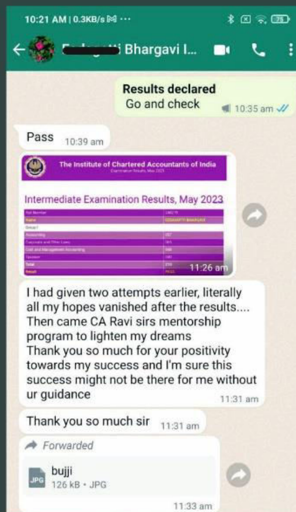

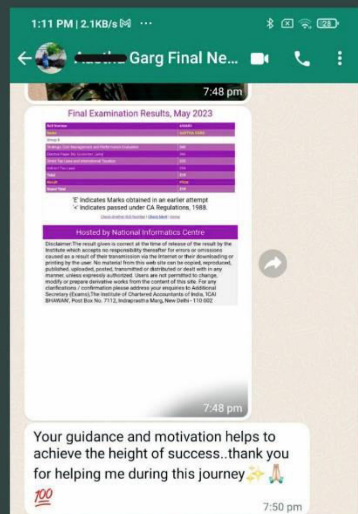

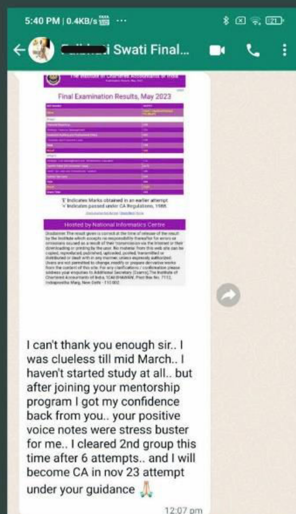

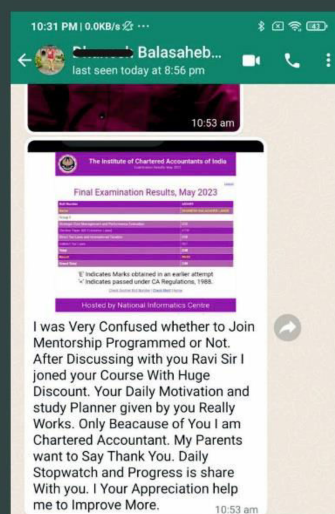

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Chapter 6
Registration of Charges

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.34 to Q.46											
Past Exams	Q.19	Q.20	Q.16 Q.17	Q.22	No	Q.18	No	No	Q.21	Q.22	Q.23	No
MTP	Q.11	Q.1 Q.3 Q.11	Q.1 Q.2 Q.25	Q.4 Q.24 Q.26	Q.5	Q.6 Q.7	Q.8 Q.9	Q.10	Q.28 Q.29	Q.6 Q.12 Q.13 Q.27	Q.14	Q.29 Q33
RTP	No	No	No	Q.1 Q.26 Q.30 Q.31 Q.32	No	Q.6	No	Q.2	Q.15	No	No	No

Question 1

What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013. (MTP March'19, 5 Marks, MTP Oct'18, 6 Marks, RTP Nov'19)

Answer 1

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

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

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

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, despite the fact that no intimation has been received by him from the company.

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

According to the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge-

(1) A company shall within a period of thirty days from the date of the payment or satisfaction in

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full of any charge registered, give intimation of the same to the R gistrar along with the fee.

(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge.

Question 2

Define the term "charge" and also explain what the punishment for default with respect to registration of charge is as per the provisions of the Companies Act, 2013. (MTP April'19,5 Marks, Old & New SM, RTP Nov '21)

Answer 2

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI,If any company is in default in complying to with any of the provision of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company in default shall be liable to a penalty of fifty thousand Rupees.

Question 3

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. [MTP Aug '18 & March'18,6 Marks]

Answer 3

(1) Rectification by Central Government in register of charges: Section 87 of the Companies Act, 2013 empowers the Central Government to make rectification in register of charges. According to the provision-

(1) The Central Government on being satisfied that—

(i) (a) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

(b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

\- was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(ii) on any other grounds, it is just and equitable to grant relief,

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- it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

(2) Condonation of delay and rectification of register of charges.- (1) Where the instrument creating or modifying a charge is not filed within a period of 300 hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

a. The application for condonation of delay and for such other matters covered in sub-clause (a), (b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government along with the fee.

b. The order passed by the Central Government under section 87(1) of the Act shall be required to be filed with the Registrar along with the fee as per the conditions stipulated

Question 4

Answer the following in the light of the companies Act, 2013 -

(i) MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge Page 123 on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

(ii) Mr. Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Antriksh 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 the name of Mr. Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? (MTP Oct '19,6 Marks, Old & New SM)

Answer 4

(i) The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be

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filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

(ii) However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision MNC Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees. Since first sixty days from creation of charge were expired on 11th May, 2019, MNC Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Notice of Charge : According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered u section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered. Thus, the contention of NRT Ltd. is correct.

Question 5

Briefly explain the provisions enforced by the Companies (Amendment) Act, 2019 when a charge created before 02- 11-2018 [before the commencement of Companies (Amendment) Act, 2019] is not registered within the prescribed period of thirty days as provided in Section 77 (1) of the Companies Act, 2013. (MTP 5 Marks May 20, Old & New SM)

Answer 5

As per Section 77 (1) of the Companies Act, 2013 every company creating a charge:

a. within or outside India,
b. on its property or assets or any of its undertakings,
c. whether tangible or otherwise, and
d. situated in or outside India, is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018[before the commencement of Companies (Amendment) Act, 2019] and it was not registered within the prescribed period of thirty days of its creation, clause (a) of the first Proviso toPSaecgtieon124

77 (1) states that the Registrar may, on an application by the company, allow such registration to

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be made within a period of 300 days of such creation. According to clause (a) of the Second Proviso to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

Question 6

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013. (MTP 4 Marks Oct 20, MTP 5 Marks Sep'22, RTP Nov 20, Old & New SM)

Answer 6

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

the debt has been satisfied in whole or in part; or the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5. Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

Question 7

ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ₹ 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.
(MTP 5 Marks Oct 20, Old & New SM)

Answer 7

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The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013 Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

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

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

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore Z Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Question 8

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified? (MTP 3 Marks March 21, Old & New SM)

Answer 8

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

(i) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

(ii) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Question 9

Mr. A is working with a reputed Chartered Accountant firm in Delhi. After gaining an experience of 5 years, now Mr. A is planning to open his own firm A and Associates. He has now purchased a commercial property in Delhi belonging to Kesha Limited after entering into an agreement with the company. At the time of registration, Mr. A comes to know that the title deed of the company is not free and the company expresses its inability to get the

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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 Kesha Limited is correct? Give your answer with respect to the provisions of the Companies Act, 2013. (MTP 4 Marks March 21, MTP 4 Marks Nov 21, Apr 22, Old & New SM, RTP May 18)

Answer 9

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. A, therefore, ought to have been careful while purchasing property and should have verified beforehand that Kesha Limited had already created a charge on the property. In view of above, the contention of Kesha Limited is correct.

Question 10 Define Charge.

Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013. (MTP 5 Marks Nov 21)

Answer 10

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

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar shall be verified by a certificate issued either-under the seal, if any, of the company, orunder the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or under the hand of some person other than the company who is interested in the mortgage or charge.

Question 11

Mind Limited realised on 2nd May, 2018 that particulars of charge created on 12th March, 2018 in favour of a Bank were not filed with 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, 2018 instead of 12th March, 2018? Examine with reference to the relevant provisions of the Companies Act, 2013. (MTP March '18 , Aug '18 , 5 Marks)

Answer 11

According to section 77(1) of the Companies Act, 2013, the prescribed particulars of the charge

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together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge.
In the present case particulars of charge have not been filed within the prescribed period of 30 days.
However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, Mind Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.
There will be no change in the situation if the charge was created on 12th February, 2018.

Question 12
Krish (Private) Limited on 7th May 2022 obtained ₹ 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?(MTP 4 Marks Oct'22)

Answer 12
As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.
Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.
Thus, when Krish (Private) Limited obtains working capital loans from financial institut ions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it.
Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

Question 13
Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation. (MTP 5 Marks Oct'22)

Answer 13
As per the provisions of Section 77 of the Companies Act, 2013, in case the charge was not

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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.

Question 14

Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013.(MTP 5 Marks April '23, PYP 3 Marks Jan 21)

Answer 14

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

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

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

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

Question 15

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

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

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

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Advise with reference to the relevant provisions of the Companies Act, 2013. (RTP May '22)

Answer 15

According to section 77(1) of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the 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 its creation. However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

(a) Krish Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).

Taking advantage of clause (b) of first proviso to section 77 (1), Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.

If the company realises its mistake of not registering the charge on 27 th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non- registration of charge.

Question 16

The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge. [PYP May'19,1 Mark]

Answer 16

According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

Question 17

The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed. [PYP May'19,1 Mark]

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Answer 17

As per 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 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 three hundred days of such creation on payment of such additional fees as may be prescribed. Hence, the given statement is True.

Question 18

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

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

(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation. (PYP 4 Marks Nov 20)

Answer 18

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

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

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

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

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow

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registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

Question 19

Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar? (PYP 6 Marks May 18)

Answer 19

Charge: According to section 2(16) of the Companies Act, 2013 "charge" has been defined as an interest or lien created

on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Why creating a charge is a necessity for companies? The answer to this lies in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets. Once charge is registered and filed, it becomes an information in public domain as to how much company has borrowed against its assets and from whom.

Time limit for registration of charge with the registrar: 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. Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time from the Central Government in accordance with section 87.

Question 20

What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges. (PYP Nov 18, 6 Marks)

Answer 20

Time limit for registration of charge with the registrar: 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, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the rPegaisgtrear130

within 30 days of creation. The Registrar may, on being satisfied that the company had sufficient

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cause for not filing the particulars and instrument of charge, if any, 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 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed. The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014]. Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.
Place of keeping company's register of charges: According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.
Inspection of the register of charges and instrument of charges: The register of charges and instrument of charges, shall be open for inspection during business hours—
(a) by any member or creditor without any payment of fees; or
(b) by any other person on payment of such fees as may be prescribed,
-subject to such reasonable restrictions as the company may, by its articles, impose.

Question 21
Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:
(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
(2) When can the Registrar refuse to register the charges the present scenario?(PYP 4 Marks May '22)

Answer 21
1. Registration by charge holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.
   Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.

2. Registrar refuse to register the charges: However, the Registrar shall not allow such registration by the charge- holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

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Question 22

Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges. (PYP 5 Marks Nov '22, PYP 5 Marks Nov'19)

Answer 22

In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge

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

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

Question 23

City Bakers Limited obtained a term loan of ₹ 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013. (PYP 5 Marks, May '23)

Answer 23

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is registered under section 77, any person acquiring

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such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

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

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

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

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed. If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Alternate Answer to this part of question (Extension of Time Limit)

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. Provisions relating to extension of time limit as under:

(i) Charges created before 02-11-2018: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation. Further, if the charge is not registered within the extended period of 300 days, it shall be done within six months from 02-11-2018 on payment of prescribed additional fees.

(ii) Charges created on or after 02-11-2018: In such cases (i.e. where the charge was created on or after 02-11- 2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed. If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Multiple Choice Questions (MCQs)

Question 24

On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar: (MTP 1 Mark, Oct'19)

(a) 14 (b) 21 (c) 30 (d) 300

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Answer 24: (a)

Question 25

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

(a) for minimum 8 years from the date of creation of charge
(b) For minimum 10 years from the date of creation of charge
(c) For minimum 8 years from the date of satisfaction of charge
(d) permanently, without any time limit (MTP 1 Mark, April'19)

Answer 25: (c)

Question 26

Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of Rs. 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of Rs. 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of Rs.50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry? (MTP Oct '19, 2 Marks, RTP Nov'19)

(a) It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.
(b) It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.
(c) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds Rs. 1.00 crore.
(d) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds Rs. 2.00 crores.

Answer 26: (b)

Question 27

The instrument creating a charge or modification thereon shall be preserved for a period of years from the date of satisfaction of charge by the company.

(a) 5

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(b) 7
(c) 8
(d) 15 (MTP 1 Mark March 21, MTP 1 Mark Oct'22)

Answer 27: (c)

Question 28

An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:

(a) Debt
(b) Charge
(c) Liability
(d) Hypothecation (1 Mark March '22)

Answer 28: (b)

Question 29

The registrar shall keep a register of charges which shall be open to inspection by on payment of fee:

(a) the company
(b) the charge holder
(c) holder
(d) any person (1 Mark April 22 & Oct '23)

Answer 29 : (d)

Question 30

With a view to augment its production, Surya Techno-Products Limited availed a loan of Rs 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth Rs 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno- Products.

(a) Yes, the bank can recover the fees paid by it for registration of charge.
(b) No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
(c) Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.
(d) Only when it obtains recovery orders from National Company Law Tribunal (NCLT),the bank can recover the fees paid by it for registration of charge from the company. (RTP Nov'19)

Answer 30: (a)

Question 31

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A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of Rs. 1.00 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration.

(a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th April, 2019.

(b) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17th April, 2019.

(c) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2nd May, 2019.

(d) The company cannot now get the charge register as the time prescribed by Law has expired. (RTP Nov'19)

Answer 31: (b)

Question 32

Cyplish Games and Toys Limited was sanctioned a term loan of Rs 60.00 lacs by Zawnn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed.

However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge.

(a) Special Fees. (b) Ad-valorem Fees.

(c) A Late Registration Fees (d) Ad-valorem Duty. (RTP Nov'19)

Answer 32 : (b)

Question 33

Raj Limited purchased a property from ABC Limited which was mortgaged to DEF Bank against a loan of ₹ 50 lakh. Raj Limited settled the dues to DEF Bank and the same was registered with the sub-registrar. However, neither the ABC Limited nor DEF Bank has filed particulars of satisfaction of charge with the Registrar of Companies. In this particular case what will Raj Limited do to file particulars of satisfaction of charge with the Registrar of Companies?

(a) Raj Limited needs to approach DEF Bank or ABC Limited to file a memorandum of satisfaction as they were the party to mortgage.

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(b) Raj Limited can directly request the Registrar to file a particulars of satisfaction noting the release of charge.
(c) Raj Limited needs to approach DEF Bank (mortgagee) to file particulars of satisfaction of charge with the Registrar of Companies.
(d) Raj Limited needs to approach ABC Limited (mortgagor) to file particulars of satisfaction of charge with the Registrar of Companies. (2 Marks Sep '23)

Answer 33 : (b)

34 Any person acquiring property, on which charge is registered under section 77, shall be deemed to havenotice of the charge from:
(a) the expiry of thirty days of such charge
(b) the date of application for registration of the charge
(c) the date of acquiring the property
(d) the date of such registration

Ans: (d)

35 A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹ 1 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16 th February, 2023. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:
a. 27th April, 2023
b. 17th April, 2023
c. 2nd May, 2023
d. 16th June 2023

Ans: (b)

36 The instrument creating a charge or modification thereon shall be preserved for a period of years from the date of satisfaction of charge by the company.
a. 5
b. 7
c. 8
d. 15

Ans: (c)

37 An interest or lien created on the property or assets of a company or any of its undertakings or both assecurity is known as:
a. Debt
b. Charge
c. Liability

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d. Hypothecation

Ans: (b)

38 Who cannot inspect the register of charges and instrument of charges, during business hours, withoutpaying any fees:

a. Any member of the company
b. The Creditor of the company
c. Persons other than member and creditor of the company
d. No person is allowed to inspect the register of charges

Ans: (c)

Theoretical Questions Answers

Question 39

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

Answer 39

A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in- trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to usethem in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge. Crystallization of a Floating Charge

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

i. When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non- payment of interest or default in repayment of instalments as per the termsof agreement.
ii. When the company ceases to continue its business.
iii. When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, thesecurity (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

Question 40

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

Answer 40

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

(i) According to section 85 (1):

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

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registered office.

Note: Rule 10 (1) specifies Form

CHG-7 in which the Register of Charges shall be maintained.

- The Register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case the prescribed particulars.

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

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

(iii) Provisions of Rule 10 are as under:

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

  Inspection of Register of Charges and Instrument of Charges: As regards inspection, section 85 (2) states that the register of charges and the instrument of charges shall be open for inspection duringbusiness hours:

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

(b) by any other person on payment of prescribed fees.

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

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

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

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

Question 41

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

Answer 41

A copy of every instrument evidencing any creation or modification of charge andrequired to be filed with the Registrar shall be verified as follows:

(a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verifiedby a certificate issued either under the seal, if any, of the company, or underthe hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other

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than the company who is interestedin the mortgage or charge;

(b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether whollyor partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Question 42

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

Answer 42

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includesa mortgage'.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if any company is in default complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

Question 43

Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be differentif the company realised its mistake ofnot registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer 43

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018. Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30

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days of its creation. If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees. Since the first sixty days from creation of charge have expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed ad valorem fees. The company is required to make an application tothe Registrarin this respect giving sufficient cause for non-registration of charge.

Question 44

Mr. Antriksh purchased a commercial property in Delhi belonging to NRT Limited after entering into an agreement with the company. At the time of registration, Mr. Antriksh 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 thepropertyof the company. Explain, whether the contention of NRT Limited is correct?

Answer 44

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any personacquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed tohave notice of the charge from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Antriksh, therefore, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property.

In view of above, the contention of NRT Limited is correct.

Question 45

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

Answer 45

The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section87 of the Companies Act, 2013.

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

(i) when there was omission in giving intimation to the Registrar with respect to payment or

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satisfaction of charge within the specified time;
(ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).
Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.
The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, OK Bank can also proceed under Section 87 as aforesaid.
The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Question 46
Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues toOk Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer 46
Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part ofthe company's

property or undertaking.
This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5. Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction

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noting the release of charge.

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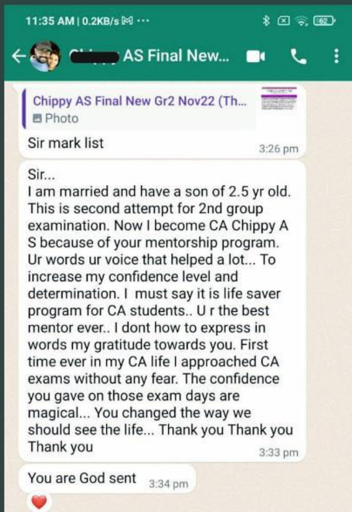

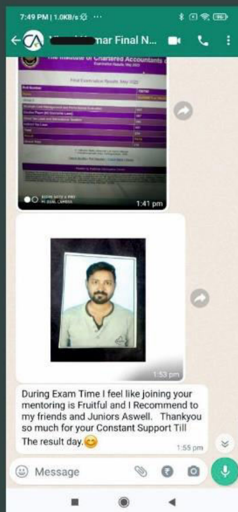

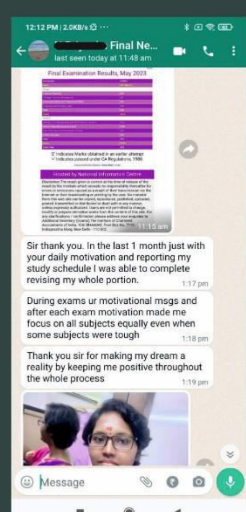

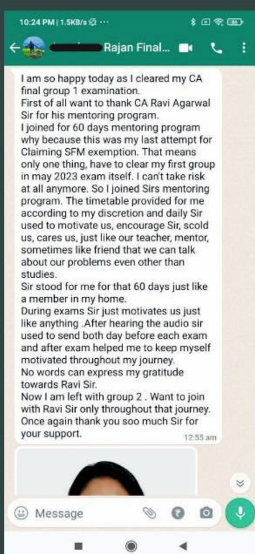

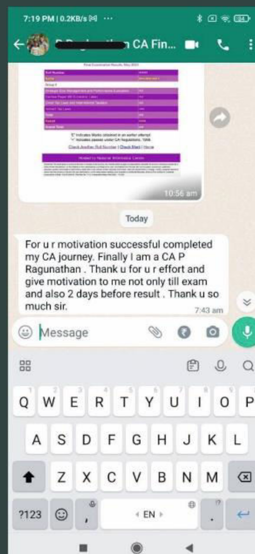

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Chapter 7
Management & Administration

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.71 to Q.108											
Past Exams	Q.34 Q.35 Q.39	Q.11 Q.32 Q.33 Q.38	Q.30 Q.31	Q.36		Q.37			Q.45	Q.46	Q.27	Q.47
MTP		Q.3 Q.4 Q.12 Q.27	Q.2 Q.21 Q.27 Q.48 Q.49 Q.50 Q.51	Q.1 Q.52	Q.53	Q.5	Q.6 Q.7 Q.8 Q.9 Q.54 Q.55 Q.56	Q.10 Q.11 Q.57 Q.58 Q.62	Q.14 Q.15 Q.58 Q.59	Q.16 Q.58 Q.61 Q.62	Q.17 Q.18 Q.19 Q.20 Q.63 Q.64	Q.17
RTP		Q.25	Q.22	Q.6 Q.23 Q.24	Q.6 Q.65 Q.66	Q.14 Q.44 Q.67	Q.20 Q.27	Q.26	Q.28 Q.68 Q.69	Q.29 Q.30		Q.70

Question 1
At a General meeting of a XYZ Limted, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration. (MTP Oct'19,4 Marks)

Answer 1
Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:
The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
The notice required under the Companies Act must have been duly given of the general meeting;
The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.
Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision

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of the Chairman is in order.

Question 2

Examine the following with reference to the relevant provisions of the Companies Act, 2013:

(i) 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.

(ii) Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members? (MTP March'19 ,6 Marks)

Answer 2

(i) According to section 100 (2) 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 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

(ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture- holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.
Accordingly, a director Mr. Bheem, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

Question 3

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

(i) Miraj 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. S and Mr. P 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. (MTP Oct'18,4 Marks, PYP May '18 4 Marks)

(ii) Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? (MTP Oct'18,4 Marks, Old & New SM)

Answer 3

(i) For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the Annual General Meeting. However, there is nothing illegal 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.

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Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should 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. Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. S and Mr. P as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

(ii) Under section 102(2)(b) in the case of any meeting other than an AGM, all business s transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(1) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
(i) every director and the manager, if any;
(ii) every other key managerial personnel; and
(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
(2) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 4

M Limited held its Annual General Meeting on September 15, 2017. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2017,Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after hi s father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom. (MTP Oct'18,6 Marks, MTP Mar'22, 5 Marks MTP 5 Marks April '23, PYP 5 Marks Jan 21, Old & New SM, MTP 4 Marks Apr'19)

Answer 4

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialed or signed

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and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

Question 5

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? (MTP 4 Marks Oct 20, Old & New SM , PYP May '18 , 4 Marks)

Answer 5

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under subsection (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees (As per amendment- ten thousand rupees) and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees. (As per amendment- two lakh rupees)

In the instant case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. The idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Question 6

Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company regarding the time limit for

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holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. (MTP 5 Marks March 21, Old & New SM , RTP May '20, RTP Nov'19)

Answer 6

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year. The first financial year of Shambhu Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company.

Question 7

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan. (MTP 4 Marks April 21)

Answer 7

As per Rule 18 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized.

A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email id s are already registered.

In the light of the above provisions of the Act, 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, if the 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.

Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

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Question 8

The Board of Directors of Swati Limited 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 on the basis of the provisions of the Companies Act, 2013. (MTP 2 Marks April 21, Old & New SM)

Answer 8

According to section 100 (2) 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 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Question 9

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

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

(ii) A company should file its annual return within six months of the closing of the financial year. (MTP 5 Marks April 21)

Answer 9

(i) An annual general meeting cannot be held on a national holiday. Under section 96 (2) of the Companies Act, 2013 every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.

Thus, the statement 'An annual general meeting can be held on a national holiday' is incorrect.

(ii) The statement is incorrect in terms of section 92 (4) of the Companies Act, 2013.

Section 92 (4) states that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Question 10

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013. (MTP 4 Marks Oct '21)

Answer 10

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

Question 11
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.? (MTP 4 Marks Nov 21, PYP Nov'18,4 Marks, Old & New SM May 22)

Answer 11
According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.
(i) (1) P1, P2 and P3 will be counted as three members.
(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.
In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of 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

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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 (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

Question 12
Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)? (MTP Aug '18, 3 Marks, Old & New SM)

Answer 12
Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. In the given case, Sirhj has given proper notice.
However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Question 13
Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
(ii) The Regist r any special reason, extend the time within which the first AGM shall be held.

Answer 13
(i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within nine months from the closing of the first financial year. Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.
(ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

Question 14
Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for

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any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide, as per the provisions of the Companies Act, 2013:

(i) Whether the contention of Amar is valid.

(ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held? (MTP 5 Marks April 22, RTP Nov 20)

Answer 14

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

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

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

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

Question 15

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

(a) Quorum for the general meeting if the company has 800 members.

(b) Quorum for the general meeting if the company has 6500 members.

(c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50. (MTP 5 Marks April 22)

Answer 15

According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

(1) five members personally present if the number of members as on the date of meeting is not more than one thousand,

(2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,

(3) thirty members personally present if the number of members as on the date of the meeting

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exceeds five thousand.
The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of
the items of business on the agenda of the meeting. Thus,
(a) If the company has 800 members, quorum shall be 5 members personally present.
(b) If the company has 6500 members, quorum shall be 30 members personally present.
(c) If the company has 5500 members, quorum shall be 30 members personally present.
However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

Question 16

The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:
(i) A, the representative of Governor of Karnataka.
(ii) B and C, shareholders of preference shares,
(iii) D, representing Green Limited and Blue Limited
(iv) E, F, G and H as proxies of shareholders.
Can it be said that the quorum was present in the meeting? (MTP 6 Marks Sep'22)(Same concept fewer adjustments MTP 5 Marks Aug'18, RTP May '20, Old & New SM)

Answer 16

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.
In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.
Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.
If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.
In view of the above there are only three members personally present.
'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment

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of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies Green Limited and Blue Limited. E, F, G and H are not to be included as they are not members but representing as proxies for the members.
Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Question 17
Happy Limited received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case? (MTP 4 Marks March '23 & 6 Marks ,Sep '23, PYP 3 Marks Jan'21)

Answer 17
Section 105(1) of the Companies Act, 2013, provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
Further, section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. Happy Limited refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.
Question 18
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. (MTP 6 Marks March '23)

Answer 18
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—

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(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.

Question 19
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. (MTP 4 Marks April '23, PYP 3 Marks May 22)

Answer 19
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 minutes book of general meeting.

Question 20
Ganges Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2022. However, 10 days have passed since 31st August, 2022, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Ganges Limited is required to file report on Annual General Meeting? (MTP 4 Marks April '23, RTP May 21)

Answer 20
According to section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy o f the report is to be filed with the Registrar within thirty days of the conclusion of AGM along with the prescribed

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fee. Since, Ganges Ltd. is a listed company, hence it has to file a copy of report on annual general meeting with the Registrar within 30 days from 31st August, 2022.

Question 21

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? (MTP Oct '19 , 5 Marks, RTP May'18, Old & New SM)

Answer 21

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;

(ii) is irrelevant or immaterial to the proceeding; or

(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non- inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Question 22

Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

(i) EGM be held in India

(ii) EGM be held in Netherlands (RTP May '19)

Answer 22

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

(i) The Board of Directors can call the EGM in India.

(ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Question 23

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Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid. (RTP Nov '19)

Answer 23

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

Question 24

Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard.
Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ. (RTP Nov'19)

Answer 24

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday 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 situate.
Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza. In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

Question 25 (Includes concepts of Chap 9- Accounts of Companies)

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the

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requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

(ii) Mary Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company. (RTP Nov'18)

Answer 25

According to section 100 (2) 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 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.

Question 26

Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors- first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? (RTP Nov '21)

Answer 26

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under subsection (4), before the expiry of the period specified therein, such company and its every officer

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who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

In the above case, the annual general meeting of Nutty Buddy Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Question 27

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting. According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? (RTP May 21, MTP April'19,6 Marks, MTP Oct'18, 5 Marks, Old & New SM)(PYP 4 Marks ,May '23)

Answer 27

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

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Question 28

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 send, then in such case, what was the responsibility(ies) of the company? (RTP May '22)

Answer 28

(a) As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:-

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting

- 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the

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prescribed time limit to Abhiyogic Ltd.

(b) As per Section 140(4) of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Question 29

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.(RTP Nov'22)

Answer 29

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote

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Question 30

Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.

Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting? (PYP May'19,3 Marks)

Answer 30

According to section 103(1)(a)(i) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company. In the instant case, the quorum for the public company will be 5 members personally present.

In the said company, two members are bodies corporate and one member is the President of India. 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.

As per section 113 of the Companies Act, 2013, 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 and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

Question 31

If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? (PYP May'19,2 Marks]

Answer 31

According to Rule – 20(4)(iii)(C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Question 32

Members of ZA Ltd. holding less than 1% of total voting power want the company to give a

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special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request. (PYP Nov'18,3 Marks)

Answer 32

Resolutions requiring special notice [Section 115]

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding Rs. 5,00,000/- has been paid-up. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Question 33

'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members. (PYP Nov'18,4 Marks)

Answer 33

Restriction on voting rights [Section 106 of the Companies Act, 2013] According to the said Section:

(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

Question 34

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As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. (PYP May'18,6 Marks)

Answer 34

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014 (as per amendment except one person company and small company who shall file annual return from FY 2020-21 onwards in Form No. MGT-7A)

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; 11. Such other matters as may be prescribed.

Question 35

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? (PYP May'18,5 Marks, Old & New SM)

Answer 35

(i) Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company: Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

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So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the 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. Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

[Note: A presumption may be taken with respect to payment of fees. In such a case, any other person (other than specified above) may also inspect the Register of members of company]

Question 36

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

(i) Resolution to increase the Authorised share capital of the company.

(ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.(PYP Nov'19,4 Marks)

Answer 36

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of: (i) every director and the manager, if any;

(i) every other key managerial personnel; and

(ii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon. Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are

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lacking.
The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.
The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 37

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 resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard. What would be your answer in the above case, if PQ Limited is a Private company? (PYP 4 Marks Nov 20)

Answer 37

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.
If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.
If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.
In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited 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.

Question 38

Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual

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return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct. (PYP Nov '18 , 3 Marks)

Answer 38

As per the provisions of Section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct.

Question 39

Give the points of distinction between ordinary resolution and special resolution.(PYP May '19, 5 Marks)

Answer 39

Difference between ordinary resolution and Special resolution Ordinary Resolution—

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution—

As per Section 114(2) of the Act, a resolution shall be a special resolution, when–

(a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) The notice required under this Act has been duly given; and

(c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Question 40

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Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

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

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.

(iv) There shall be a maximum interval of 15 months between two AGMs. (PYP July'21,4 Marks)

Answer 40

According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the fir st financial year.

(i) Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

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

Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.

Hence, the given statement is correct.

(iv) According to section 96, the gap between two annual general meetings should not exceed 15 months.

Hence, the given statement is correct, that there shall be a maximum interval of 15 months between two AGMs.

Question 41

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?

(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority? (PYP July 21, 5 Marks)

Answer 41

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. Any member shall be entitled to be

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furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes .

Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.

(ii) As provision does not specify anything on authorizing any one else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him.

Question 42

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 gong to be held on 07-09-2020. Then what will be the e- voting period and the time of closing? (PYP 4 Marks Dec '21)(MTP Oct '23)

Answer 42

Joint shareholders must concur in voting unless the articles provide to the contrary.

(i) The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) Time period for e-voting: The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting. Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e-voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

Question 43

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.

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(iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting. (PYP 6 Marks Dec '21)(MTP Oct '23)

Answer 43

(i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requistionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
Hence, it is imperative for joint holders (or by requistionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

(iii) According to section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-anhour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled. Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

Question 44

New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2020. The notice was posted to the members on 16th August 2020. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide: (i) Whether meeting has been validly called?

(ii) If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?

(iii) Whether the length of serving of notices be curtailed by Article of Association? (PYP 5 Marks Dec '21, PYP 6 Marks May'19, RTP Nov 20)

Answer 44

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.
Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date

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of meeting, are excluded for sending the notice.
Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected-in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.
Hence, in the given question:
(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
(ii) As explained in (i) above, notice falls short by 2 days.
(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Question 45

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.
(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013. (PYP 2 Marks May '22)
(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding
interest of a director. (PYP 2Marks May '22)

Answer 45

(i) Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
In the given Question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.
(ii) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.
Effect of non-disclosure: As per section 102(4), if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.
If any default is made in complying with the provisions of this section, every such director who is

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in default, shall be liable for such contravention with penalty [Section 102(5)].

Question 46

TST Limited has Equity Share Capital of 10000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013. (PYP 4 Marks Nov'22)

Answer 46

Validity of Resolution passed in the EGM called by the Requisitionists As per Section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.
The requisition made under sub- section 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.
If the Board does not, within twenty one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub- Section 4].
Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.
Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub- section (4) shall be re-imbursed to the requisitionists by the company.
In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ₹ 30,000 (each holding ₹ 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

Question 47

The paid-up share capital of Golden Shoes Limited is ₹ 25,00,000 divided into 2,50,000 equity shares of ₹ 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022.

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Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office. (RTP Nov '23)

Answer 47

Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register' , containing the names and particulars of the members, debenture- holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

MULTIPLE CHOICE QUESTIONS (MCQS)

Question 48

Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution?

(a) 60 Votes
(b) 80 Votes
(c) 41 votes

(d) 20 votes (MTP March '19, 2 Marks)

Answer 48: (a)

Question 49

ABC Ltd., a pharmaceutical company was having its manufacturing plant in Solan, Himachal Pradesh. The address of its registered office as informed to the Registrar of Companies was of one of its Director's office, situated at Mumbai, Maharashtra. To comply with the provisions of the Companies Act, 2013 it was keeping all its books of accounts, other relevant papers and financial statements at its registered office. After sometime Directors of the company found it difficult to maintain such books etc.at the registered office, so in a duly convened meeting of the Board of the Directors, it was decided that the books of accounts and other relevant papers be kept at the office situated in Solan. Within which time period the Registrar must be given notice about such decision of the board –

(a) Within 30 days from the date of taking such decision by the board.

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(b) Within 15 days from the date it starts maintaining its books of accounts at the office situated at Solan.
(c) Within 30 days from the date it starts maintaining its books of accounts at the office situated at Solan.
(d) Within 7 days from the date of taking such decision by the board. (MTP April '19, 1 Mark)

Answer 49 : (d)

Question 50

ABC Infrastructures Limited is a listed company quoted at National Stock Exchange. The company closed its Register of Members in June and August, 2017 for 12 and 21 days respectively. The CFO of company has informed the company secretary to consider closing of register in December for another 15 days for some strategic reasons. Referring to the provisions of Companies Act, 2013, examine the validity of above action of the company.

(a) Valid, as the closure of register of members by company each time is not exceeding 30 days.
(b) Invalid, as company cannot go for closure of Register of members more than twice in a year.
(c) Invalid, as the period of closing register of members exceeding 30 days in a year.
(d) Invalid, as the period of closing the Register of members by the company is exceeding 45 days in a year. (MTP April '19, 1 Mark)

Answer 50 : (d)

Question 51

The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Ananat, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least before the meeting:

(a) 24 hours
(b) 1 day
(c) 2 days
(d) 3 days (MTP April '19, 1 Mark)

Answer 51: (d)

Question 52

In the current financial year Zunee Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means. (MTP 2 Marks, Oct'19)

(a) Since the company has more than 500 members it is required to provide to its members

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the facility to exercise their right to vote at the forthcoming AGM by electronic means.
(b) The company is not required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.
(c) Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a onetime measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.
(d) Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

Answer 52: (b)

Question 53
Which one of the following requires ordinary resolution?
(a) to change the name of the company
(b) to alter the articles of association
(c) to reduce the share capital
(d) to declare dividends. (MTP 1 Mark May 20)
Answer 53 : (d)

Question 54
Neha is a director of Primus Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Neha for how long such declaration shall be valid.
(a) 1 month
(b) 6 month
(c) 1 year
(d) She has to furnish declaration for each meeting separately (MTP 1 Mark March 21)

Answer 54 : (c)

Question 55
A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not
less than _ _ the number of votes, if any, cast against the resolution.
(a) Twice
(b) Three times
(c) One third
(d) One fourth (MTP 1 Mark April 21)

Answer 55 : (b)

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Question Q.56

Lalit made an offer to Managing Director (MD) of a company. MD accepted the offer though he had no authority to do so. Subsequently Lalit withdrew the offer but the company had already ratified the MD's acceptance. State which of the statement given hereunder is correct:

(a) Lalit is bound with the offer due to ratification

(b) An offer once accepted cannot be withdrawn

(c) Both option (a) & (b) is correct

sLalit is not bound to an offer. (MTP 2 Marks April 21)

Answer 56 : (c)

Question 57

The Annual General Meeting of Brother Limited was held on 25 May 2021. According to the provisions of Companies Act, 2013, till what date the company should submit report of AGM to the registrar?

(a) 04.06.2021

(b) 09.06.2021

(c) 24.06.2021

(d) 25.06.2021 (MTP 2 Marks Nov 21)

Answer 57 : (c)

Question 58

Gama Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General

meetings of Gama Limited will be kept at:

(a) That place where members of Gama Limited will decide.

(b) That place where all employees of Gama Limited will decide.

(c) Registered office of the company Gama Limited.

(d) That place where senior officials of Gama Limited will decide. (MTP 1 Mark Nov 21, Mar'22, Oct'22, RTP May'20)

Answer 58: (c)

Question 59

Vinod is a director of Prem Limited. He intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Vinod for how long such declaration shall be valid.

(a) 1 month

(b) 6 month

(c) 1 year

(d) She has to furnish declaration for each meeting separately (MTP 1 Mark March '22)

Answer 59 : (c)

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Question 60

A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than the number of votes, if any, cast against the resolution :

(a) Twice

(b) Three times

(c) Three fourth of

(d) Two third of (MTP 1 Mark April 22 & Oct '23)

Answer 60 : (b)

Question 61

Shreya is a director of Shree Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Shreya for how long such declaration shall be valid.

(a) 1 month

(b) 6 month

(c) 1 year

(d) She has to furnish declaration for each meeting separately (MTP 1 Mark Oct'22)

Answer 61: (c)

Question 62

The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.

(a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.

(b) No, the signing is not in order as only the Chairman is authorised to sign the report

(c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.

(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company. (MTP 2 Marks Oct'22, Nov'21)

Answer 62 :(d)

Question 63

The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?

(a) 75% of members entitled

(b) 90% of members entitled

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(c) 91% of members entitled
(d) 95% of members entitled (MTP 1 Mark Oct'22, Mar'19)
Answer 17 :(d)

Question 63
First annual general meeting of the company should be held within ……… from the closing of the first financial year.
(a) 6 months
(b) 9 months
(c) 12 months
(d) 18 months (MTP 1 Mark March '23)
Answer 63 : (b)

Question 64
In case of a Private company, quorum of Annual General Meeting is:
(a) 1 member personally present
(b) 2 members personally present
(c) (c) 3 members personally present
(d) 5 members personally present (MTP 1 Mark April '23)
Answer 64 : (b)

Question 65
All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so?
(a) Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.
(b) Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.
(c) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.
(d) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM. (RTP Nov' 19)
Answer 65 (c)

Question 66
The minute book of General meetings of Alpha Limited will be kept at:
(a) That place where members of Alpha Limited will decide.
(b) That place where all employees of Alpha Limited will decide.
(c) Registered office of the company Alpha Limited.

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(d) That place where senior officials of Alpha Limited will decide. (RTP May'20)

Answer 66 : (c)

Question 67

Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the schedule time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board:

(a) The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall,

(b) As same banquet hall is not available meeting can be held at different place as may be decided appropriate by the Board,

(c) As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location,

(d) As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders, (RTP Nov '20)

Answer 67 : (b)

Question 68

Amber Limited is a manufacturer of glassware. Its paid up share capital is divided into 20,0000 shares of ₹ 100 each. The company is maintaining its register of members as per the provisions of the Companies Act, 2013. The company wanted to close its register of members for declaring dividend. It may do so by giving minimum days' notice.

(a) 7 days

(b) 10 days

(c) 15 days

(d) The register of members cannot be closed. (RTP May '22)

Answer 68 : (a)

Question 69

Raman, the original allottee of 2000 equity shares in ABC Limited has transferred the same to Ruchi. The instrument of transfer dated 21st August, 2020, duly stamped and signed by Raman was handed over to Ruchi. Advise Ruchi regarding the latest date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.

(a) 21st August, 2020.

(b) 20th September, 2020

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(c) 20th October, 2020.
(d) 19th November, 2020 (RTP May '22)

Answer 69 : (c)

Question 70

Vichar Vimarsh Limited called its Annual General Meeting on 20th September, 2022 to consider and adopt the financial result as of 31st March, 2022. Due to want of quorum the meeting was adjourned and the adjourned meeting was held on 27th September, 2022. What is the last date of filing of Annual Return with the Registrar of Companies:

(a) 60 days from the date of 31st March, 2022
(b) 60 days from the date of 20th September, 2022
(c) 60 days from the date of 27th September, 2022
(d) 60 days from the date of 30th September, 2022(RTP Nov '23)

Answer 70: (c)

71 The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman ofthe company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.

(a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
(b) No, the signing is not in order as only the Chairman is authorised to sign the report
(c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.

Ans: (d)

72 The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter noticeif members entitled to vote at that meeting give their consent in writing or by electronic mode. In suchcases how many members have to give their consent?

a. 75% of members entitled
b. 90% of members entitled
c. 91% of members entitled
d. 95% of members entitled

Ans: (d)

73 Which among the following companies is not required to provide its members the facility to exerciseright to vote by electronic mode under the provisions of the Companies Act, 2013?

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a. **B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.**
b. **A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange**
c. **C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange**
d. **D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.**

Ans: (c)

Theoretical Questions Answers

Question 74

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

Answer 74

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

i. the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
ii. its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
iii. the Central Government, State Government or any local authority;
iv. (i) a reporting company; or
(ii) a body corporate; or
(iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);
v. Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;
vi. Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

Question 75

As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?

Answer 75

In this respect Rules 5 (7) and 5 (8) of the Companies (Management and Administration) Rules, 2014 are relevant.

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Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.
According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.
Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

Question 76

With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is Rs. 30 crores divided into 3 crores shares of Rs. 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

Answer 76

Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.
As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—
(i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
(ii) in the case of any other general meeting, by members of the company—
(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
(b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at that meeting.
Second proviso to Section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.
In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per

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cent of the paid- up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.
Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

Question 77

Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2022, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

Answer 77

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.
By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.
Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

Question 78

Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.

Answer 78

Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.
Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that in case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date

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of such entry within thirty daysfrom the date of passing of resolution.
Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:
(i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.
(ii) there should be entered the result of the voting made by the shareholders in respect of resolution.
(iii) there should be entered the summary of the scrutinizer's report.
(iv) there should be entered the date of making entry.
Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

Question 79
The paid-up share capital of Disha Home Appliances Limited is Rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.

Answer 79
In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11
(2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:
(i) a listed company; or
(ii) a company having paid-up share capital of Rs. 10 crores or more or turnover of Rs. 50 crores or more.
Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Question 80
Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a Page 174 statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companiesa copy of the Report on its AGM.
(i) State within how much time it is required to file the said Report.
(ii) In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable forsuch failure.

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Answer 80

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

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

a. Company: Rs. one lakh and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. five lakh.

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

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

Question 81

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, ashare holder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

Answer 81

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;

(ii) is irrelevant or immaterial to the proceeding; or

(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusionor non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Question 82

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and

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the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting. According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?

Answer 82

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another personas his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Question 83

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 in detail.

Answer 83

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting ,shall be annexed to the notice calling such meeting:

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of

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every director and the manager, if any or every other key managerial personnel and relatives of such persons; and

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about theissue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 84

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

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.

Answer 84

According to section 100 (2) 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 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Question 85

Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be consideredat such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Isthe notice valid?

Answer 85

Under section 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business. Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the

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Companies Act, 2013.

Question 86

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

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

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer 86

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that: -

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf: -

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid- up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any timeby the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question 87

Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions as per the provisions of the Companies Act, 2013?

Answer 87

Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty- four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the

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business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. In the given case, Sirhj has given proper notice.
However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Question 88

Miraj Limited held its Annual General Meeting on September 15, 2019. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2019, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

Answer 88

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting. By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.
Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

Question 89

InfoTech Ltd. was incorporated on 1.4.2018. No General Meeting of the company has been held till 30.4.2020. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer 89

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year. The first financial year of Infotech Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019.

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The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit

Question 90

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

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

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

Answer 90

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.
In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.
If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. In view of the above there are only three members personally present.
'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.
Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

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Question 91
What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.

Answer 91
A proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.
The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:

1. Under section 105 (1) any member of a company entitled to attend and voteat a meeting of the company shall be entitled to appoint another person asa proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

Question 92
Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. 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 valid. Referring to the provisions of the Act, decide:

(i) Whether the meeting has been validly called?
(ii) If there is a shortfall, state and explain by how many days does the notice fallshort of the statutory requirement?
(iii) Can the delay in giving notice be condoned?

Answer 92
According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed. Also, it is to be noted that 21 clear days' mean that the date on which notice is served and the date of meeting are excluded for sending the notice. Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery

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by post, such service shall be deemed to have been effected – in the case of a notice of a meeting, at the expiration of forty- e i g h t hours after the letter containing the same is posted.

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Question 93

KMN Ltd. scheduled its Annual General Meeting to be held on 11th March, 2020 at11:00 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 11:30A.M.?

(iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

What happens if there is no Quorum in the Adjourned meeting?

Answer 93

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, P4and P5 representing ABC Ltd. and DEF Ltd. respectively will be countedas 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 P7shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

(i) The section further states that, if the required quorum is not present within half an hour, the

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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 (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

(ii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.
In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

(iii) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Question 94

Luxy Hair stylefs 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.

Answer 94

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.

Question 95

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.

Answer 95

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.

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Question 96

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2021, for laying down the financial statements relating to the Financial Year ended 31st March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the annual return for the year ending 31st March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

Answer 96

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

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

Question 97

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.

Answer 97

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.

Question 98

The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh

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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.

Answer 98

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.

Question 99

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

Answer 99

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

Question 100

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

Answer 100

According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was

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present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Question 101

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?

Answer 101

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.

Question 102

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

Answer 102

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

Question 103

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

Answer 103

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

Question 104

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

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Answer 104

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

Question 105

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

Answer 105

For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting decides that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would be immaterial.

Question 106

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

Answer 106

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

Question 107

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

Answer 107

In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2023. According to section 96 (1),the company must hold its first AGM latest by 31st December 2023 i.e.

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within 9 months of the close of its financial year on 31st March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Question 108

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

Answer 108

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

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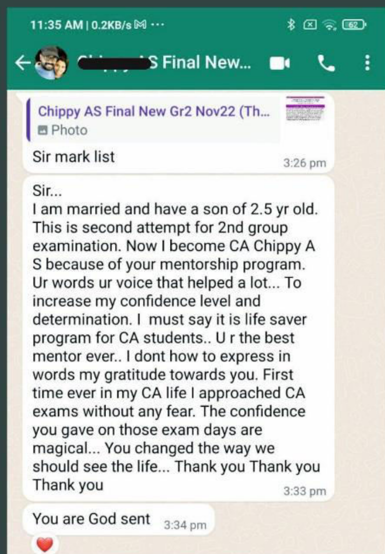

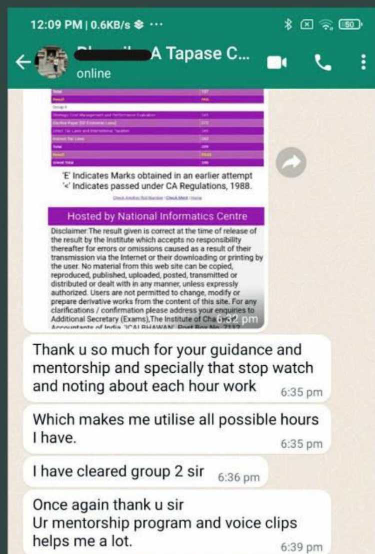

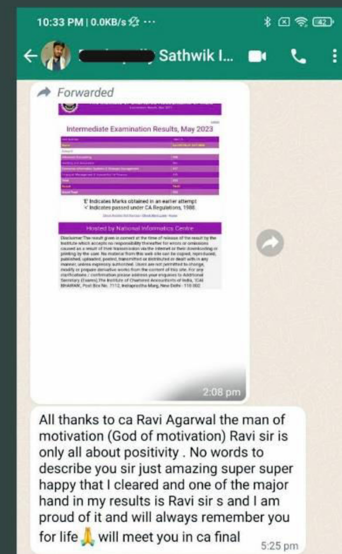

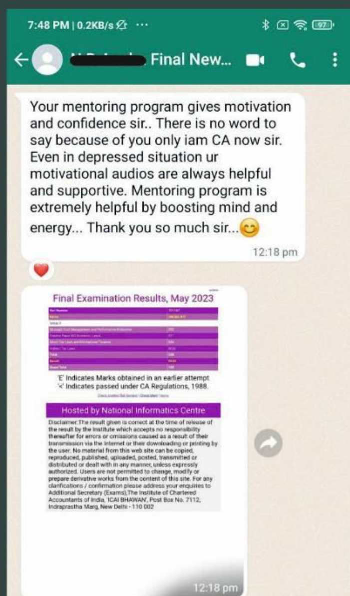

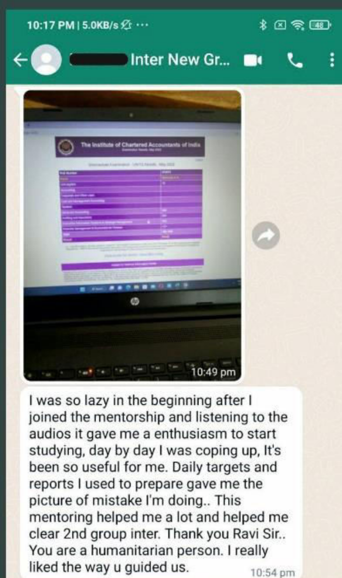

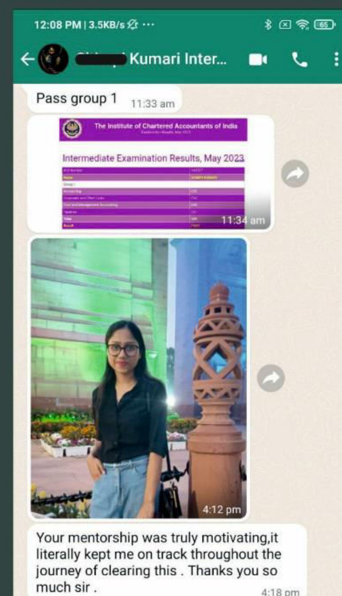

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Chapter 8
Declaration and Payment of Dividend

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.35 to Q.53											
Past Exams	No	Q.2 Q.6	Q.8 Q.17	Q.20	No	Q.18 Q.19	No	No	No	Q.22	Q.23	No
MTP	Q.4	Q.5	Q.2 Q.3 Q.24 Q.25 Q.26	Q.11 Q.12 Q.31	Q.1 Q.6	Q.7 Q.33	Q.2 Q.8	Q.9 Q.10 Q.27 Q.28 Q.29 Q.30	No	Q.8 Q.12 Q.32	Q.12 Q.14	Q.14 Q.21 Q.34
RTP	Q.9	No	Q.15	Q.31	No	No	Q.2	Q.10	Q.16	No	No	No

Question 1

TAT Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. (MTP May'20, March'19, Aug'18 6 Marks, PYP May '18 & May '19 , 4 Marks)(Similar to MTP Apr'21 & Apr'22 5 Marks but different figures)

Answer 1

Interim Dividend: 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.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by TAT Ltd. 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. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

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Question 2

(i) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of Rs. 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment (MTP Oct'20, April '19 , 3 Marks, PYP Nov '18 , 3 Marks)

(ii) Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive. (MTP Mar'21, April '19 , 3 Marks, Old & New SM, RTP May '21, PYP Nov '18 , 3 Marks)

Answer 2

(i) Transfer to reserves (Section 123 of the Companies Act, 2013): A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.
As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.
As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

(ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.
Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

Question 3

State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013. (MTP April-19,6 Marks)

Answer 3

Credit of amount to the Fund: There shall be credited to the Investor Education and Protection Fund the following amounts—
Amount given by the Central Government- the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilized for the purposes of the Fund;
Donations by the Central Government- donations given to the Fund by the Central Government,

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State Governments, companies or any other institution for the purposes of the Fund;
Amount of Unpaid Dividend Account- the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under section 124(5);
Amount of the general revenue account of the Central Government- the amount in the general revenue account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;
Amount in IEPF- the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
Income from investments- the interest or other income received out of investments made from the Fund;
Amount received through disgorgement or disposal of securities- The amount received under section 38(4) i.e. amount received through disgorgement or disposal of securities under section 38(3) shall be credited to the IEPF provided under section 38(4);
Application money- the application money received by companies for allotment of any securities and due for refund;
Matured deposits- matured deposits with companies other than banking companies;
Matured debentures- matured debentures with companies;
Interest- interest accrued on the amounts referred to in clauses (h) to (j);
Amount received from sale proceeds- sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
Redemption amount- redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
Other amount- such other amount as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Question 4

During the financial year 2016-17, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor, to accommodate the said interim dividend.

(i) Examine the validity of the Board's decision under the provisions of the Companies Act, 2013.

(ii) Examine what will be your answer, if the Board proposes to transfer more than 10% of the profits of the company to the reserves for the current year before the declaration of any dividend? (MTP March'18,6 Marks)

Answer 4

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 out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
Further a dividend when declared becomes a debt and a shareholder is entitled to recovery of the same after expiry of 30 days as prescribed under Section 127 of the Companies Act, 2013. Section

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2(14A) of the Act defines dividend to include interim dividend. Therefore, dividend once declared becomes a debt and payable within 30 days of declaration.
In the present case, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor.
However, in view of the above, the Board of directors cannot revoke the second interim dividend. Therefore, decision of the Board to revoke the declared 2nd Interim dividend is invalid.

Question 5

The Director of Rom 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. They seek your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend? (MTP Oct '18,6 Marks)

Answer 5

I. The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.
As per the facts given in the question, Mr. A is holding equity shares of face value of Rs. 10 Lakhs and has not paid an amount of Rs. 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an amount of Rs. 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.
II. only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20 th 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. R will be entitled to the dividend.

Question 6

Komal Ltd. declares a dividend for its shareholders in its Annual General Meeting held on 27thSeptember, 2019. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

(i) The dates during which Komal Ltd. is required to pay the dividend?

(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed

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dividend to unpaid dividend account? (MTP 4 Marks May 20, PYP Nov '18 4 Marks)

Answer 6

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

(i) Payment of dividend : In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days, 27/09/2019 will be excluded and last 30thday, i.e. 27/10/2019 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).

(ii) Transfer of unpaid or unclaimed divided : As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2019 to 3rd November, 2019 (both days inclusive).

Question 7

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. 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. (MTP 3 Marks Oct 20, RTP May '21, PYP May'18,2 Marks, Old & New SM)

Answer 7

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Question 8

Vishal Limited declared and paid 10% dividend to all its shareholders except Mr. Ricky, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Ricky doesn't

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tally with the records of the bank. The company, however, did not inform Mr. Ricky about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend. (MTP 3 Marks March 21, MTP 3 Marks Oct'22, Old & New SM, PYP May '19 2 Marks)

Answer 8

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, Vishal Ltd. has failed to communicate to the shareholder Mr. Ricky about noncompliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Question 9

The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him? (MTP 3 Marks Oct 21, RTP May 18) (Same concept different figures PYP 2 Marks May '22)

Answer 9

The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

Question 10

The Board of Directors of Dew Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid

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to shareholders after 45 days.
Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act. (MTP 6 Marks Nov 21, RTP Nov'21, Old & New SM, PYP 2 Marks Dec '21)

Answer 10

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Dew Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

The Board of Directors of Dew Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

If a company fails to comply to with any of the requirements of this section, such a company shall be liable to a penalty of one lakh rupees and in case of continuing failure with a further penalty of five hundred rupees for each day after the first during which the failure continues subject to maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty five thousand rupees and in case of continuing failure with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of two lakh rupees.)

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.

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Question 11
Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016 -17, except in the following two cases:
(i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.
(ii) Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.
You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (MTP Oct '19,6 Marks, Old & New SM)

Answer 11
I. Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.
In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about noncompliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

II. Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.
In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

Question 12
The Annual General Meeting of ABC Bakers Limited held on 30 th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.(MTP 6 Marks Sep'22, MTP 5 Marks Mar'23, MTP 5 Marks Oct'19, Old & New SM)

Answer 12
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

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dividend:
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 the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.
In the given question, the company was unable to post dividend warrant within 30 days from the date of declaration of dividend. Thus, the directors will be liable as per the above provisions and the company is liable to pay simple interest. However, Mr. Ranjan will not succeed if he claims interest at 20% per annum interest as the limit prescribed under section 127 is 18% per annum.

Question 13
G Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2021- 2022 out of the profits of current year. The company has earned a profit of ₹ 910 crores during 2021-2022 any does not intend to transfer any amount to the general reserves out of the profits. Is G M ruments Limited allowed to do so, as per the provisions of the Companies Act,2013?

Answer 13
According 23 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.
As per the given facts, G Medical Instruments Limited has earned a profit of ₹ 910 crores for the financial year 2021-2022. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.
As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Question 14
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. (MTP 6 Marks April '23 & Sep '23 , PYP 5 Marks Jan 21)

Answer 14
According to section 124 of the Companies Act, 2013:

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(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.

Question 15

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for morePtahgane2193

years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable? (RTP May'19)

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Answer 15

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web- site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed. Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. If RST Ltd fails to comply to with any of the requirements of this section, such a company shall be liable to a penalty of one lakh rupees and in case of continuing failure with a further penalty of five hundred rupees for each day after the first during which the failure continues subject to maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty five thousand rupees and in case of continuing failure with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of two lakh rupees.

Question 16

Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain. (RTP May '22) (Similar to May'20 but different figures)

Answer 16

As per second proviso to Section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

(b) The total amount to be drawn from such accumulated profits shall not exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

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(c) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
(d) The balance of reserves after such withdrawal shall not fall below 15% of its paid -up share capital as appearing in the latest audited financial statement.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

Question 17

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The
Directors declared the approved dividends. Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend? (PYP May'19 2 Marks) (Same concept different figures RTP May'18)

Answer 17

Payment of dividend: According 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. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members.

Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

Question 18

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? (PYP 4 Marks Nov 20)

Answer 18

(i) According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company

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may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to section 8 (1) of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) Penal consequences: According to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Question 19

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. (PYP 4 Marks, Nov 20)

Answer 19

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.

(a) According to the said rule, the required conditions are:

(b) Condition I: The rate of dividend declared shall not exceed the average of the rates at which

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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.

(c) 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

(d) Condition III: The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
The amount drawn as stated above =₹ 25 Lakhs Less: loss for the financial year 2019-2020 = ₹ 20 Lakhs
Amount available =₹5 Lakhs
Hence, the quantum of dividend is further restricted to ₹ 5 lakhs.

(e) Condition IV: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.
Accumulated Reserves ₹ 150 Lakhs Proposed withdrawal declaration of dividend ₹ 5 Lakhs Balance of Reserves ₹ 145 Lakhs
This is more than 15% of paid-up capital (i.e. 15% of ₹ 100 Lakhs) i.e. ₹ 15 lakhs. Thus, the company can declare a dividend of ₹ 5 lakhs.

Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 20192020 and the maximum amount of dividend that can be paid is ₹ 5 Lakhs.

Question 20

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

(i) The Board of Directors of Anand Ltd. proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.(Old & New SM)

(ii) Whether a Company can declare dividend for the financial year in which it incurred loss. (PYP Nov'19, 5 Marks)

Answer 20

(i) Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.
In the given instance, the Board of Directors of Anand Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

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(ii) As per Second Proviso to Section 123 (1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Question 21

ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013? (PYP 3 Marks July 21)(MTP Oct '23)

Answer 21

Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021). It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

Question 22

A company has accumulated Free Reserves of ₹75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ₹ 12 lakhs. The Board proposes a payment of dividend of ₹30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid? (PYP 6 Marks Nov '22)

Answer 22

In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions of Rule 3:

Condition 1: The rate of dividend declared shall not exceed the average of the rates at which

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dividend was declared by the company in the immediately preceding three years.
Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.
Calculations For Each Condition
Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.
Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.
Condition 2: As per the facts, the Board proposes a payment of dividend of ₹ 30 lakhs i.e., 30% on the paid up
capital.

So, the Paid up Share Capital of the company = ₹ 100 Lakh Paid-up Capital + Free Reserves = 100+ 75 = ₹ 175
Lakh 10% thereof = ₹ 17.5 Lakh
Hence the dividend to be declared is to be restricted to ₹ 17.5 Lakh.
Condition 3:
Here, Free Reserves = ₹ 75 Lakh
Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh Balance of Reserves = ₹75 Lakh-17.5 Lakh = ₹ 57.5 Lakh
This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ₹ 100 Lakh) i.e. ₹ 15 Lakh.
Thus, the company can declare a dividend of ₹ 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ₹ 100 lakh.
Hence, the proposal of company for payment of dividend of ₹ 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of ₹ 12 lakh, is invalid.

Question 23

ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that

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Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013. (PYP 6 Marks , May '23)

Answer 23

Interim dividend: As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years.
Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021- 2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.
Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Multiple Choice Questions (MCQs)

Question 24

In how many days from the date of declaration of interim dividend, it shall be deposited in a separate bank account (MTP April-19, 1 Mark)

(a) 5 days (b) 7 days (c) 15 days (d) 21 days

Answer 24 : (a)

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Question 25

After Declaration of dividend, it should be paid within

(a) 14 days (b) 21 days (c) 30 days (d) 45 days (MTP April-19- 1 Mark)

Answer 25 : (c)

Question 26

ABC Ltd., a listed company proposed a dividend @ 15% on equity shares for the financial year ended on 31st March 2018. The Annual General Meeting (AGM) of the company was held on 15th July 2018 and the proposed dividend was approved and declared in the same. Due to some technical issues, dividend on 600 shares neither be paid within the time limit prescribed by the Act nor was transferred to unpaid dividend account. In such a situation which regulatory authority can take action against the company and its officers in default? (MTP April 19, 2 Marks)

(a) Central Government (b) SEBI

(c) Tribunal (d) Investor Education and Protection Fund Authority

Answer 26 : (b)

Question 27

The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2021 but the company has incurred loss during the current financial year up to the end of June, 2021. However, it is noted that during the previous five financial years i.e., 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.

(a) Maximum at the rate of 10%.

(b) Maximum at the rate of 11%.

(c) Maximum at the rate of 10.5%.

(d) Maximum at the rate of 11.5%. (MTP 2 Marks Oct 21)

Answer 27 : (b)

Question 28

Amount to be transferred to reserves out of profits before any declaration of dividend is

(a) 5%

(b) 7.5%

(c) 10%

(d)

at the discretion of the company. (MTP 1 Mark Oct 21, Apr'22)

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Answer 28 (d)

Question 29

Mr. Guru bought 40,000 shares of Real Consultancy Services (RCS) of face value 10 each out of his savings. On such shares, the final call of Rs. 2 is due but unpaid by Mr. Guru. In the meantime, RCS declared dividend at a rate of 15%. Regarding un-paid call money by Mr. Guru, in light of dividend due to him from RCS, state which of following the statements is correct?

(a) Dividend cannot be adjusted against the unpaid call money
(b) The dividend of Rs. 48,000 can be adjusted against unpaid call money
(c) The dividend of Rs. 48,000 can be adjusted against unpaid call money, only if consent is given by Mr. Guru.
(d) The dividend of Rs. 64,000 can be adjusted against unpaid call money, even if consent is not given by Mr. Guru. (MTP 2 Marks Nov 21)

Answer 29 : (b)

Question 30

When the dividend is declared at the Annual General Meeting of the company, it is known as ….

(a) Final Dividend
(b) Interim Dividend
(c) Dividend on preference shares
(d) Scrip Divided (MTP 1 Mark Nov 21, Sep'22)

Answer 30 : (a)

Question 31

Sumitra Healthcare and Hospitality Limited had issued 9% non-convertible debentures which matured four years back. However, 1000 such debentures of Rs. 100 each are still remaining unclaimed and unpaid even after the maturity. State the period after which the company needs to transfer them to Investor Education and Protection Fund (IEPF) if they remain unclaimed and unpaid. (MTP Oct '19, 2 Marks, RTP Nov'19)

(a) After the expiry of five years from the maturity date.
(b) After the expiry of six years from the maturity date.
(c) After the expiry of seven years from the maturity date.
(d) After the expiry of eight years from the maturity date.

Answer 31: (c)

Question 32

During the half year ended September 2021, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the

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financial year ended on March 2019. Further during the year ended March 2022, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2021. You are required to state the validity of the acts of the Board of directors.

(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.

(b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.

(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.

(d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2022. The application made for revision in the Board report is however valid in law. (MTP 2 Marks Oct'22)

Answer 32 :(d)

Question 33

Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ₹ 20,00,000. The Board of Directors is keen to utilize ₹ 20,00,000 along with free reserves of ₹ 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2019. Advise the company.

(a) ₹ 20,00,000 are to be excluded from the distributable profits as the same cannot be utilized towards declaration of dividend.

(b) Only 25% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.

(c) Up to 50% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.

(d) Up to 60% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.(RTP Nov '20)

Answer 33 : (a)

Question 34

Dividend once declared, should be paid within days from the date of declaration .

(a) 14

(b) 21

(c) 30

(d) 60 (MTP 1 Mark Oct '23)

Answer 34 : (C)

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35 When the dividend is declared at the Annual General Meeting of the company, it is known as
(a) Final Dividend
(b) Interim Dividend
(c) Dividend on preference shares
(d) Scrip Divided

Ans: (a)

36 Amount to be transferred to reserves out of profits before any declaration of dividend is
(a) 5%
(b) 7.5%
(c) 10%
(d) at the discretion of the company.

Ans: (d)

37 The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2022 but the company has incurred loss during the current financial year up to the end of June, 2022. However, it is noted that during the previous five financial years i.e., 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.
(a) Maximum at the rate of 10%.
(b) Maximum at the rate of 11%.
(c) Maximum at the rate of 10.5%
(d) Maximum at the rate of 11.5%.

Ans: (b)

38 The amount accumulated in the Investor Education and Protection Fund shall not be used for:
a. refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.
b. reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
c. grants or donation to the Central Government for the purpose of investor's education and training.
d. distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.

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Ans: (c)

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

a. 6% p.a.
(b) 12% p.a.
(c) 15% p.a.
(d) 18% p.a.

Ans: (d)

Theoretical Questions Answers

Question 40

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

Answer 40

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

Question 41

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2019, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2019.Mr. Ranjan filed a suit against the

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Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.

Answer 41

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. Ranjan will not succeed if he claims interest at20% interest as the limit under section 127 is 18% per annum.

Question 42

The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid- up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

Answer 42

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment. In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. There after, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for

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purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date ofthe 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 unclaimedto a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee one thousand for everyday during which such default continues.

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

Question 43

Referring to the provisions of the Companies Act, 2013, examine the validity of the following: The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

Answer 43

Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

Question 44

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018- 19, except in the following two cases:

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

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about this discrepancy.

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

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

Answer 44

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non- compliance was not communicated to him. In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law. In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its directors, etc.

Question 45

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2019. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

Answer 45

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed. Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Question 46

(i) YZ Medical Instruments Limited is a manufacturing company & has proposeda dividend @ 10% for the year 2018-19 out of the profits of current year. The company has earned a profit of Rs. 910 crores during 2018-19. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment.

(ii) Karan, holder of 5000 equity shares of Rs. 100 each of M/s. Rachit Leather Shoes Limited did not pay final call of Rs. 10 per share. M/s. Rachit Leather Shoes Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

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Answer 46

(i) According to section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company. As per the given facts, YZ Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year. As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

(ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, M/s. Rachit Leather Shoes Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, call money of Rs. 50,000 not paid by Karan can be adjusted fully from the entitled dividend amount of Rs. 50,000 payable to him.

Question 47

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer 47

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127will be attracted.

Question 48

For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

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Answer 48

The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit.

Question 49

Brix Shipyards Limited has earned a profit of ₹ 1,000 crores for the financial year 2018-19. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

Answer 49

The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any amount of profits to the reserves.

Question 50

Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March, 2020, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%.
Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2019-20, as per the provisions of the Companies Act, 2013.

Answer 50

The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
  However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.
- The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
- The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
- After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid- up share capital as per the latest audited financial statement.
  The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

Question 51

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The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2022-2023. The company announced 28th September 2023 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 30th September 2023.
Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been entered in the register of members on 18th June, 2023. Who will be entitled to the above dividend?

Answer 51
According to section 123, dividend shall be paid by a company only to the registered shareholder of such sha Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.
In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e. Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan

Question 52
The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2022-23. The same was approved at the Annual General Meeting of the company held on 25th June, 2023.
Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2023, but the same were transferred by him to Mr. Raj, whose name was registered on 20 th April, 2023 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

Answer 52
According to section 123(5), dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker. Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April, 2023. Since, Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June, 2023, he will be entitled to the dividend.
Note: In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only ₹ 5 (face value ₹10) on each share held by them. In case of declaration of dividend at the rate of ₹ 5 per share, the company ,if authorised by its articles, shall be justified in paying dividend of ₹ 2.50 per share in respect of such partly paid shares.

Question 53
Mr. Alok, holding equity shares of face value of ₹ 10 lakhs, has not paid ₹ 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.
Answer 53
Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and

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there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to ₹ 80,000 is justified and therefore, no punishment is attracted.

Applicability of Section 127 to Nidh is In terms of Notification No. GSR 465 (E), dated 05-06-2015, Section 127 dealing with punishment shall apply to the Nidh is, subject to the following modification:

In case the dividend payable to a member is ₹ 100 or less, it shall be sufficient compliance of the provisions of the section 127, if the declaration of the dividend is announced in the local language in one local news paper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidh is for at least 3 months.

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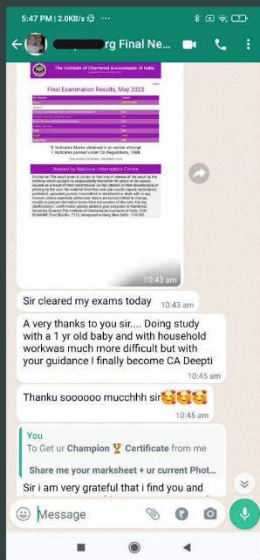

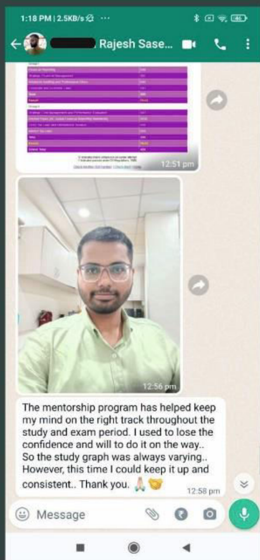

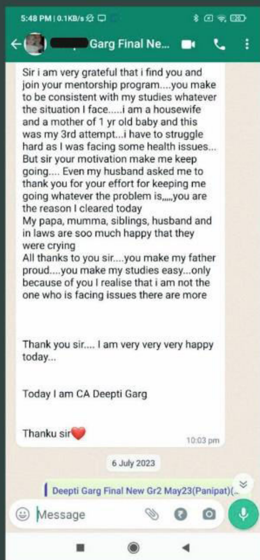

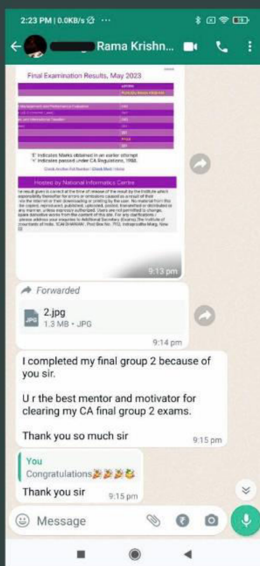

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Chapter 9
Accounts of Companies

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.47 to Q.71											
Past Exams	Q.23	Q.22	Q.13 Q.21	Q.24 Q.26		Q.25			Q.19	Q.29	Q.30	
MTP	Q.1 Q.2	Q.3	Q.31 Q.32 Q.33 Q.34		Q.4 Q.46	Q.5 Q.13 Q.35	Q.7	Q.35 Q.36 Q.38	Q.8 Q.9 Q.37	Q.10 Q.11 Q.35 Q.39	Q.12 Q.40 Q.41 Q.42 Q.43 Q.44 Q.45	Q.8 Q.11 Q.35 Q.37
RTP	Q.4 Q.17	Q.15		Q.14				Q.16		Q.18	Q.19	

Question 1

The directors of Ninja Ltd. having a paid- up capital of Rs. 1500 crores have approached you to state them the provisions of the Companies Act, 2013 and rules thereunder, regarding which companies are required to constitute CSR Committee? Also, state the composition of CSR Committee. (MTP March'18,6 Marks)

Answer 1

Which Company is required to constitute CSR committee:

Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having

(1) net worth* of rupees 500 crore or more, or

(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

*"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. Composition of CSR Committee:

(a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.

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(b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.
(c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
(d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.
(e) The Board's report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee

Question 2

Natraj Limited is an unlisted Public company having paid up share capital of ₹ 80 crores during the preceding financial year 2016-17. The turnover of the company was ₹ 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, discuss the answer to the following:

(i) Is it mandatory for the above company to appoint an internal auditor for the financial year 201718?

(ii) What are the qualifications of the Internal Auditor? (MTP March '18, 6 Marks)

Answer 2

(i) Class of companies required to appoint Internal Auditor: Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:
1. Every listed company;
2. Every unlisted public company having –
(a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or
(b) Turnover of 200 crore rupees or more during the preceding financial year; or
(c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
(d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and
3. Every private company having –
(a) Turnover of 200 crore rupees or more during the preceding financial year; or
(b) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

As per the facts given in the question, Natraj Limited is an unlisted public company with the paid up share capital of ₹ 80 cores during the preceding financial year with the turnover of ₹ 110 crores. Since, Natraj Limited fulfills one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is mandatory for the Natraj Limited to appoint an internal auditor for the financial year 2017-18.

(ii) Qualifications of Internal Auditor

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(a) Internal Auditor shall either be a chartered accountant or a cost accountant or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Here, the term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

Question 3

The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re-opening of accounts on court's or Tribunal's order. (MTP Oct '18 , 6 Marks)

Answer 3

According to section 130 of the Companies Act, 2013,

(1) On Filing of an application: 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 regulatory 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:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income- tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

(2) Nature of Revised Accounts: The accounts so revised or re-cast shall be final.

(3) Time Period: 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:

Provided that where a direction has been issued by the Central Government under the proviso to subsection (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

Question 4

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March,2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures. Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit

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& Loss and the Board's Report. (RTP May'20, Old & New SM , PYP 3 Marks Jan 21)

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (MTP 6 Marks May 20, RTP May '18)

Answer 4

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto under section 134(3), shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full- time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Question 5

Whether a Company can keep books of Accounts in electronic mode accessible only outside India? (MTP 3 Marks Oct 20)

Answer 5

A Company has the option of keeping its books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India, at all times 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 daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India. As per amendment- Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account,

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shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled

Question 6

State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013. (MTP 3 Marks March 21, Oct'21, RTP Nov '22)

Answer 6

Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,
(b) Whole-Time Director, in charge of finance
(c) Chief Financial Officer
(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Question 7

Green Limited is a company dealing in trading of spices. It has maintained its books of accounts under Single Entry System of Accounting. The company has recently hired a new accountant. The new accountant, Mr. Dubey, is doubtful that the accounts can be maintained under Single Entry System. Advise the company whether it is allowed to do so? (MTP 4 Marks March 21)

Answer 7

According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Green Limited is not permitted.

Question 8

Aura Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2021 and turnover of ₹ 100 crore during the financial year 2020-21. The Company Secretary has advised the Board of Directors that Aura Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013. (MTP 6 Marks March '22 & 5 Marks Sep '23)(PP 3 Marks Jan 21)

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Answer 8

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;
(2) every unlisted public company having-
(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
(B) turnover of 200 crore rupees or more during the preceding financial year;
(C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
(D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, Aura limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company). Hence, the advice of the Company Secretary is not correct.

Question 9

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.
(ii) Period of preservation of books of accounts (MTP 6 Marks April 22)

Answer 9

(i) Inspection by Directors

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

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

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

(ii) Period for preservation of books

According to section 128(5) of the Companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the

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

Question 10

The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor. (MTP 4 Marks Sep'22)

Answer 10

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;
(2) every unlisted public company having-
(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
(B) turnover of 200 crore rupees or more during the preceding financial year; or
(C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

Question 11

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a "Directors' Responsibility Statement". Briefly enumerate any four matters to be furnished in the said statement. (MTP 6 Marks Oct'22, Aug'18 & Oct '23, PYP 3 Marks Dec '21, PYP 4 Marks May 18)

Answer 11

Directors' Responsibility Statement: According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(4) the directors had prepared the annual accounts on a going concern basis; and
(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

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(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Question 12

Explain the following as per the provisions of the Companies Act, 2013:

(i) Who shall sign Board's Report
(ii) Filing of financial statements with the Registrar when AGM is not held (MTP 6 Marks March '23)

Answer 12

I. Signing of Board's Report [Section 134(6)]: The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
II. Annual General meeting not held [Section 137(2)]: Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

Question 13

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 i unts and recasting the financial statements for the financial year 2011-12. Examine the validity of ation filed by the Income Tax Authorities to NCLT. (MTP 6 Marks April '23, MTP Oct 20, Old & New SM, PYP May'19,3 Marks, RTP May 21)

Answer 13

As per s 0 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

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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.

Question 14

Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same.

Prateek has approached you advise him regarding his responsibility for signing the financial statement.

Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more informations:

1. **The Board as a policy does not authorise the chairperson of the company to sign the financial statements**
2. **The company has appointed Ms. Sunanina as its Company Secretary (RTP Nov'19)**

Answer 14

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

Question 15

The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements. (RTP Nov'18)

Answer 15

(1) Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board, do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by

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the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(2) Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
   a. the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
   b. the making of any necessary consequential alternation.

(3) Framing of rules by the Central Government in relation to revised financial statement or director's report: The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
   a. make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
   b. make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
   c. require the directors to take such steps as may be prescribed.

Question 16

Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of ₹ 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020 -21. The management of the company have approached you to advise them about the appointment of internal auditor.

Advise them as per the provisions of the Companies Act, 2013.(RTP Nov '21)

Answer 16

According to section 138 read along with Rules of the Companies Act, 2013, every private company having—

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ₹ 45 crore and turnover of ₹ 250 crore

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for the financial year 2019-20.
Since, the company is fulfilling the criteria of turnover (i.e. more than ₹ 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020 -21.

Question 17
Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (Rs In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
(ii) State the composition of the CSR committee unlisted company and a private company. (RTP May-18)

Answer 17
Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals
with the provisions related to the Corporate Social Responsibility.
As per the given facts, following are the answers in the given situations-
(i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company 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, in pursuance of its CSR Policy.
Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.
(ii) Composition of CSR Committee: The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.
(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;
(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Question 18
Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the

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consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.
Advise, how would Dhiman Limited deal with the consolidation of such financial statements. (RTP Nov'22)

Answer 18
According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.
Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get s financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.
It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.
Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.
Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.
Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Question 19
Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial

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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. (RTP May 23, PYP 4 Marks May '22)

Answer 19

Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Question 21

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 where at 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? (PYP May'19,4 Marks, Old & New SM)

Answer 21

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.

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Hence, 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.

Question 22

A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of Rs 11 crores and a turnover of Rs 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode. (PYP Nov'18,3 Marks, Old & New SM)

Answer 22

Filing of financial statements in XBRL Mode

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, the following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-

(i) companies listed with stock exchanges in India and their Indian subsidiaries;
(ii) companies having paid up capital of five crore rupees or above;
(iii) companies having turnover of one hundred crore rupees or above;
(iv) all companies which were hither to covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

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Question 23

Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of Rs 100 crore, net profit Rs 3 crore, accumulated loss of Rs 50 crore and securities premium Rs 300 crore as per the audited accounts of the company for the Financial Year 2016-17.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not. (PYP May'18,6 Marks)

Answer 23

Corporate Social Responsibility Committee: According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having - (1) net worth of rupees 500 crore or more, or

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(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during (as per amendment- the immediately preceding financial year)

shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

- turnover of Rera Ltd. is Rs 100 crore,
- net profit of Rs 3 crore and
- net worth of Rs 253 crore (Net profit + securities premium -accumulated loss= 3 + 300 – 50=253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

[Note 1: - It can also by presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[Note 2: Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

Question 24

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? (PYP Nov'19,2 Marks)

II. State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. (PYP Nov'19,2 Marks)

III. Whether a Company can keep books of Accounts in electronic mode accessible only outside India. (PYP Nov'19,2 Marks, Old & New SM)

Answer 24

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. 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

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(c) Chief Financial Officer
(d) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.
Any other person of a company charged by the Board with duty of complying with provisions of section 128.
A Company have has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,
(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India at all times 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 daily basis.
Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Question 25
Explain the following in brief with reference to Companies Act 2013:
(i) National Financial Reporting Authority (NFRA)
(ii) Corporate Social Responsibility (CSR) Committee (PYP 6 Marks, Nov 20)

Answer 25
(i) National Financial Reporting Authority (NFRA)
According to section 132 of the Companies Act, 2013, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.
Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—
(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
(ii) Corporate Social Responsibility (CSR)Committee:
According to section 135(1) of the Companies Act, 2013, every company having (1) net worth of rupees 500 crore or more, or
(2) turnover of rupees 1000 crore or more or
(3) a net profit of rupees 5 crore or more
during the immediately preceding financial year shall constitute a Corporate Social Responsibility

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Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.
Duties of CSR Committee [Section 135(3)]: The CSR Committee shall-
(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
(c) monitor the CSR Policy of the company from time to time.

Question 26

SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. (PYP Nov '19, 2 Marks, Old & New SM)

Answer 26

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.
Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.
Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.
SKP Limited is advised to follow the above procedure accordingly.
[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part (i) of the question]

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Question 27

KSR Limited, an unlisted company furnishes the following data :
(a) Paid-up share capital as on 31-3-2021 ₹ 45 Crore.
(b) Turnover for the year ended 31-3-2021 ₹ 175 Crore
(c) Outstanding loan from bank as on 3-3-2021 ₹ 105 crore (₹ 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 ₹ 90 crore after repayment.
Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022? (PYP July '21 , 3 Marks)

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Answer 27

According to the Companies (Accounts) Rules, 2014, every unlisted public company having- (A) paid up share capital of 50 crore rupees or more during the preceding financial year; orPage 222

(B) turnover of 200 crore rupees or more during the preceding financial year; or
(C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;
shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate. In the given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., ₹ 105 crore on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

Question 28

Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss? (PYP 3 Marks Dec '21)

Answer 28

According to section 129(3) of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub- section (2).
The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.
Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.
Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

Question 29

The Government of Rajasthan and Haryana are jointly holding 58% of the paid-up Equity Share Capital of Moon Ltd. The Audited financial statements of Moon Ltd. for the financial

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year 2021-22 were placed at its Annual General Meeting held on 31st August, 2022. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not filed its financial statements to the Registrar, Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 5th October, 2022 whereat the accounts were adopted. Thereafter, Moon Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 25th October, 2022.
Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Moon Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar. (PYP 5 Marks Nov '22)

Answer 29

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 Moon Ltd. were adopted at the adjourned AGM held on 5th October, 2022 and filing of financial statements with Registrar was done on 25th October, 2022 i.e. within 30 days of the date of adjourned AGM. However, Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August 2022.
Hence, Moon 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.

Question 30

A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 201516 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT. (PYP 3 Marks , May '23)

Answer 30

Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for reopening of accounts—A

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company shall re-open its books of account and recast its financial statements, on an application made by the Central Government, or other competent authorities as prescribed under section130 (1) of the Companies Act, 2013 to the NCLT to the effect that—
(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.
In the given instance, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is validly filed to NCLT.

Multiple Choice Questions (MCQs)

Question 31

Amex limited is a public company having a net- worth of Rs. 950 crores, turnover of 200 crores (the company is just 5 years since the date of its incorporation) during the immediately preceding financial year, has to constitute a Corporate Social Responsibility (CSR) Committee. It has 9 Directors (A, B, C, D, E, F, G, H and I). Further, Mr. F, G, H and I are independent directors. Out of the following statements which statement is correct:
(a) CSR committee may constitute of A, B and C
(b) CSR committee may constitute of A, B and D
(c) CSR committee may constitute of A, F and G
(d) There is no need to constitute a CSR committee as the turnover is just 200 crores during the immediately preceding financial year (MTP March '19,2 Marks)

Answer 31 : (c)

Question 32

Excellent Art Private Limited, has a paid up capital of Rs.50 crore, Turnover of Rs.25 crore and borrowing of Rs.25 crore and outstanding deposits of Rs.30 crore. Decide if the Company needs to comply with internal audit requirements under the Act?
(a) No. The provisions of Internal audit are not applicable on private companies.
(b) Yes. Company is having Paid up capital of Rs.50 Crore and outstanding deposits more than Rs.25 crore.
(c) No. Because the borrowings are less than Rs.100 crore and Turnover is less than Rs.200 crore
(d) None of the above (MTP March '19, 2 Marks)

Answer 32 (c)

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Question 33

A company can re- open / recast its book of accounts on an application to Tribunal made by:

(a) Registrar **(b) Member**

(c) Board of Directors **(d) Income –tax authorities**

(MTP April'19, 1 Mark)

Answer 33 : (d)

Question 34

Feel Rich Co. Ltd. Having its registered office at New Delhi, is a subsidiary of a German company named Richman Company limited. The financial year of the parent/holding company ends on 31st December every year. The subsidiary company intends to follow a different financial year for consolidation of its accounts with its parent company, situated outside India. For doing so it is required to take prior permission of the competent authority. For the purpose from the following who will be this competent authority—

(a) Registrar of Companies at New Delhi **(b) Tribunal**

(c) Ministry of Corporate Affairs **(d) SEBI (MTP April'19, 1 Mark)**

Answer 34 : (b)

Question 35

One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:

(a) 30 days of the date of meeting in which it was adopted.

(b) 90 days of the date of meeting in which it was adopted.

(c) 90 days from the closure of the financial year.

(d) 180 days from the closure of the financial year. (MTP 2 Marks Oct 21, Oct'22, Nov'20 & Oct '23)

Answer 35 : (d)

Question 36

Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of Companies Act, 2013 this would mean that:-

(a) This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year

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

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

(d) Only the amount that has been spent on the employees having salary of Rs. 20,000 per

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month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year. (MTP 2 Marks Nov 21)

Answer 36 : (b)

Question 37

ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2021, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?

(a) 2016-2017
(b) 2014-2015
(c) 2011-2012
(d) 2012-2013 (MTP 2 Marks April 22 & Oct '23)

Answer 37 : (d)

Question 38

During the half year ended September 2020, the board of directors (BOD) of Gold Leaf Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2018. Further during the year ended March 2021, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2020. You are required to state the validity of the acts of the Board of directors.

(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
(b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
(d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2021. The application made for revision in the Board report is however valid in law. (MTP 2 Marks Oct 21 & Sep '23)

Answer 38 : (b)

Question 39

The financial statement in relation to a dormant company may not include:

(a) balance sheet
(b) cash flow statement
(c) applicable explanatory note

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(d) profit and loss account (MTP 1 Mark Sep'22)

Answer 39 : (b)

Question 40

Pratham Limited has decided to spend ₹ 40 lakhs on project of CSR. The average net profit of the company is ₹ 10 crores. But due to some reasons, company was able to spend only ₹ 30 lakhs. Now what will be the option for the company for the rest ₹ 10 lakhs.

(a) Penal provision will be applicable for unspent amount of ₹ 10 lakhs.

(b) No penal provision but explanation is required in Board report for not spending ₹ 10 lakhs

(c) No penal provision

(d) The company is required to transfer the amount to separate fund. (MTP 2 Marks March '23)

Answer 40 (c)

Question 41

The company X plans to cover its skilled as well as semi-skilled workers of its units under medical health insurance plan, for which the company X will bear the expenses. Will this expenditure be permissible under CSR activities as per the provisions of the Companies Act, 2013:

(a) only expenditure on skilled workers is allowed

(b) expenditure on both skilled and semi- skilled workers is allowed

(c) Resolution to be passed in board meeting before incurring this expenditure and in the board report it must be mentioned, so that the same will be permissible under CSR activities

(d) such expenditure is not permissible under eligible CSR activities (MTP 2 Marks March '23)

Answer 41 (d)

Question 42

The Corporate Social Responsibility Committee of the board shall consist of:

(a) Three or more directors out of which at two directors shall be Independent Director

(b) Three or more directors out of which at least one director shall be Independent Director.

(c) Three or more directors and all should be Independent Directors

(d) Three or more directors with condition of not a single director should be Independent Director (MTP 1 Mark March '23)

Answer 42 (b)

Question 43

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Victory Limited was incorporated in January 2015. How much expenditure Victory Limited shall ensure to spend in pursuance of its Corporate Social Responsibility Policy:

(a) The company shall ensure to spend in every financial year, at least 2% of the average gross profits of the company made during the 2 immediately preceding financial years.

(b) The company shall ensure to spend in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years.

(c) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 2 immediately preceding financial years.

(d) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 3 immediately preceding financial years. (MTP 1 Mark March '23)

Answer 43 (b)

Question 44

Which of the following is not mandatorily required to include cash flow as part of its financial statement.

(a) Shiv Limited

(b) Shiv Private Limited (not a start- up company)

(c) Shiv (OPC) Private Limited

(d) Shiv Limited, having paid up share capital of 3 crore and turnover of 30 crore (MTP 2 Marks April '23)

Answer 44 (c)

Question 45

Compute the minimum amount the company (Natraj Limited) is required to spend on account of Corporate Social responsibility year 2022-2023, if during the financial years 2019-2020, 2020-2021 and 2021-2022 net profits are ₹ 30 crore, ₹ 25 crore and ₹ 32 crore respectively.

(a) ₹ 87 lac

(b) ₹ 1.14 crore

(c) ₹ 1.64 crore

(d) ₹ 58 lac (MTP 2 Marks April '23)

Answer 45 (d)

Question 46

G Ltd. (a company having CSR Committee as per the provision of Section 13 of the Companies Act, 2013) decides to spend and utilize half of the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of G Limited and the remaining half of the amount of Corporate Social Responsibility on the activities for the benefit of family

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members of employees of G Limited As per the provision of Companies Act, 2013 this would mean that:-

(a) Total Amount spent on Corporate Social Responsibility Activities by G Limited for that financial year

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

(c) Half amount spent on Corporate Social Responsibility Activities by G Limited for that financial year

(d) Half amount spent on Corporate Social Responsibility Activities and remaining half amount spent on Other Activities by G Limited for that financial year (RTP May'20)

Answer 46: (b)

47 ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of account of the Company. You, as an expert, are called upon by SEBI to advise the earliest financial year to be quoted in application for reopening of books of account may be granted by Tribunal?

(a) 2018-2019

(b) 2016-2017

(c) 2013-2014

(d) 2014-2015

Ans: (d)

48 During the half year ended September 2022, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2020. Further during the year ended March 2023, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2022. You are required to state the validity of the acts of the Board of directors.

a. The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.

b. The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.

c. The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.

d. The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2023. The application made for revision in the Board report is however valid in law.

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Ans: (b)

49 As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities:

a. The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.
b. The surplus shall not form part of the business profit of a company
c. The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.
d. The surplus shall form part of the business profit of a company

Ans: (b)

50 Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of Companies Act, 2013 this would mean that:

a. This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
b. No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
c. Only half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year
d. Only the amount that has been spent on the employees having salary of ₹ 20,000 per month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

Ans: (b)

51 Modern Furniture Limited (MFL) is required to prepare the financial statement that comply with accounting standards and shall be in form specified in schedule III. But the financial statement prepared and presented are not in compliance with applicable accounting standards, therefore MFL required to disclose which of following:

i. Deviation
ii. Reason of deviation
iii. Financial effects arise out of such deviation.

a) Only i
b) Only i and ii
c) Only i and iii
d) All of i, ii, and iii

Ans: d)

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52 Compute the minimum amount that Modern Furniture Limited is required to spend on account of Corporate Social responsibility year 2022-2023. MFL was incorporated in August 2020. Net-profit made during the financial years 2020-2021 and 2021-2022 are ₹ 20 crore, and ₹ 38 crore respectively.

a) ₹ 76 lac
b) ₹ 1.16 crore
c) ₹ 58 lac
d) Since the company has not completed the period of three financial years since its incorporation, hence no CSR spending is required.

Ans: (c)

Theoretical Questions Answers

Question 53

The registered office of the Bharat Ltd. is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Please advise.

Answer 53

According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.
Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the abovementioned procedure.

Question 54

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary. The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions

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of the Companies Act, 2013?

Answer 54

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Question 55

A Housing Finance Ltd. is a housing finance company having a paid up share capital of ₹ 11 crores and a turnover of ₹ 145 crores during the financial year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.

Answer 55

Filing of financial statements in XBRL Mode

As per Rule 1 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

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

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

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

(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015. Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules. Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode.

Question 56

Herry Limited is a company registered in Thailand. SKP Limited (Registered in India),a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

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Answer 56

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year. Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause. SKP Limited is advised to follow the above procedure accordingly.

Question 57

(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 persons responsible for complying with the provisions regarding maintenance of Books ofAccounts of a Company.

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

Answer 57

(i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

(ii) Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

(iii) A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India at all times so as to be usable for subsequent reference. Provided that for the financial year commencing on or after the 1st day of April, 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every

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transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basic daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Question 58

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?

Answer 58

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 But Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2018.

Hence, 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.

Question 59

The Income Tax Authorities in the current financial year 2019-20 observed, during the

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assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer 59

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and notrecast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year. In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009 which is beyond8 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. 2019-2020, is invalid.

Illustration True false

Question 60

Statement – Vouchers need not to be preserved as part of requirement of preserving books for period of 8 years.

Answer 60

False

Reason – As per section 128(5) of the Companies Act 2013, the books of account, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

Question 61 Illustration

Can XYZ limited maintain its books of account on cash basis?

Answer 61

The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and according to double entry system of accounting. No exception has been given by the Act

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to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of account on cash basis.

Question 62 Illustration

The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer 62

Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of

a. Any notes annexed to or forming part of such financial statement;
b. The auditor's report; and
c. The Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable.

Question 63 Illustration

Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can state that controls are adequate and operating efficiently?

Answer 63

Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not.

Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here, adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

Question 64 Illustration

ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Answer 64

In case of a One Person Company, the financial statements shall be signed by only one director, for

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submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.

Question 65 Illustration

ABC Ltd is a company with a turnover of more than ₹ 1000 crores in each of the preceding three financial years and have incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?

Answer 65

As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Question 66 Illustration

Can an international organisation be engaged for implementation of CSR project?

Answer 66

Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programmes as perits CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

Question 67 Illustration

RELM Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listedon a recognized Stock Exchange in India. One of the subsidiaries of RELM Industries Limited is a foreigncompany incorporated outside India. In the annual general meeting of the company, RELM Industries Limited has placed its audited financial statement including consolidated financial statement on its website. RELM Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its country of incorporation. You are required to examine whether RELM Industries Limited has complied with the provisions of section 136?

Answer 67

No, RELM Industries Limited has not complied with the provisions of section 136 because RELM Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RELM Industries Limited in this case) may place such unaudited financial statement on its website and where such financial

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statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Question 68 Illustration

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2021, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

Answer 68

Vandana Ltd. Would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per its accounting policies for the purpose of consolidation.
Further, as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.
Further, the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Question 69 Illustration

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2022, was notheld. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer 69

In the present case, though AGM was not held, it ought to be held by 30 September 2022 under sections96 of the Companies Act, 2013.
Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e. by 30 October 2022 along with such fees or additional fees as may be prescribed.

Question 70 Illustration

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2022 but the same were not adopted by the shareholders?

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Answer 70

Since the AGM has been held in time on 27 September 2022, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

Question 71 Illustration

Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co. LLP, as its internal auditors for the year ended 31stMarch 2023. However, for the financial year 2023-24, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co. LLP as its internal auditors. Please advise.

Answer 71

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co. LLP.

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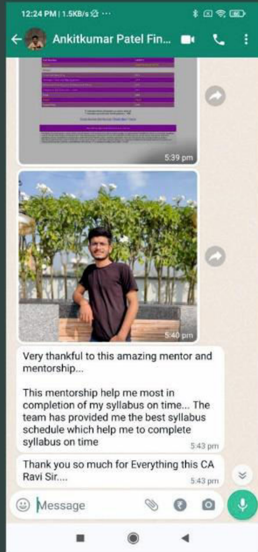

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Chapter 10
Audit And Auditors

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.48 to Q.71											
Past Exams	Q.27 Q.28	Q.26	Q.23	Q.14 Q.40					Q.34 Q.35	Q.36	Q.37	
MTP	Q.5	Q.6 Q.7 Q.15 Q.16	Q.2 Q.3 Q.4 Q.42 Q.44	Q.1 Q.12 Q.41	Q.3 Q.44	Q.8 Q.45	Q.9 Q.10 Q.20	Q.11 Q.12 Q.13 Q.14 Q.43 Q.44	Q.17 Q.18 Q.19 Q.47	Q.21 Q.22	Q.23 Q.47	Q.39
RTP	Q.25	Q.24	Q.3									Q.38

Question 1

A company includes the following shareholders also:

(I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013. (MTP Oct'19, 3 Marks)

Answer 1

According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor- General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

Question 2

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Explain how the auditor will be appointed in the following cases :
(i) A Government Company within the meaning of section 394 of the Companies Act,2013.
(ii) A Public Company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company. (MTP March'19,6 Marks, Old & New SM)

Answer 2

(i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:
The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.
In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to nongovernment companies in relation to the appointment of auditors shall apply.
The auditor shall be appointed as follows:

a. The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

b. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:
Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Question 3

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.
(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd."? (MTP May'20, March'19,5 Marks, Old & New SM , RTP May '19)

Answer 3

(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be

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disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor. Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
In the present case, Mr. Abhi. is holding security of Rs. 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

Question 4

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2018. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2018. But Naresh & Company continues to function as statutory auditors of the company. Advice as per the provisions of the Companies Act, 2013. (MTP April'19,5 Marks, MTP Aug'18, 3 Marks, RTP May '20, Nov '20, Old & New SM)(Same concept different figures RTP Nov'18)

Answer 4

Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.
In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.
Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2018 i.e. after the investment made by his wife in the equity shares of EF Limited.

Question 5

State the provisions of the Companies Act, 2013 regarding the signing of the Audit report by the Auditors of the company. (MTP March'18,4 Marks)

Answer 5

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

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(i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).

(ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Question 6

Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-
Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor.
The company in General Meeting removed Mr. Surh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place? (MTP Aug'18,3 Marks)

Answer 6

Removal of first auditor: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.
Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.
The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Question 7

Mr. Honest, an auditor of MM company ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner. (MTP Aug'18,4 Marks)

Answer 7

Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5) of the Companies Act, 2013]

(i) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has,

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whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

(ii) Requirement for change of auditor: If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Question 8

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Vikas, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2020 by an ordinary resolution. Mr. Mukesh, a shareholder of the Company, objects to the manner of appointment of Mr. Vikas on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Mukesh is tenable? Also examine the consequences of the above appointment under the said Act. (MTP 3 Marks Oct 20, Old & New SM)

Answer 8

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a nongovernment company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Mukesh is not tenable. The appointment is valid under the Companies Act, 2013.

Question 9

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor. (MTP 3 Marks March 21)

Answer 9

According to section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company and the auditor so appointed shall hold office until the conclusion of the first AGM.

If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and such auditor shall hold office till the conclusion of the first AGM.

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Question 10

Shiv Limited is incorporated on 3.10.2020. The company is having a paid- up share capital of Rs. 5 crores. Following are key shareholders of the company:

Name of the Party holding shares	Amount(in Rs.)
Central Government	1.50
Punjab Government	1.23
Others	2.27

The first auditor of the company has been appointed by the Board of Directors on 31.10.2020. The members of the company have objected to such an appointment by the Board of Directors. According to the members its only the members who can appoint the first auditor. Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct. (MTP 6 Marks April 21)

Answer 10

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

As per section 139(7), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company and in case the Comptroller and Auditor - General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting. In the given question, Shiv Limited is a government company as 54.6% [(1.5+1.23)/ 5= 54.6%] of the share capital is held by Central government and State Government (Punjab Government). Thus, the first auditor of Shiv Limited shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration. Thus, the appointment of first auditor by Board of Directors on 31.10.2020 is not valid. The Board of Directors can appoint the first auditor in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period of period 60 days. The Board of Directors of the company shall appoint such auditor within the next 30 days.

In the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform

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the members of the company who shall appoint such auditor within 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting . Thus, the contention of members that its only the members who can appoint the first auditor of the Government company, is not correct.

Question 11

Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of ₹1,20,000 (face value ₹ 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd.
(MTP 3 Marks Oct 21, PYP Nov '18 ,2 Marks)

Answer 11

As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.
However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 [as prescribed under the

Company (Audit and Auditors) Rules, 2014].
In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

Question 12

The Auditor of the company (other than government company) has resigned on 31st December, 2020, while the Financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case. (MTP 3 Marks Oct 21, Oct'19)

Answer 12

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under section 139 (8)(i) of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 13

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

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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? (MTP 5 Marks Oct 21, RTP Nov '22)

Answer 13

According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re - appoint— (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years. Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re - appointment as auditor in the same company for five years from the completion of such term.

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

Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

Question 14

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for rupees 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita spouse of Mr. Kumar, a Chartered Accountant, is the store- keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company. (MTP 5 Marks Nov 21, PYP Nov '19 , 6 Marks, Old & New SM)

Answer 14

(i) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lacs.

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(ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Question 15

Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

(i) "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of Rs. 900/-. Whether Mr. A is qualified for appointment as an Auditor of "XYZ Ltd."?

(ii) "Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of Rs. 90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."? (MTP Oct '18 , 6 Marks)

Answer 15

According to section 141 (3)(d) (i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

(i) In the present case, Mr. A. is holding security of Rs. 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

(ii) As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs. 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Question 16

What are the rights of the auditor of a company in respect of attending the General Meeting. (MTP Oct '18 ,4 Marks)

Answer 16

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

(i) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.

(ii) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting.

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(iii) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Question 17

Advise as per the provisions of the Companies Act, 2013, with regard to appointment of auditor:

(i) Mr. Shepra is a practicing Chartered Accountant. He holds shares in X Limited. The nominal value of these shares is ₹ 50,000. Whether X Limited can appoint Mr. Shepra as auditor?

(ii) Mr. Showik, a practicing Chartered Accountant has business relationship with Primus Hotels Limited. The hotel used to provide services to Mr. Showik frequently, on the same price as charged from other customers. Whether Primus Hotels Limited can appoint Mr. Showik as its auditor? (MTP 6 Marks March '22)

Answer 17

I. As per section 141 (3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In this case Mr. Sherpa, a practicing Chartered Accountant holding shares in X Limited cannot be appointed as auditor of X Limited.

II. Section 141(3) of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company, shall not be eligible for appointment as an auditor of a company.

The term business relationship shall be construed as any transaction entered into for a commercial purpose except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;
- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the given question, since the transaction is at arm's length price so Mr. Showik can be appointed as an auditor of Primus Hotels Limited.

Question 18

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd :

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(i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of ₹ 2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.

(ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of ₹ 99,000

(iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud. (MTP 6 Marks April 22)

Answer 18

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Hence, Maninder is disqualified to be appointed as an auditor in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)

(ii) As per section 141(3)(d)(ii) a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.
Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only ₹ 99,000.

(iii) As per section 141(3)(h), a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction , shall not be qualified to be appointed as an auditor of a company. Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.

Question 19

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

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

(ii) Re-appointment of Mr. Guru at the first AGM in the above situation. (MTP 5 Marks March '22, MTP 6 Marks March '23, RTP Nov '21, PYP 6 Marks Nov '20)

Answer 19

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

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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 reappoint an individual as auditor for more than one term of five consecutive years. As per the given provisions following are the answers:

(i) Appointment of Mr. Guru (as first auditor) by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

Question 20

Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:

(i) First auditor

(ii) Subsequent auditor (MTP 6 Marks, Apr'21) Page 245

Answer 20

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

In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited is not a government company. Hence, the provisions applicable to non- government companies in relation to the appointment of auditors shall apply. The auditor shall be appointed as follows:

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

(ii) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor: Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

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Question 21

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

(1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.

(2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh. (MTP 5 Marks Sep'22)

Answer 21

1. As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.
   Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.
2. As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Question 22

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013. (MTP 5 Marks Oct'22, PYP July '21 , 5 Marks)

Answer 22

Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies

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(Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:
The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Question 23
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? (MTP 6 Marks April '23, RTP May 21, Old & New SM, PYP May '19, 3 Marks)

Answer 23
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 system to strengthen the internal control mechanism of the company. As per the above provision , said service is strictly prohibited.
In the light of the above provisions, it is advised that the Statutory Auditor not to take up the above stated assignment.
In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

Question 24
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) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?

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(2) **What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?**
(3) **Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another /s Dark Limited during such cooling-off period? Page 247**
(4) **any be appointed as internal auditors of M/s Big Limited and it's another lis k Limited, during such cooling-off period? (RTP Nov'18)**

Answer 24

According to section 39 (2) of the Companies Act, 2013,

I. 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.

II. 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.

III. Further, 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.

IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

(1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
(2) The cooling- off period shall be of 5 years.
(3) 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.
(4) 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 auditors 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.

Question 25

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Explain how the auditor will be appointed in the following cases:
A Government Company within the meaning of section 394 of the Companies Act, 2013. The Auditor of the company (other than government company) has resigned on 31st December, 2016,w hile the Financial year of the company ends on 31st March, 2017. (RTP May'18)

Answer 25

The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:
The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.
In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting. The situation as stated in the
question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the audit or before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 26

CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company? (PYP Nov'18,4 Marks)

Answer 26

As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.
As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3

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more years i.e., till 31.03.2021.

Section 139(2) states 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. Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

Question 27

Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor. [PYP May'18,3 Marks]

Answer 27

Tenure of Auditor: Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

- an individual as auditor for more than one term of five consecutive years; and
- an audit firm as auditor for more than two terms of five consecutive years. Cooling off Period:

(1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(2) 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.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re- appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

Question 28

PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?[PYP May'18,3 Marks]

Answer 28

As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be

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obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

(A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(B) the proposed appointment is as per the term provided under the Act;

(C) the proposed appointment is within the limits laid down by or under the authority of the Act;

(D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Question 29

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 :

(i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of Rs 70,000/- (market value Rs 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company: (SM May 22)

Answer 29

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of Rs 70,000 (market value Rs 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

Question 30

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company.

Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013.(PYP 3 Marks Jan 21)

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Answer 30

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.

Question 31

Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor. (PYP 2 Marks Dec '21)

Answer 31

Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of section 141, he shall be deemed to have vacated his office as an auditor.
In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Surya Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Surya Distributors Ltd.

Question 32

Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard? (PYP 2 Marks Dec '21)

Answer 32

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".
In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing director of ABC Ltd. by himself is in violation of section 139(6) of the Companies Act, 2013 Board of Directors to appoint the first auditor of the company.
In Director of ABC Ltd. cannot appoint the first auditor of the company

Question 33

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Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.(PYP July '21 , 3 Marks)

(ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company? (PYP 5 Marks Dec '21)

Answer 33

(i) First auditor

(1) According to section 139(7) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy

According to section 139(8) of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Question 34

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause

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that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors1 as per the provisions of the Companies Act, 2013. (PYP 5 Marks May'22)

Answer 34

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the Question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine

Question 35

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013. (PYP 5 Marks May'22)

Answer 35

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine.

With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable. 1 To be read as 'auditors'

Question 36

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

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(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh.
(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹ 1,50,000.
(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.) (PYP 6 Marks Nov '22)

Answer 36

(i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.
Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹ 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lakh. such person cannot be appointed as auditor of the company.
In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹ 1 Lakh i.e. of an amount worth ₹ 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.

(iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh, shall not be appointed as an auditor. Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹ 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹ 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

Question 37

L Ltd. having 2,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ₹ 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23
onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.
When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

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In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co? (PYP 4 Marks, May '23)

Answer 37

i) Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of ₹1 crore, and it received a notice from its 50 members holding paid-up capital of ₹ 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[Note: In the given question 50 members are holding paid-up share capital of ₹ 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is ₹ 1 crore.

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —

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(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.
Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.
However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

Question 38
Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022- 2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013. (RTP Nov '23)

Answer 38
Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.

Question 39
VM & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Limited held on 30th September, 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 31st March, 2023. Subsequently, having given consideration to the Board recommendation, VM & Associates were removed at the general meeting held on 25th May, 2023 by passing a special resolution but without obtaining approval of the Central Government.
Examine the validity of removal of VM & Associates by X Limited under the provisions of the Companies Act, 2013. (MTP 4 Marks Oct '23)

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Answer 39

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 Limited to remove VM & Associates, auditors of the company at the general meeting held on 25th May 2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Multiple Choice Questions (MCQs)

Question 40

BSP Ltd appointed XPP & Co LLP as their statutory auditors for the year ended 31 March 2018 on 18 June 2018, as per Section 139(8) of the Companies Act 2013, to fill the casual vacancy caused by resignation of previous statutory auditors to hold office till the conclusion of next Annual General Meeting (AGM) of BSP Ltd. BSP Ltd is listed with Bombay Stock Exchange and National Stock Exchange. BSP Ltd is covered under auditors rotation requirements and wants to re-appoint XPP & Co LLP at their next AGM. Please advise. (MTP Oct'19, 2 Marks)

(a) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.

(b) XPP & Co LLP can be re-appointed for a term of four consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.

(c) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM.

(d) XPP & Co LLP cannot be re-appointed at the AGM.

Answer 40: (a)

Question 41

NTW Ltd is listed on National Stock Exchange and has a turnover of INR 4500 crores. NTW Ltd has 12 subsidiaries, 3 associate companies and 5 joint venture companies (collectively referred to as NTW Group). AKW & Co LLP is the statutory auditor of NTW Ltd. NTW Ltd wants to appoint AKW as the statutory auditors for entire NTW Group. In respect of this, please advise the management of NTW Group. (MTP Oct'19, 2 Marks)

(a) AKW & Co LLP can be appointed as statutory auditors for only 10 companies of NTW Group.

(b) AKW & Co LLP can be appointed as statutory auditors for only 20 companies of NTW Group.

(c) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW

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Group.

(d) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group provided they meet the limits requirements as per the Companies Act 2013.

Answer 41 : (d)

Question 42

Advise whether the auditor appointed by a private limited company with paid up capital of Rs.30.00 Crore, in the following cases are valid for the financial year 2017-18:-

(a) Amanpreet (an Individual auditor) who has been the auditor since the Financial Year 2011-12

(b) Firm MGA & associates was appointed as auditor in the Financial Year 2011-12.

(c) Firm MGA & associates, who completed 10 years continuously as auditor in company. Now company wants to appoint VGA & associates wherein Mr. V is a partner who is also partner is MGA & Associates.

(d) The provisions of rotation of auditor are not applicable on private companies

(MTP March'19, 2 Marks)

Answer 42 : (b)

Question 43

Which of the following is a prohibited services to be rendered by the auditor of the Company

(a) design and implementation of any financial information system

(b) making report to the members of the company on the accounts examined by him

(c) compliance with the auditing standards

(d) Reporting of fraud against the company by officers or employees to the Central Government. (MTP Oct'21, April'19, & March '23, 1 Mark)

Answer 43 : (a)

Question 44

For appointing an auditor other than the retiring auditor, (a) Special notice is required.

(b) Ordinary notice is required.

(c) Neither ordinary nor special notice is required

(d) Approval of Central Government is required. (MTP Oct'21, May'20, April'19, 1 Mark)

Answer 44: (a)

Question 45

Which of the non-financial matter, Statutory auditor is required to report in his report:

(a) Whether employees appointed during the period covered by audit meet the requisite educational/professional qualification at the time of appointment.

(b) Whether every page of minute book of General meetings bears full signature of

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Chairman as per provisions of Companies Act, 2013.
(c) Whether the incorporation documents are managed properly.
(d) Whether any director is disqualified from being appointed as a director under section 164(2). (MTP 1 Mark Oct 20)

Answer 45 : (d)

Question 46

The word 'firm' for the purpose of Section 139 shall include-
(a) An individual auditor
(b) LLP
(c) An individual auditor and LLP both
(d) A company (MTP 1 Mark Nov 21)

Answer 46 : (b)

Question 47

Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:
(a) One year only
(b) One term of 3 consecutive years only
(c) One term of 4 consecutive years only
(d) Two terms of 5 consecutive years (MTP 1 Mark March '22 & March '23)

Answer 47 : (d)

48. Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:
(a) One year only
(b) One term of 3 consecutive years only
(c) One term of 4 consecutive years only
(d) Two terms of 5 consecutive years

Ans: (d)

49. Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its:
(e) Second annual general meeting
(f) Fourth annual general meeting
(g) Sixth annual general meeting
(h) Eight annual general meeting

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Ans: (c)

50. For appointing an auditor other than the retiring auditor,
(i) Special notice is required.
(j) Ordinary notice is required.
(k) Neither ordinary nor special notice is required
(l) Approval of Central Government is required.

Ans: (a)

51. Unicorn Steel Private Limited is incorporated as on 02.06.2022, board of directors of the company held board meeting as on 15.06.2022 to appoint Jain Ajmera & Associates as a first auditor of the companyfor a term of 5 years. As per section 139(6) of the Companies Act, 2013, the board shall appoint first director within 30 days from the date of registration of the company. Evaluate the legal validity;
a. Valid
b. Invalid
c. Valid after approval of shareholder in General Meeting
d. Valid only after approval of Central Government

Ans: (b)

52. Special Resolution to remove auditor at general meeting shall be passed within , form the approval from central government.
a. 30 days
b. 1 month
c. 60 days
d. 3 Months

Ans: (c)

Question 53
State the procedure for the following, explaining the relevant provisions of theCompanies Act, 2013:
(i) Appointment of First Auditor, when the Board of directors did not appoint theFirst Auditor within one month from the date of registration of the company.
(ii) Removal of Statutory Auditor (appointed in last Annual General Meeting)before the expiry of his term.

Answer 53
(i) Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.
Section 139 (6) continues to provide further that if the Board of Directors failsto appoint such

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auditor,it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting. From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

a. Inform the members of the Company;
b. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
c. Members shall at that extra ordinary meeting appoint the first auditors of the company;
d. The first auditors so appointed shall hold office up to the conclusion of the first AGM of the company.

(ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed maner. From this sub sect ion it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed. Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014. The application shall be made to the Central Government within thirty days of the resolution passed by the Board. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Question 54

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2018 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

Answer 54

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non- government company. Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been

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made in the Act whereby a special resolution is required for the appointment of the auditors. Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Question 55

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice

Answer 55

Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs.1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15October 2019 i.e. after the investment made by his wife in the equity shares of EF Limited.

Question 56

Explain how the auditor will be appointed in the following cases:

(i) A Government company within the meaning of section 394 of the Companies Ac000t, 2013.

(ii) A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Answer 56

(i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

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In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) In the given case as the total shareholding of the XYZ Bank is just 18% ofthe subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

(1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

(2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Question 57

Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September2018, in which he accepted the assignment. Subsequently, in January2019 he joined B,as a partner in the consultancy firm of Mr. B. Mr. B is also working as aFinance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

Answer 57

(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with consultancy firm where B is also a partner and B is also the Finance executive of X Ltd. Hence, Ayush has attracted clause (3)(c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Abhi is holding security of Rs.1000 in the Abhiman Ltd, therefore, he is

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not eligible for appointment as an auditor of Abhiman Ltd.

Question 58

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who isa relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of Rs. 70,000/- (market value Rs. 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company. Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNPLtd. want to appoint Mr. Ramesh as an auditor of the company.

(ii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper ofPRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company

Answer 58

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000. In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of Rs. 70,000 (market value Rs. 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

(ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 lacs.

(iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment ofthe company as a director or a key managerial personnel. In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will notbe disqualified to be appointed as an auditor in the said company.

Question 59

The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer 59

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According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system. In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.
In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013. In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Question 60

Modern Furniture Limited (MFL), despite not mandated by Section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee.
Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

Answer 60

Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under section 177, but constituted by company, then also such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.
Hence, act of audit committee and board at MFL is legally valid.

Question 61

Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

Answer 61

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Hence in the instant case, the appointment of Mr. Ganpati by the Managing Director himself is invalid due to violation of Section 139(6) of the Companies Act, 2013.

Question 62

FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crore. During the year ended 31st March 2023, a fraud was

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uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer 62

The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

Question 63

Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2022 in which he accepted the assignment. Subsequently, in January 2023, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Answer 63

Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

Question 64

"Mr. Ashish", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of "XYZ Ltd."?

Answer 64

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr. Ashish is holding security of ₹ 900 in XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

Question 65

"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ₹ 90,000/-. Whether "Mr. P" is qualified for

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being appointed as an auditor of "ABC Ltd."?

Answer 65

As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face value in ABC Ltd., which is as per requirement of proviso to section 141(3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Question 66

"ABC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of "Mr. C", is holding securities of "MWF Ltd." having face value of ₹ 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?

Answer 66

As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

Question 67

MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded. During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded.

Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer 67

In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit these additional information.

Hence the auditor should conclude the work without delaying because of this additional information.

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Question 68

NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspicious transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor deal with such matter?

Answer 68

As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transaction shave been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

Question 69

Whether entire audit report need to read before the company in general meeting?

Answer 69

No, as per section 145 of the Companies Act 2013, qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Question 70

Regarding the general meeting for which notice is served on auditor;

i. Whether auditor is mandatorily required to be attend the said general meeting?

ii. If yes, whether he is required to attend the meeting personally?

Answer 70

Answer to first part is yes, while no in case of second, because as per section 146 of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.

Question 71

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Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139

Answer 71

No, because as per proviso to section 148(3), no person (or firm including LLP) appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records or vice- versa.

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Chapter 11
Companies Incorporated Outside India

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.32 TO Q.45											
Past Exams	Q.17	Q.13	NO	Q.19	NO	NO	Q.20.Q.21 Q.22	Q.24	Q.23	Q.25	NO	NO
MTP	Q.7	Q.1	Q.2, Q.6 Q.26	Q.2 Q.27	Q.2, Q.3 Q.28	Q.4 Q.29	Q.2, Q.5 Q.12	Q.8 Q.30	Q.31	Q.9 Q.10	Q.11	NO
RTP	Q.2 Q.12	Q.13	Q.5	NO	NO	NO	NO	Q.14	Q.15	NO	NO	Q.16

Question 1
X Inc, a foreign 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, registrar having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the registrar on valid service of notice (MTP 2 Marks Aug' 18)

Answer 1
According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode. Hence, the registrar may serve the show cause notice by following the above provisions.

Question 2
(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? (MTP 2 Marks Mar 19, Oct'19, May'20, MTP 4 Marks Apr'21, RTP May'18)
(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. (MTP 2 Marks Mar 19, Oct'19, Old & New SM)

Answer 2
(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:

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(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, 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 provides that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 3

Determine the legal positions in the given situations:

Abroad Ltd. a foreign company without establishing a place of business in India, issued prospectus for subscription of securities in India. Being a consultant of the company, advise on the validity of such an issue of prospectus by Abroad Ltd. (MTP 3 Marks, May 20, Old & New SM)

Answer 3

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

Accordingly, in the given situation, issue of prospectus by the Abroad Ltd., a foreign company will be valid if done in compliance with the above stated section 379 of the Act.

Question 4

Radix Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. State the legal position as to the nature of the Radix Ltd. as a foreign company in the light of the Companies Act, 2013. (MTP 8 Marks Oct20)

Answer 4

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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, 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.

In view of the above provisions, Radix Ltd., will be treated as foreign company for being involved in business activity through telemedicine

Question 5

Delegate Limited, incorporated in Singapore desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai. (MTP 8 Marks , March-21, RTP May'19, Old & New SM)

Answer 5

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

(1) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;
(2) the full address of the registered or principal office of the company;
(3) a list of the directors and secretary of the company containing such particulars as prescribed under the Companies (Registration of Foreign Companies) Rules,2014,

- personal name and surname in full;
- any former name or names and surname or surnames in full;
- father's name or mother's name and spouse's name; date of birth;
- residential address;

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- nationality;
- if the present nationality is not the nationality of origin, his nationality of origin;
- passport Number, date of issue and country of issue; (if a person holds more than one passport passports to be given)
- in ome-tax permanent account number (PAN), if applicable;
- in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship); other directorship or directorships held by him;
- Membership Number (for Secretary only); and e-mail ID.

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

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

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

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

(8) any other information as may be prescribed.

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

Question 6

Z Limited, a Foreign Company, incorporated in Japan has a branch office in Hyderabad in India. Mr. Bhartiya, the Indian Citizen holds preference shares of Z Limited which comprises 10% of the paid-up share capital of the company. Deshi Limited, a company incorporated in India holds equity shares of Z Limited which comprises 45% of the paid-up share capital of the company. During the financial year 2019-20, there has been alteration in the particulars of the documents mentioned under section 380 of the Act and the company has failed to submit the alterations to the Registrar within 30 days. Analyse in the light of the applicable laws the consequences of failure on the validity of any contracts entered into by the foreign company? (MTP 8 Marks April '19)

Answer 6

As per Section 379 of the Companies Act, 2013 where not less than fifty per cent 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

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regard to the business carried on by it in India as if it were a company incorporated in India.
As per amendment Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub- section shall be inserted, namely:—
"(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:
Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as maybe after it is made, be laid before both Houses of Parliament."
As per section 393 of the Act, any failure by a company to comply with the provisions of Chapter XXII of the Act 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, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.
Chapter XXII of the Act comprises of Section 379 to 393.
In the above question, the provisions of the Companies Act, 2013 are applicable on Z Limited because an aggregate of 55% of the paid-up share capital of the company are held by an Indian citizen and Indian company. However, there has been non-compliance of section 380 of the Act by Z Limited.
Therefore, Provisions of the Companies Act, 2013 apply on the company. However, there has been violation of section 380 of the Act, so as per section 393 of the Act, the validity of any contract entered into by the foreign company shall not be affected, the company may be sued in respect of such contract but shall not be entitled to bring any suit in respect of such contract until it has complied with the relevant provisions related to the companies incorporated outside India under the Companies Act, 2013.

Question 7
X, a foreign company, with a place of business in India, ceases to carry on business in India. State the legal position of such foreign company under the Companies Act, 2013. (MTP 2 Marks March '18)

Answer 7
According to section 376 of the Companies Act, 2013, where any body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under part II of chapter XXI of the Companies Act, 2013, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it is incorporated.

Question 8
Identify which among the following companies can be categorized as foreign companies

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Case	Incorporated	Registered	Additional Condition
1	Malaysia	Malaysia	Developed patient's database for a hospital in India. Server in Malayasia
2	Dubai	Dubai	No Place of business in Indiabut employs agents in India
3	California	California	Board meetings held in India
4	Australia	Australia	59% of the shareholding held by an India company
5	Washington	Washington	Offers & invites deposits from citizens of India but hasno place of business In India
6	Germany	Germany	49% of the shareholding held by an Indian Company

(MTP 8 Marks Nov 21)

Answer 8

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

For the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

Also as per section 379 of the Act, where not less than fifty per cent. 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.

Based on the above provisions, analysing each case as below

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Case Incorporated Registered Additional Condition Reasons

1 Malaysia Malaysia Developed patient's Though incorporated outside India, database for a hospital in it is involved in transacting business India, Server in Malaysia in India and having place of Business through electronic mode. Hence it is a foreign company.

2 Dubai Dubai No Place of business in Since the company, though India but employs agents employed agent in India, but have in India no place of business in India. Hence not a foreign company.

3 California Board meetings held in Mere holding of meetings in India India cannot be termed as conducting business activity in India. Hence not a foreign company.

4 Australia Australia 59% of the shareholding As per the provisions, if not less than held by an Indian 50% of shareholding of a foreign company company is held by Indian citizens. It is treated as an Indian Company. Hence this is not a foreign company.

5 Washington Washington Offers & invite deposits This is one of the ways of transacting from citizens of India but business through electronic modes. has no place of business However, this company doesn't have India a place of business in India. Hence it is cannot be called as a Foreign Company

6 Germany Germany 49% of the shareholding As per the provisions, if not less than held by an Indian 50% of shareholding of a foreign Company company is held by Indian citizens, it is treated as an Indian Company. Here only 49% is held by Indian company. Hence this is a foreign company.

Question 9

A company incorporated in France, with limited liability, established an office in Baroda, and started conducting business activity from its place of business. In compliance of Section 382 of the Companies Act, 2013, it conspicuously exhibited a name board outside its office, with the name of the company in English in big block letters. In three days, the company received a notice from the Registrar stating that it had not properly complied with the requirements of Section 382 of the Companies Act, 2013. Mention the areas of lapses of the foreign company, which would be mentioned in the notice. (MTP 4 Marks Sep '22)

Answer 9

According to Section 382 of the Companies Act, 2013,

- every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- if the liability of the members of the company is limited, cause notice of that fact—

(I) to be stated in every such prospectus issued and in all business letters, bill -heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(II) to be conspicuously exhibited on the outside of every office or place where it carries on

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business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

(i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated, name of the country. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated. i.e. Baroda.

(ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda The above lapses would have given rise to the notice from the Registrar.

Question 10

Elegant Educations Ltd. is a UK based company, engaged in the business of providing on-line education. It has introduced some certificate courses having duration of 4 to 6 months and any person can enrol in the courses. The education is provided through on-line classes, webinars and study materials are supplied through e-mails to the registered candidates. The company is not having any place of business in India. It is mentioned that all the candidates who have enrolled in the course are the Indian Citizens residing in India.

(i) Based on the above facts of procuring 100% business from India, whether the company will be treated as foreign company or an Indian company. (MTP 3 Marks Oct 22)

(ii) What will be your answer if in the above question, more that 55% of that foreign company's paid-up share capital is held by Indian Companies or Indian Citizens. (MTP 3 Marks Oct 22)

Answer 10

In terms of Section 2(42) "Foreign Company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014 provides that for the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Thus, from the above provisions the company is treated as foreign company irrespective of the fact that its 100% business comes from India.

(ii) Section 379(2) provides 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-

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- one or more citizens of India; or
- one or more companies; or
- bodies corporate incorporated in India;
- 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 Chapter XXII 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. Thus, in the given case, if more that 50% of the paid-up share capital is held by Indian Companies / Citizen it shall be treated as a company incorporate in India and such company shall abide by the provisions of Section 380 to 386 (both inclusive) and Section 392 and 393 shall be applicable.

Question 11

I. Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013. (3 Marks April '23)

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

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

(2) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai. (5 Marks April '23, Old & New SM)

Answer 11

(i) Yes, as per 2(42) of the Companies Act, 2013, any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner shall be considered as a foreign company.

Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

(ii) (1) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of

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business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

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

I. a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company.
II. the full address of the registered or principal office of the company;
III. a list of the directors and secretary of the company containing their respective details as per the rules.
IV. the name/s and address/s of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
V. the full address of the office of the company in India which is deemed to be its principal place of business in India;
VI. particulars of opening and closing of a place of business in India on earlier occasion or occasions;
VII. declaration that none of the directors of the company / the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and VIII. any other information as may be prescribed.

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

Question 12

(i) LMP Paper 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. Explain whether it will be treated as a Foreign Company under the Companies Act, 2013? (RTP May 18, MTP 4 Marks Apr'21)

(ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalties prescribed under the said Act, which can be levied. (RTP May '18)

Answer 12

(i) As per Section 2(42) read with the Companies (Registration of Foreign Companies) Rules, 2014 of the Companies Act, 2013, 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 is a foreign company.

Further the above said rules states the meaning of "electronic mode". It means carrying out electronically based,

whether main server is installed in India or not, including, but not limited to –

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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, 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, LMP Paper Ltd., will be treated as foreign company.

(ii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non- filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000, or with both.

Question 13

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. (RTP Nov 18, PYP 8 Marks Nov'18)

Answer 13

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. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not

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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, telemedicine, 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.

Therefore, looking e above description, a company which has no place of business established in India, ye doing online business through telemarketing in India will be treated as a foreign company.

Question 14

Tokushia Motors L ncorporated in Japan. Its share capital is held by the following personsCitizens of India – 10% Indian Companies– 40%

The company has opened its representative office in Mumbai on 15 th January, 2021, in order to receive orders from the Indian Market and make available the delivery of Japanese luxury cars to the Indian purchasers.

The company was not aware of the Indian Company Law, hence could not file the required documents to the Registrar. The company could file all the required documents only on 28th February, 2021. Based on the above facts, answer the following questions:

(i) Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Tokushia Motors Ltd?

(ii) What documents are required to be filed by Tokushia Motors Ltd to the Registrar of Companies?

(iii) By what time all the requisite documents shall be filed? (RTP Nov 21)

Answer 14

(i) Section 379(2) of the Companies Act, 2013, provides that where not less than fifty per cent 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

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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 given case, although the company was incorporated in Japan, however its share capital of not less than 50% is held by the Indian citizens and Indian companies, hence in terms of section 379(2) all the provisions pertaining to Chapter XXII of the Companies Act, 2013, shall be applicable on it.

(ii) In terms of section 380(1) every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

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

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

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

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

(f) particulars of opening and closing of a place of business in India on earlier occasion or in that none of the directors of the company or the authorised representative r been convicted or debarred from formation of companies and india or abroad; and information as may be prescribed.

Further its sub-section (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

(iii) In the given, case the company had established its representative office in India on 15.01.2021, it was required to file the documents latest by 14.02.2021 with the Registrar.

Question 15

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 the ordinary course of business	Material Contracts
F.Y. 2017-18	4	2

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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? (RTP May 22)

Answer 15

(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

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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.

Question 16

Zell Power LLC (ZPL), is foreign company as per definition provided in the Companies Act 2013, carrying business in India also. It is strictly observing the provisions stated for foreign companies in Companies Act 2013, while Registrar (ROC, Delhi) is of opinion that ZPL apart from observing the provision prescribed for foreign companies (section 380 to 386 along section 392 and 393) ZPL also need to observe other provisions of the Companies Act, 2013 with regard to the business carried on by it in India as if it were a company incorporated in India.

ZPL is not agreed to opinion of Registrar and continue to observe only those provisions which are applicable to foreign companies. ZPL also furnish the following details to ROC. ZPL capital includes; Ordinary Share (6 Million @ Face Value £ 5 with £ 2 Paid-up) – £12 Million Preference Stock (1.2 Million @ £10 fully Paid-Up) - £ 12 Million

Debt Fund - £ 21.25 Million

Out of which;

Mr. Trishi who is an Indian citizen and Residing in India being part of promoter group own 2,932,780 ordinary shares of ZPL

Mr. Nirav who is an Indian citizen but residing in UAE own 109,205 preference stock of ZPL Modern Engineering Limited that an Indian Company own 67,220 ordinary shares and 142,320 preference stocks of ZPL Raj Investment Limited, which is an Indian Company holds 393,475 preference stocks of ZPL

You are required to evaluate the facts, and determine whose opinion hold legal validity in the light of the relevant provisions of the Companies Act, 2013. (RTP May 23)

Answer 16

Section 379 of the Companies Act 2013 deals with application of Act to foreign companies.

Sub-section 2 to section 379 provides where not less than fifty percent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is held by

(i) one or more citizens of India or

(ii) one or more companies or bodies corporate incorporated in India, or

(iii) 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 usiness carried on by it in India as if it were a company incorporated in India.

Total of ordinary shares held by Indian citizen or corporation in aggregate are 3 million (i.e. 2932780

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and 67220) whose paid-up value is ₤6 million
Total of preference stock held by Indian citizen or corporation in aggregate are 0.645 million (i.e. 109,205, 142,320, and 393,475) whose paid-up value is ₤6.45 million
Since out of paid-up capital of ₤24 (i.e. ₤12 million ordinary share capital + ₤12 million preference share capital) of ZPL, ₤12.45 million held by citizens of India along with companies incorporated in India, in aggregate hence ZPL 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. Opinion of Registrar is legally valid and shall prevail.

Question 17

Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarian Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/ documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai? (PYP 2 Marks May '18)

Answer 17

According to Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014,

(i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(ii) Where such translation is made within India, it shall be authenticated by-

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India and they shall be authenticated by the persons mentioned under the above Rules.

Question 18

Ronnie Coleman Ltd., a foreign Company failed to deliver some documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd. for its failure to deliver the documents. (4 Marks Nov '18, Old & New SM)

Answer 18

The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non filing or for contravention of any provision for this chapter including for non filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which

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provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000, or with both.

Question 19

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.(PYP 8 Marks Nov '19, Old & New SM)

Answer 19

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
(c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
(e) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(i) In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as

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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.

Question 20

Analyze under the provisions of the Companies Act, 2013, whether the following Companies can be considered as a Foreign Company:

(i) A Company incorporated outside India and registered in Moscow, Russia has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India.

(ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.

(iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company.

(iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the Board Meetings held only in India. (PYP 4 Marks Jan '21)

Answer 20

(i) As per the facts, a company is registered in Moscow, Russia and has installed its main server in Moscow for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that this company has a place of business in India through electronic mode and is conducting business activity in India. Hence, the above company is a foreign company by taking into account the provisions of Section 2(42) of the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014.

(ii) In this case, a company is incorporated outside India and employs agents in India but does not have a place of business in India. As per section 2(42) of the Companies Act, 2013, 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. Since, the company though employed agent in India but have no place of business in India, so it cannot be termed as foreign company.

(iii) In the given situation, a company is registered in Australia. It has authorised Mr. X in India to

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source customers and enter into contract on behalf of the company. Thus, it can be said that this company has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, this company is a foreign company as per the Companies Act, 2013.

(iv) In the given situation, a company is registered in Mauritius. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business models, financial strategies and important decisions in India cannot be termed as conducting business activity in India. Hence, the above company is not a foreign company as per the Companies Act, 2013.

Question 21

Phil Heath Systems Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the Indian 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-forrn and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies?(PYP 4 Marks Jan '21)

Answer 21

Phil Health Systems Incorporated (PHSI), a foreign company, is registered outside India and has a place of business in India. As it has prepared financial statements pertaining to the Indian business operations, it reflects conducts of business activity in India. Therefore, provisions related to companies incorporated outside India shall be applicable to it. 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 30 th 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

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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 instant 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.

Question 22

(i) Tokyo Ferro Alloys Limited, a company registered in Japan, started its operations in India by establishing a Marketing Division in Mumbai on 1st April, 2021. Recently, the Company decided to issue certain securities in India and therefore, is planning to circulate in India, a prospectus offering for subscription in securities of the Company. Assuming that all the other formalities in this respect have been complied with, advise the person in-charge of Indian operations regarding the other documents required to be annexed to the prospectus in order to registered the same, referring to the relevant provisions of the Companies Act, 2013 and the rules made thereunder,

(ii) Vibav Pte, a company incorporated in Singapore is having a liaison office in Delhi. The Liaison office seeks your advice regarding the documents to be filed with the Registrar along with the financial statement under the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014. (PYP 4 Marks Dec '21)

Answer 22

(i) According to this Section 389 of the Companies Act, 2013 read with Rule 11 of 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.

Accordingly, the person in charge of the Indian operations shall be advised in accordance with

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the above provisions.

(ii) According to Rule 4 of the Foreign Companies (Registration of Foreign Companies) Rules, 2014, every foreign company, shall, along with the financial statement required to be filed with the Registrar, attach thereto the ng documents; namely:-

Statement of related party transaction Atriation of profits transfer of funds (including dividends, if any).

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

Question 23

RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid.

RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid-up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.

The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.

The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies. Answer the following, referring to the provisions of the Companies Act, 2013:

(i) Whether RFC Limited is a foreign company?

(ii) Whether service of notice by the Registrar of companies is valid? (PYP 4 Marks May '22)

Answer 23

(i) Whether RFC Limited is a Foreign Company ? Definition of a Foreign Company

As per Section 2(42) of the Companies Act, 2013, "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. Provision of Section 379(2): Requirement of holding of paid up share capital of Foreign Company:

Further, in the light of the inputs given in the problem, 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 incorporated outside India is held 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 foreign company shall also comply with the provisions of Chapter XXII 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. [Section
379(2)]

In the given case, RFC Limited, incorporated in Singapore has a business place in Mumbai. The

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Company has issued 5,00,000 shares of USD 100 each i.e. of USD 5,00,00,000 comprising of USD 4,00,00,000 equity share capital (i.e. 4 lac* USD 100) and USD 1,00,00,000 preference share capital (i.e,1 lac * USD 100).
As the issued capital was fully paid up except 5,000 preferences shares (i..e, 5000* 50= USD 2,50,000), so, total paid up share capital of the RFC limited is:

Equity Share Capital	USD 4,00,00,000
Preference Share Capital (Full Paid)	USD 95,00,000
Preference Share Capital (Partly Paid)	USD 2,50,000
Total Paid up Share Capital	USD 4,97,50,000

As per facts, shareholding by RJW, an Indian citizen is USD 25,45,000 preference share capital (i.e. 26,000 shares *USD 100- 1100 shares * USD 50) and Ronte Limited incorporated in New-Delhi (India) is holding USD 2,23,50,000 equity share capital (i.e., 2,23,500 *USD 100) in RFC Limited. Aggregate shareholding is USD 2,48,95,000.
As per requirement of Section 379(2), RJW, an Indian citizen and Ronte Limited incorporated (an Indian Company) were holding more than 50% of the shareholding (i.e. 50%* USD 4,97,50,000 = 2,48,75,000) in RFC Limited.
Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .
(ii) Whether service of notice by the RoC is valid?
Yes, the service of notice by the Registrar of Companies is valid in the light of Section 383 of the Companies Act, 2013. According to the provision 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 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Question 24

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 regard 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?

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(iv) Whether the documents can be submitted at the Registrar's office at Mumbai? (PYP 4 Marks July 21)

Answer 24

In the light of the given facts, following are the answers:

(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 (2)]

(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 informations:

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

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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.]

Question 25

CNC Limited is a foreign company having its places of business in Mumbai and Ahmedabad in India. It has amended its Memorandum of Association on 1 st June, 2022 and closed branch office situated at Mumbai. Referring to the provisions of the Companies Act, 2013 advise the company on the following matters:

(i) Compliance procedure as regards to amendment of Memorandum of Association.
(ii) Compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the Registrar of Companies afterwards. (PYP 4 Marks Nov 22)

Answer 25

According to section 380 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014, following shall be the compliances duly required to be fulfilled by the CNC Limited, a foreign company, for closure of one of its branch of Mumbai office.

(i) W.r.t. Compliance procedure as regards to amendment of Memorandum of Association
According to Section 380 (3) of the Act which provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees.
As in the instance, the CNC Limited has amended its Memorandum of Association on 1st of June 2022 and closed its branch office of Mumbai. This altered document is required to be delivered to Registrar by CNC Limited within 30 days i.e. latest by 1st of July 2022.

(ii) W.r.t. compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the registrar of companies afterwards If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.
Here, in the given case, CNC Limited has still Ahmedabad as a place of business in India. So, will continue the submission of document to the Registrar even after the closure of Mumbai

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office.

Multiple Choice Questions (MCQs)

Question 26

Surya Ltd., incorporated and registered in New Delhi with a foreign shareholding more than 50% due to liberalization in Foreign Direct Investment (FDI) policy. State the correct statement as to the status of the Surya Ltd.

(a) Surya limited shall not considered as foreign source because of its registration in India.

(b) Surya Ltd would be 'foreign source' have foreign shareholding more than 50% of foreign company.

(c) Surya Ltd would be 'foreign source' have foreign contribution through various international agencies.

Answer 26: (b)

Question 27

Vision Ltd., a foreign Company incorporated in Singapore, appointed Mr. X as a representative in India for the management of place of business in India. Due to un–satisfactory services of Mr. X, Vision Ltd. replaced him and appointed Mr. Y. Vision Ltd. is required to comply with which of the following requirement-(MTP 2 Marks , Oct'19)

(a) Vision Ltd. shall file return to the Registrar of Company in India, within 30 days of the appointment of Mr. Y

(b) Vision Ltd. being a foreign co. in Singapore does not require to give any such intimation of replacement/ change made for management of place of business in India

(c) Vision Ltd. shall intimate of such alteration at the place where its registered within 15 days from such alteration.

(d) Vision Ltd. shall file return to the Registrar, within 1 month of such alteration as to appointment of Mr. Y

Answer 27 : (a)

Question 28

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

(a) Within 15 days to the Central Government

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

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

(d) Within 30 days to the Registrar having jurisdiction over New Delhi (MTP 1 Mark ,May'20)

Answer 28: (d)

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Question 29

In which of the following cases the issue of prospectus by a company incorporated outside India will be invalid in law considering the provisions of Chapter XXII of Companies Act, 2013. (MTP 1 Mark , Oct-20)

(a) The Consent to the issue of the prospectus required from any person, as an expert is attached to the copy for the registration of prospectus to be delivered to the Registrar.

(b) In case where the prospectus is signed by the duly authorized agents of the directors and the copy of power of attorney is not attached with the copy of prospectus to be delivered for Registration.

(c) A company incorporated outside India not having place of business in India.

(d) A Company to be incorporated outside India.

Answer 29: (b)

Question 30

Fam Company LLC, a company incorporated outside India, proposes to establish a place of business in India. The list of the directors includes Mr. Arjun – Managing Director, Mr. Ranveer – Director and Ms. Lavina – Secretary of Fam Company LLC. Mr. Malik and Mr. Arbaaz, resident in India, are the persons who has been authorised by Fam Company LLC to accept on behalf of the company service of process, notices or other documents required to be served to Fam Company LLC. In relation to the company's establishment, you are asked by the Fam Company LLC with respect to whose declaration will be required to submit to the Registrar by the Company for not being convicted or debarred from formation of companies in or outside India.

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

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

(c) Mr. Malik and Mr. Arbaaz.

(d) Mr. Arjun, Mr. Ranveer, Mr. Malik and Mr. Arbaaz (MTP 1 Mark Nov 21)

Answer 30 : (d)

Question 31

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

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

(b) Beta Periodicals Limited shall be considered as a foreign company since it is a wholly

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owned subsidiary of Modern Books Publishers plc. which is a foreign company.

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

(d) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the New Delhi Bench of National Company Law Tribunal for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.(MTP 2 Marks, March'22)

Answer 31 : (a)

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

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

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

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

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

Ans: (c)

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

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

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

(g) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than

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2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

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

Ans: (d)

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

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

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

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

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

Answer A

35.Fam Software Company Inc., a company incorporated in Australia, proposes to establish a place of business at Mumbai. The list of the Directors includes (i) Mr. Arjun – Managing Director, (ii) Mr. Ranveer
– Director, (iii) Mr. Ramesh Malik - Director and (iv) Mr. Arbaaz - Director. Ms. Lavina has been appointed as the Secretary of Fam Software Company Inc. It is to be noted that Mr. Ramesh Malik andMr. Arbaaz, resident in India, are the persons who have been authorised by Fam Software Company Inc. to accept on behalf of the company service of process, notices or other documents required to be served on Fam Software Company Inc. In relation to the company's establishment, you are required to enlighten the Fam Company Inc. with respect to whose, a declaration will be required to be submitted to the Registrar of Companies by Fam Software Company Inc. for not being convicted or debarred from formation of companies in or outside India.

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

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

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

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

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Ans: (d)

36.5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit andloss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act,2013:

(e) Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.
(f) Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.
(g) Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.
(h) Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.

Ans: (d)

Theoretical Questions Answers Question 37

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

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

Answer 37

(i) The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

(ii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non- filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 but which may extend to 5,00,000.

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Question 38

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

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

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

Answer 38

(i) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and suchother provisions as may be specified elsewhere under Companies Act, 2013.

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

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are notin the English language, a certified translation thereof in the English language;

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

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

(1) personal name and surname in full;

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

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

(4) date of birth;

(5) residential address;

(6) nationality;

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

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

(9) income-tax permanent account number (PAN), if applicable;

(10) occupation, if any;

(11) whether directorship in any other Indian company, (Director Identification Number (DIN),

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Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
(12) other directorship or directorships held by him;
(13) Membership Number (for Secretary only); and
(14) e-mail ID.
(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
(h) any other information as may be prescribed.

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

Question 39

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

Answer 39

Preparation and filing of financial statements by a foreign company:
According to section 381 of the Companies Act, 2013:
(i) Every foreign company shall, in every calendar year,—
(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may beprescribed, and
(b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreigncompany 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 countryof 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

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shall applysubject to such exceptions and modifications as may be specified in notification in that behalf.

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

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by thecompany 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 placesof business established by the foreign company in India as on the date of balance sheet.

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

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

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

(1) Statement of related party transaction

(2) Statement of repatriation of profits

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

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

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

Question 40

In the light of the provisions of the Companies Act, 2013, examine whether the following Companiescan be considered as a 'Foreign Company':

(i) Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.

(ii) Xen Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

Answer 40

(i) According to section 2(42) of the Companies Act, 2013, "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 throughelectronic mode; and conducts any business activity in India in any other manner.

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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-
business to business and business to consumer transactions, data interchange and other digital supply transactions;
offering to accept deposits or inviting deposits or accepting deposits or subscriptions insecurities, in India or from citizens of India;
financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
online services such as telemarketing, telecommuting, telemedicine, education and information research; and all related data communication services,
Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.
In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting businessactivity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act,2013.
In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question 41

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

Answer 41

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a placeof business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on orattached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.
Accordingly, the Abroad Ltd. a foreign company shall proceed with the issue of prospectus in compliancewith the above stated provisions of section 379 of the Act.

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Question 42
Jackson & Jackson LLC, incorporated in Germany, is proposing to establish a business in Mumbai, India.Its official documents are in German language. Whether Jackson & Jackson LLC can file the required documents with Registrar in the same language.

Answer 42
Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013. Further, if the original instruments/ documents are not in the English language, a certified translation in the English language isrequired for the same and submitted to Registrar.

Question 43
Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

Answer 43
Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

Question 44 Illustration
Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Isthe Company required to submit the documents as required under Section 380 of the Companies Act, 2013.

Answer 44
Yes, as per 2(42) of Companies Act, 2013, any company or body corporate incorporated outside India which (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner shall be considered as a foreign company. Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

Question 45 Illustration

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Examine with reference to the provisions of the Companies Act, 2013 whether the following companiescan 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.

Answer 45

Section 2(42) of the Companies Act, 2013 defines a "foreign company" as any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.
According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the CompaniesAct, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office.

Further, to qualify as a 'foreign company' a company must have the following features:

(a) it must be incorporated outside India; and

(b) it should have a place of business in India.

(c) That place of business may be either in its own name or through an agent or may even be through the electronic mode; and

(d) It must conduct a business activity of any nature in India.

(i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

(ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India.

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Chapter 12
The Limited Liability Partnership Act, 2008

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.1 TO Q.11											
Past Exams	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
MTP	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
RTP	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

1. Which of the following cannot be converted into LLP?
(a) Partnership firm
(b) Private company
(c) Listed company
(d) Unlisted company

Ans: (c)

2. The approved name of LLP shall be valid for a period of from the date of approval:
(a) 1 Month
(b) 2 Months
(c) 3 months
(d) 6 months

Ans: (a)

3. Name of the Limited Liability Partnership shall be ended by:
(a) Limited
(b) Limited Liability partnership or LLP
(c) Private Limited
(d) OPC

Ans: (b)

4. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?
(a) An LLP has a legal personality separate from that of its members.
(b) The liability of each partner in an LLP is limited.
(c) Members of an LLP are taxed as partners.
(d) A listed company can convert to an LLP.

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Ans: (b)

5. For the purpose of LLP, Resident in India means:
(a) Person who has stayed in India for a period of not less than 182 days during the current year.
(b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
(c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
(d) Person who has stayed in India for a period of not less than 120 days during the financial year.

Ans: (d)

Theoretical Questions Answers

Question 6
"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Answer 6
LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 7
Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Shar ma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

Answer 7
Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding

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is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

Further, Section (2)(1)(e) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

(i) an LLP registered under this Act;

(ii) an LLP incorporated outside India; and

(iii) a company incorporated outside India,

but does not include—

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 20132' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Therefor HUF is not covered in the definition of body corporate and cannot be partner in LLP.

Question 8

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

Answer 8

According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Question 9

Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹10,00,000 against the LLP but the worth of the assets of LLP are only ₹7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

Answer 9

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP

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are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

Question 10

M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

Answer 10

Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable; or

(b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

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

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999 then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

Question 11

Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

Answer 11

According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

(a) the person has notice that the former partner has ceased to be a partner of the LLP; or

(b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the

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Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

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Chapter 13
The General Clauses Act, 1897

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.55 TO Q.69											
Past Exams	Q.2 Q.4 Q.30	Q.29	Q.9 Q.14	Q.31 Q.32	NO	Q.33 Q.34	Q.20 Q.21 Q.22 Q.24 Q.36	Q.23 Q.35	Q.30 Q.37	Q.38	Q.40 Q.41	NO
MTP	Q.16 Q.15	Q.1 Q.6 Q.7 Q.8 Q.9 Q.10	Q.2 Q.4 Q.5 Q.6 Q.46	Q.2 Q.3 Q.45 Q	Q.4	Q.3 Q.10 Q.48 Q.49	Q.2 Q.11 Q.12 Q.50	Q.4 Q.9 Q.13 Q.14 Q.48 Q.49 Q.50	Q.17 Q.18 Q.19 Q.24 Q.48 Q.50	Q.4 Q.20 Q.48 Q.49	Q.21 Q.22 Q.23 Q.24 Q.52 Q.53	Q.21 Q.22 Q.24 Q.43 Q.44 Q.52 Q.54
RTP	Q.25	Q.11	Q.25	Q.2	Q.5	Q.9	Q.4 Q.20	Q.26	Q.27	Q.28 Q.51	Q.2	Q.42

Question 1

Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise. (MTP 4 Marks ,Aug '18)

Answer 1

As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) properly addressing

(ii) pre-paying, and

(iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Thus, where a notice is sent by the landlord by registered post and the same is returned by the

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tenant with an endorsement of refusal, it will be presumed that the notice has been served. Hence, in the given situation, a notice was rightfully served to Mr. Wise.

Question 2

X owned a land with fifty tamarind trees. He sold his land to (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". (MTP 4 Marks ,Mar'21, April '19, Oct '19, , PYP 4 Marks ,May '18 , RTP Nov 19, RTP May'23, Old & New SM)

Answer 2

"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

I. Land,
II. Benefits to arise out of land, and
III. Things attached to the earth, or
IV. Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment. In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Question 3

'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897. (MTP 3 Marks ,Oct 20, Oct ,19, Old & New SM)

Answer 3

In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Question 4

What is the meaning of service by post as per provisions of The General Clauses Act, 1897?(MTP May 20, Nov 21 & Sep '22, 3 Marks, MTP April '19 ,4 Marks, Old & New SM, RTP May 21, PYP May '18 2 Marks)

Answer 4

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"Meaning of Service by post" [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Question 5

A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation. (MTP March '19, 4 Marks, RTP May 20)

Answer 5

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. Hence, where the where the notice could not be served on account of the fact that the house of Mr P was found locked, it will be deemed that the notice was properly served as per the provisions of Section 27 of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non- service.

Question 6

What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897. (MTP March 19 & Aug 18 4 Marks)

Answer 6

"Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;
The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

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Question 7 (Includes concepts of Chap 8- Declaration of Dividend)
Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30/09/2017. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend. (MTP Oct'18,March'18,4 Marks, Old & New SM)

Answer 7
As per the provisions of Section 9 of the General Clauses Act, 1897, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
Section127 of the Companies Act, 2013 uses the words, 'thirty days from'. Thus, in the given situation Excel Ltd. is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/ 10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/ 2016 will be included.

Question 8
What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment? Explain as per the provisions of the General Clauses Act, 1897. (MTP Oct'18,4 Marks)

Answer 8
"Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22]: Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Question 9
SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations? (MTP Oct'21 3 Marks, Oct'18,2 Marks, RTP Nov 20, Old & New SM, PYP May '19 2 Marks)

Answer 9
According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it

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receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament. Hence, in the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Question 10

As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company? (MTP 4 Marks Oct 20, MTP 2 Marks Aug 18, Old & New SM)

Answer 10

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

Question 11

Mr. R, an advocate, fraudulently deceived his client Mr. Chandan who was taking his expert advise on taxation matters. Now, Mr. R is liable to a fine for his fraudulent act both under the Advocates Act and the Income Tax Act, 1961. State the provision as to whether his offence is punishable under both Acts. Give your answer as per the provisions of the General Clauses Act, 1897. (MTP 4 Marks April 21, RTP Nov '18)

Answer 11

"Provision as to offence punishable under two or more enactments" (Section 26 of the General Clauses Act, 1897) Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Thus, Mr. R shall be liable to be punished either under the Advocates Act, 1961 or under the Income Tax Act, 1961, but shall not be punished twice for the same offence. He can be punished under any of the enactments if his offence is established.

Question 12

Elucidate the term "Commencement" as per the General Clauses Act, 1897 . (MTP 3 Marks April 21)

Answer 12

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Section 3(13) of the General Clauses Act, 1897, defines the term "Commencement".
"Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force. Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect. A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai — AIR1970 sc 398).

Question 13

Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example. (MTP 3 Marks Oct 21)

Answer 13

"Duty to be taken pro rata in enactments": According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity. Pro rata is a Latin term used to describe a proportionate allocation.
Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

Question 14

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2021, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? (MTP 3 Marks Nov 21, Old & New SM, PYP May '19 ,2 Marks, Old & New SM)

Answer 14

Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).

Question 15

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When does an enactment is said to have come into operation if the Act has not specified any particular date of its enforcement. Explain with the help of an example as per the provisions of the General Clauses Act, 1897. (MTP March'18,4 Marks, Old & New SM)

Answer 15

According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Thus, we can see Financial year starts from first day of April but Calendar Year starts from first day of January. Hence, Financial year and Calendar year are not same.

Question 16

State what do you understand by the term 'Document' as per the General Clauses Clauses Act, 1897? Discuss which of the following will be treated as document?

(i) Power-of-attorney.

(ii) Cheque (MTP March '18, 2 Marks)

Answer 16

According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter. Thus,

(i) Yes, power-of-attorney is a document.

(ii) Yes, cheque upon a banker is a document

Question 17

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) 'Things attached to the earth' have been held to be immovable property.

(ii) The word "bullocks" could be interpreted to include "cows". (MTP 4 Marks March '22)

Answer 17

(i) 'Things attached to the earth' have been held to be immovable property: This statement is valid. As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

(1) Land,

(2) Benefits to arise out of land, and

(3) Things attached to the earth, or

(4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

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(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid.
Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clause Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Question 18

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? (MTP 4 Marks April 22)

Answer 18

As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.
Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.
On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Question 19

What is the meaning of the following as per provisions of the General Clauses Act, 1897?

(i) Movable Property

(ii) Person (MTP 3 Marks April 22)

Answer 19

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

(ii) Person: According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

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Question 20

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year? (MTP 4 Marks Oct'22, PYP 4 Marks Dec'21, RTP May 21)

Answer 20

Financial Year: According to Section 3(21) of the General Clauses Act, 1897, f inancial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

Question 21

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? (MTP 4 Marks March '23 & Sep '23, PYP 2 Marks Jan '21)

Answer 21

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.

Question 22

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. (MTP 3 Marks March '23, PYP 2 Marks Jan 21)(MTP 2 Marks Sep '23)

Answer 22

According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall

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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.

Question 23

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) Insurance Policies covering immovable property have been held to be immovable property.

(ii) The word "bullocks" could be interpreted to include "cows". (MTP 3 Marks April '23, PYP July '21 4 Marks)

Answer 23

i. Insurance Policies covering immovable property have been held to be immovable property: This 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.

ii. The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Question 24

"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. (MTP 4 Marks April '23, MTP 3 Marks Mar'22 & Sep '23 , PYP 3 Marks Jan 21)

Answer 24 Good Faith

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 fai th as per the General Clauses Act, 1897.
The term "Good faith" has been defined differently in different enactments. This definition of the

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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 repunant in subject or context, and if that is so, the definition is not applicable.

Question 25

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. (RTP May'19, RTP May'18, Old & New SM)

Answer 25

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) properly addressing,
(ii) pre-paying, and
(iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Further more, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

Question 26

Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20 th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19 th August 2021 or 21st August 2021?(RTP Nov '21)

Answer 26

Section 10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the

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prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.
A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20 th August 2021 due to Moharram. In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21 st August 2021.

Question 27

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by " Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory? (RTP May '22)

Answer 27

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act. However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.
Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory. In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

Question 28

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013? (RTP Nov'22)

Answer 28

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to

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the provision so repealed shall, unless a different intention appears, be construed as references to the provision so reenacted. Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.
As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

Question 29
Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. [PYP Nov'18,4 Marks]

Answer 29
Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]: Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-
(1) Publish of proposed draft rules/ bye - laws: The authority having power to make the rules or bye- laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
(2) To publish in the prescribed manner: The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
(3) Notice annexed with the published draft: There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
(4) Consideration on suggestions/objections received from other authorities: The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
(5) Notified in the official gazette: The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Question 30
Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section- 6 of The General Clauses Act, 1897. (PYP May'18,4 Marks, PYP 3 Marks May'22)

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Answer 30

According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Question 31

What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith. [PYP Nov'19,4 Marks]

Answer 31

As per Section 3(22) of the General Clauses Act, 1897, the term "good faith" means 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 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.

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. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Question 32

Define the term "Affidavit" under the General Clauses Act, 1897.[PYP Nov-19,3 Marks]

Answer 32

"Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There

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are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit s nclude affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Question 33

(i) Mrs. K went to a Jewellary shop to purchase diamond ornaments. The owners of jewellary shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?

(ii) There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897? (PYP 4 Marks ,Nov 20)

Answer 33

(i) In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellary Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per section 3 (22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Indian Contract Act, 1872 is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

(ii) "Measurement of Distances" [Section 11 of the General Clauses Act, 1897]: In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Question 34

Define the following terms with reference to the General Clauses Act, 1897:

(i) Affidavit

(ii) Good Faith (PYP 4 Marks, Nov 20)

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Answer 34

(i) "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

(ii) "Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide, whether it is done negligently or not is presumed to have been done in good faith.

Question 35

Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897. (PYP 3 Marks ,July '21)

Answer 35

The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India. In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

Question 36

Give the definition of the following as per the General Clauses Act, 1897:

(i) "Rule"

(ii) "Oath"

(iii) "Person" (PYP 3 Marks, Dec '21)

Answer 36

(i) Rule: As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath: As per section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation

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and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Person: As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

(1) any company, or

(2) association, or

(3) body of individuals, whether incorporated or not.

Question 37

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, Answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be Questioned?

(iii) Is MCA entitled to make suitable changes in the draft?

(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft? (PYP 4 Marks May'22)

Answer 37

The Answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the Answers in the light of the given information and the relevant legal provisions:

(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.

(ii) No, in case of any irregularities in the publication of the draft, it cannot be Questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be Questioned.

(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.

(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Question 38

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable? (PYP 4 Marks Nov '22)

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Answer 38

According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly addressing

(ii) Pre-paying, and

(iii) Posting by registered post.

Case Laws

(i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

Question 40

"Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897. (PYP 4 Marks, May '23)

Answer 40

"Effect of Repeal" [Section 6 of the General Clauses Act, 1897]: Where any Central legislation or any regulation made after the commencement of this Act, repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

1. Revive anything not enforced or prevailed during the period at which repeal is effected or;
2. Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
3. Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
4. Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
5. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

   In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

Question 41

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"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897. (PYP 3 Marks, May '23)

Answer 41

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.
Even Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.
Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offence are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Question 42

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? (RTP Nov '23)

Answer 42

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.

Question 43

A confusion regarding the meaning of 'financial year' arose between the Financial Executive

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and Accountant of a company. Both were having different arguments regarding the meaning of 'financial year' & 'calendar year'. What is the correct meaning of the financial year under the provisions of the General Clauses Act, 1897? How it is different from calendar year? (MTP 4 Marks Oct '23)

Answer 43

Financial Year: According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April, but Calendar Year starts from first day of January.

Question 44

Shree was supposed to submit an appeal to the High Court of Delhi on 8th September, 2023, which was the last day on which such appeal could be submitted. However, on that day the High Court was closed due to total Lockdown in Delhi for 30 days due to visit of foreign delegates from 40 countries for G40 Summit. Examine the remedy available to Shree under the provisions of the General Clauses Act, 1897. (MTP 3 Marks Oct '23)

Answer 44

The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Shree was supposed to submit an appeal to High Court on 8th September 2023, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over Delhi.

In line with said provision, Shree can submit an appeal on the day on which the High Court is open.

Multiple Choice Questions(MCQs)

Question 45

As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which can be analysed in terms of General Clause Act, as: (MTP 2 Marks ,Oct '19)

I. Attending weekend classes is optional but appearing in weekly test is compulsory
II. Attending weekend classes is compulsory but appearing in weekly test is optional
III. Attending weekend classes and appearing in weekly test, both are compulsory for students
IV. Attending weekend classes and appearing in weekly test both are optional for students.

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Answer45 : (a)

Question 46

Mr. A died at the age of 72 leaving behind some movable and immovable properties to be distributed between his two sons C& D, as per his registered will. His Will clearly mentioned that all the immovable property should go to C and all the movable property should go to D. Both the brothers divided the property as per will except below mentioned properties, because they could not establish which property should go to whom. Kindly help them by ticking the property/ies which should go to D (as per the provisions of the general Clause Act, 1897):

(a) Standing crop in the fields (b) Cut crop, ready to sell
(c) Tube well in the agriculture land (d) Sandal wood tree
(MTP 2 Marks , April'19)

Answer 46 : (b)

Question 48

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under

(a) Under either or any of those enactments
(b) Twice for the same offence
(c) Either a. or b. as per the discretion of the court
(d) None of these (MTP 1 Mark Oct 20, Oct'21, Mar'22, Sep'22)

Answer 48 : (a)

Question 49

What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897?

(i) The soil for making bricks
(ii) Right to catch fish
(iii) Right to drain water
(iv) Doors and Windows of the house
(a) Only (i) and (iv)
(b) Only (i), (ii) and (iv)
(c) Only (i) and (ii)
(d) Only (ii), (iii) and (iv) (MTP 2 Marks Oct 20, Nov'21, Oct'22)

Answer 5: (b)

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Question 50

Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which

(a) It receives the assent of the President

(b) It receives the assent of the Governor General

(c) It is notified in the official gazette

(d) It receives assent of both the houses of Parliament (MTP 1 Mark March 21, Oct'21, Mar'22)

Answer 50 : (a)

Question 52

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken:

(a) To exclude females

(b) To exclude girl child

(c) To include females

(d) To exclude boy child (MTP 1 Mark March '23 & Sep '23)

Answer 8 (c)

Question 53

Calendar year starts from:

(a) January

(b) April

(c) June

(d) September (MTP 1 Mark April '23)

Answer 53 : (a)

Question 54

Where, by any Central Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power:

(a) To appoint the members of that family

(b) To grant increment to any family members

(c) To suspend or dismiss any person appointed

(d) No other power is conferred except for appointment (MTP 1 Mark Sep '23)

Answer 54 : (c)

55. Which of the following is not an Immovable Property?

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a) Land
b) Building
c) Timber
d) Machinery permanently attached to the land

Ans: (c)

56. Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:
e) It receives the assent of the President
f) It receives the assent of the Governor General
g) It receives assent of both the houses of Parliament
h) It receives assent of the Prime Minister

Ans: (a)

57. An act or omission constitutes an offence under two enactments. Referring to the provisions of the General Clauses Act, 1897, state which among the following is correct in such a situation:
i) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
j) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted first and not under the other enactment.
C) The offender shall be liable to be prosecuted and punished under boththe enactments.
d) The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice forthe same offence.
Ans: (d)

58. Every Act has a which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.
k) Definition
l) Preamble
m) Affidavit
n) Document
Ans: (b)

59. What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897?
(i) The soil for making bricks
(ii) Right to catch fish
(iii) Right to drain water
(iv) Doors and Windows of the house
(a) Only (i) and (iv)

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(b) Only (i), (ii) and (iv)
(c) Only (i) and (ii)
(d) Only (ii), (iii) and (iv)
Ans: (b)

Question 60
What is "Financial Year" under the General Clauses Act, 1897?

Answer 60
According to Section 3(21) of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April.
The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, 1897, Year means calendar year which starts from January to December.
Hence, in view of both the above definitions, it can be concluded that Financial Yearis a year which starts from first day of April to the end of March.

Question 61
What is "Immovable Property" under the General Clauses Act, 1897?

Answer 61
According to Section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:
(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) permanently fastened to anything attached to the earth.
For example, trees are immovable property because trees are benefits arise out ofthe land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Question 62
As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Answer
Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except inits 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 companies 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

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time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Question 63

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.

Answer 63

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
Properly addressing, Pre-paying, and Posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.
Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rulesto be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.
Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija,AIR 1994 Del181, a notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenablenor based upon sound exposition of law.

Question 64

X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of General Clauses Act, 1897

Answer 64

"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]:
'Immovable Property' shall include:
(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.
It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the

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definition as given in the General Clauses Act will apply to the expression given in that enactment. In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Question 65
What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Answer 65
"Meaning of Service by post" [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Question 66
Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2019.Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
(i) The dates during which Komal Ltd. is required to pay the dividend?
(ii) The dates during which Komal Ltd. is required to transfer the unpaid orunclaimed dividend to unpaid dividend account?

Answer 66
As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time touse the word "from" and for the purpose of including the last in a series of daysor any other period of time, to use the word "to".
(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days,27/09/2019 will be excluded and last 30th day, i.e. 27/10/2019 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).
(ii) Transfer of unpaid or unclaimed divided: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimedto a special account to be opened by the company in that behalf in any scheduled bank to be called the

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"Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2019 to 3rd November, 2019 (both days inclusive).

Question 67

Repeal' of provision is different from 'deletion' of provision. Explain as per theGeneral Clauses Act, 1897.

Answer 67

In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never toeffect total effecting or wiping out of the provision as if it never existed

Question 68

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2019, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Answer 68

Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" andfor the purpose of including the last in a series of days or any other period of time, to use the word "to".

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2019 will be excluded and 6thNovember 2019 shall be included, i.e. 31st October, 2019 to 6th November, 2019 (both days inclusive).

Question 69

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date onwhich the following Act/Regulation comes into force. Give reasons also,

(1) An Act of Parliament which has not specifically mentioned a particular date.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Answer 69

(1) According to section 5 of the General Clauses Act, 1897, where any CentralAct has not specifically mentioned a particular date to come into force, itshall be implemented on the day

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on which it receives the assent of the President in case of an Act of Parliament.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

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Chapter 14
Interpretation of Statutes

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.59 TO Q.74											
Past Exams	Q.14 Q.15 Q.29	Q.1 Q.2 Q.16 Q.28	Q.14 Q.23 Q.32	Q.11 Q.30	NO	Q.9 Q.27	Q.12 Q.21 Q.22 Q.31	Q.10	Q.19	Q.4 Q.33	Q.34	NO
MTP	Q.5 Q.13	Q.1 Q.6 Q.7 Q.8	Q.1 Q.3 Q.4 Q.12 Q.40 Q.41 Q.48	Q.1 Q.2 Q.36 Q.37 Q.38 Q39	Q.9 Q.10 Q.42 Q.46 Q.51	Q.2 Q.11 Q.43	Q.4 Q.12 Q.13 Q.14 Q.19 Q.40 Q.44 Q.45 Q.46	Q.1 Q.12 Q.15 Q.19 Q43 Q.47 Q.48	Q.9 Q.16 Q.17 Q.18 Q.41 Q.44 Q.45 Q.47 Q.48 Q.49 Q.50 Q.51	Q.4 Q.9 Q.10 Q.20 Q.21 Q.45 Q.43 Q.48 Q.52 Q.53	Q.17 Q.22 Q.23 Q.45 Q.53 Q.54 Q.55 Q.56	Q.21 Q.22 Q.31 Q.41 Q.43 Q.45 Q.48 Q.51 Q.53 Q.58
RTP	Q.27	Q.26	Q.24	Q.25	Q.24	Q.23 Q.40	Q.11	Q.11	Q.23 Q.57	Q.10	Q.23	Q.35

Question 1
Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous. (MTP 3 Marks Apr'19, Oct'21, Oct'19, , MTP 4 Marks Oct '18 , PYP 2 Marks Nov '18 Old & New SM)

Answer 1
Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms,

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reference may be made to technical dictionaries.

Question 2
Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act. (MTP 3 Marks, Oct'20, Oct'19, PYP 4 Marks ,Nov'18]

Answer 2
Mischieve Rule: Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.
It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.
It enables consideration of four matters in construing an Act:
(1) what was the law before the making of the Act;
(2) what was the mischief or defect for which the law did not provide;
(3) what is the remedy that the Act has provided; and
(4) what is the reason for the remedy.

Question 3
How far is 'preamble' in an enactment helpful in interpreting any of the parts of an enactment? (MTP 3 Marks, March'19)

Answer 3
Preamble: It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to the remedied by it.
The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot over- ride the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Question 4
Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute.
OR
Explain the "grammatical" and "logical" interpretation and state the situations where the courts adopt them while interpreting the Statutes in India. (MTP March'19 , March '21 & Sep'22 ,3 Marks, PYP 3 Marks Nov'22, Old & New SM)

Answer 4
Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the

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meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.
Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In other words, the emphasis in grammatical interpretation is on "what the law says" and the logical interpretation seeks on the other hand, seeks to ascertain " what the law means".
Application of the principles in the Court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The Court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the Court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the Court is to administer the law as it stands rather it is just or unreasonable.
The Court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that just or reasonable.
However, if two possible constructions of a clause, the Courts may prefer the logical constr

Question 5
Explain s 'natural and grammatical meaning' helps in the interpretation of a statute? (MTP 6 Marks ,March '18)

Answer 5
Natural and grammatical meaning: Statute are to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning. If there is an inconsistency with any express intention or declared purpose of the statute, or it inlvolves any absurdity, repugnanacy, inconsistancy, the grammatial sense must then be modified, extended or abridgd only to avoid such an inconvenience, but no further.

[(State of HP v. Pawan Kumar(2005)]
Example: In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter the Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. (Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325).

Question 6
Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes? (MTP 6 Marks , Aug '18)

Answer 6
Meaning of rule Harmonious Construction: When there is doubt about the meaning of the words

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of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.
It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.
Application of the Rule: The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

Question 7
How far are 'marginal notes' in an enactment helpful in interpreting any of the parts of an enactment? (MTP 6 Marks ,Oct '18)

Answer 7
Marginal Notes: Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section can not be used for construing the Section. In C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases. Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. [Deewan Singh v. Rajendra Pd. Ardevi, (2007)10 SCC , Sarabjit Rick Singh v. Union of India, (2008) 2 SCC]
However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.
Example: Article 286 of the constitution furnishing "prima facie", some clue as to the meaning and purpose of the Article [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC]

Question 8
How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment? (MTP 4 Marks ,Aug'18)

Answer 8
(i) Title: An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it.
The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object

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and scope of the Act.

(ii) Preamble: It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to the remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot over ride the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Question 9

'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.(MTP 3 Marks May 20 , March '22 & Oct '22, PYP 3 Marks Nov 20)

Answer 9

Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that nocitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).

Question 11

At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'? (MTP 3 Marks Oct 20, PYP Nov '19 ,3 Marks, Old & New SM, RTP May 21 & RTP Nov 21)

Answer 11

Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpresest consuetude' (the custom is the best interpreter of the law); and

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(ii) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes in India.

Question 12

Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example. (MTP 4 Marks March 21, Nov'21, MTP 3 Marks April '19, Old & New SM, PYP 3 Marks Dec'21)

Answer 12

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:

(1) what was the law before making of the Act,

(2) what was the mischief or defect for which the law did not provide,

(3) what is the remedy that the Act has provided, and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

Question 13

Differentiate between interpretation and construction. (MTP 4 Marks, March 21, March 18)

Answer 13

'Construction' as applied to a written statute or document means to determine from its known elements its true meaning or the intention of its framers. Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

Difference between Interpretation and Construction:

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It would also be worthwhile to note, at this stage itself, the difference between the terms 'Interpretation' and Construction. While more often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.
Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.
It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T,(2001)]

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co. AIR 1958)
Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.
In practice construction includes interpretation and the terms are frequently used synonymously.

Question 14

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? (MTP 3 Marks April 21, PYP May '19 3 Marks, PYP 4 Marks May '18 ,3 Marks, Old & New SM)

Answer 14

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be director y and, conversely, a statute indirectory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
the nature of the thing empowered to be done, the object for which it is done, and
the person for whose benefit the power is to be exercised

Question 15

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation? (MTP 4 Marks Oct 21, Old & New SM, PYP May '18 ,4 Marks)

Answer 15

Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself

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exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

(i) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

(ii) If the text leads to a result which is so unreasonable that it is self -evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Question 16

Write short note on:

(i) Proviso

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents. (MTP 3 Marks March '22, PYP Nov'18 ,4 Marks)

Answer 16

(i) Proviso: s

(ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Question 17

Write short notes on the following in understanding definitions while interpreting statutes:

(i) Ambiguous definitions

(ii) Definitions subject to a contrary context (MTP 3 Marks April 22 & March '23)

Answer 17

(i) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive

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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.

Question 18
Radha Limited has entered into a contract with Gopal Limited. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so? (MTP 3 Marks April 22, Old & New SM)

Answer 18
The rules regarding interpretation of deeds and documents are as follows:
First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document. It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.
The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense. It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Question 19
(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment? (MTP 3 Marks April 21, PYP 3 Marks May'22)
(ii) Does an explanation added to a section widen the ambit of a section? (MTP 3 Marks April 21, Apr'23, Old & New SM, MTP 3 Marks Nov 21, PYP 3 Marks May '22)

Answer 19
(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.

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The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.
It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).
(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 22
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? (MTP 3 Marks March '23 & Sep '23 , PYP 3 Marks Jan '21)

Answer 22
Rule of Literal Construction
Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.
This principle is contained in the Latin maxim "absoluta sententia expositore non 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.

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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. Page 330

Question 23
When can the Preamble be used as an aid to interpretation of a statute? (MTP 3 Marks April '23, RTP Nov '20, PYP May '19 ,3 Marks, Old & New SM, RTP May '22, RTP May '23)

Answer 23
Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.
In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [GullipoliSowria Raj v. BandaruPavani, (2009)1 SCC714].

Question 24
Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision.(RTP May'19) OR
Explain the function of 'proviso' as an internal aid to construction. (RTP May'20)

Answer 24
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 it stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only

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embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R,1995 SC 765)

Question 25
Explain whether Foreign Decisions be used for construing Indian Acts. (RTP Nov'19)

Answer 25
Foreign decisions of countries following the same system of jurisdiction as ours and give out law similar to ours can be legitimately used for construing our own Acts. However, prime importance, is always given to the language of the Indian Statute. Further, when guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Question 26
The 'Statute should be read as a Whole'. Explain the statement. (RTP Nov-18)

Answer 26
'Read the Statute as a Whole': It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature. One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Question 27
Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause. (RTP May'18, PYP 3 Marks Nov 20)

Answer 27
Provision: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.
It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs.

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Assistant Commissioner of Sales Tax, AIR 1955 SC 765).
Distinction between Proviso, exception and saving Clause
There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to restrainthe enacting clauseto particular cases	'Proviso' is used toremove special cases from general enactment and provide for themspecially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges alreadyexisting

Question 28
'Repeal' of provision is different from 'deletion' of provision. Explain. (PYP Nov'18,2 Marks)

Answer 28
In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Question 29
What is a Document as per the Indian Evidence Act, 1872? (PYP 2 Marks, May'18]

Answer 29
As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form a As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. For Example: A writing is a document, any words printed, photographed are documents.

Question 30
How will you interpret the term "Instrument" used in a statutes? [PYP 3 Marks, Nov'19]

Answer 30
'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed,

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charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Question 31
What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations? (PYP 3 Marks Jan 21)(MTP 3 Marks Sep '23)

Answer 31
External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.
Dictionary Definitions: Dictionary Definitions is one of the External Aids to interpretation. First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

Question 32
If it is defined as:
(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".
(ii) "Person" includes, under the Consumer Protection Act,1986.
How would you interpret/construct the nature and scope of the above definitions? (PYP 3 Marks, May '19)

Answer 32
Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
Thus,
(i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under

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the CoPmapganeie3s 33 Act, 2013 or under any previous Companies Act, shall deemed to be company.

(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Question 33

Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply. (PYP 3 Marks Nov '22)

Answer 33

The Rule of Ejusdem Generis will not apply in the following situations:

1 If the preceding term is general, as well as that which follows this rule cannot be applied.

2 Where the particular words exhaust the whole genus.

3 Where the specific objects enumerated are essentially diverse in character.

4 Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

Question 34

Explain the Doctrine of Contemporane a Expositio. (PYP 3 Marks, May '23)

Answer 34

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositioest optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Question 35

Explain the m Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your aan example. (RTP Nov '23)

Answer 35

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions. Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains......" This implies that

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while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Multiple Choice Questions (MCQs)

Question 36

Which of the following given Statement/s is/are correct: (MTP 1 Mark Oct '19)

(1) In all Central Acts and Regulations, any words which denote the masculine gender shall also be taken to include females, and vice versa.

(2) In all Central Acts and Regulations, words in the singular shall include the plural, but not vice versa.

Answer 36 : (d)

Question 37

As per the best way to interpret a statute or document is to read it as it would have been read when it was enacted or made. (MTP 1 Mark Oct '19)

(a) Optima legume interpres est consuetude
(b) Expressio unius Est Exclusio Alterius
(c) Ut res magis valeat quam pereat
(d) Contemporanea Expositio Est Optima Et Fortissima in Lege

Answer 2 : (d)

Question 38

If the used in a statute make it clear that a sense is intended, the rule of Ejusdem Generis shall not apply. (MTP 1 Mark Oct '19)

(a) Specific words, narrow (b) Specific words, wider
(c) General words, narrow (d) General words, wider

Answer 38 : (b)

Question 39

The act by which the operation of a previous Act comes to an end, is called as

(a) The Repealing Act
(b) The Consolidating Act
(c) The Amending Act
(d) Analogous Act (MTP 1 Mark Oct '19)

Answer 39 : (a)

Question 40

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An aid that expresses the scope, object and purpose of the Act—

(MTP 1 Mark, April'19, Apr'21, RTP Nov'20)

Answer 40: C)

Question 41
An internal aid that may be added to include something within the section or to exclude something from it, is—
(a) Proviso (b) Explanation (c) Schedule (d) Illustrations
(MTP 1 Mark, April'19, Apr'22 & Sep '23)(New SM)

Answer 41: (b)

Question42
Rule of Beneficial construction is also known as—
(a) Purposive construction
(b) Mischieve Rule
(c) Heydons's Rule
(d) All of the Above (MTP 1 Mark May 20)

Answer 42: (d)

Question 43
_ _ is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude
(a) Rule of Literal Construction
(b) Rule of Harmonious Construction
(c) Rule of Beneficial Construction
(d) Rule of Exceptional Construction (MTP1 Mark Oct 20, Nov 21, Sep'22, Oct'22 & Oct '23)

Answer 43: (a)

Question 45
Pick the out of the following aids to interpretation—
(a) Preamble
(b) Marginal Notes
(c) Proviso
(d) Usage (MTP 1 Mark March 21, March 22,March '23, Oct'22 & Oct '23)(New SM)
Answer 45 : (d)

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Question 46
Formal legal document which creates or confirms a right or record a fact is a—
(a) Document
(b) Deed
(c) Statute
(d) Instrument (MTP 1 Mark April 21, MTP 1 Mark May'20)

Answer 46: (d)

Question 47
According to the rule, the words of the statute are to be given their plain and ordinary meaning. —
(a) Literal rule
(b) Golden rule
(c) Natural rule
(d) Mischief rule (MTP 1 Mark Oct 21 & March '22)

Answer 47: (a)

Question 48
When there is a conflict between two or more statues or two or more parts of a statute then which rule is applicable:
(a) Welfare construction
(b) Strict construction
(c) Harmonious construction
(d) Mischief Rule (MTP 1 Mark Oct 21, March '22, Mar'19, Sep'22 & Oct '23)

Answer 48: (c)

Question 49
When the law is clear and unambiguous the court shall construe the meaning of a provision based on strict ....
(a) grammatical meaning
(b) logical meaning
(c) alternative interpretation
(d) hypothetical meaning (MTP 1 Mark April 22)

Answer 49 : (a)

Question 50
According to rule of interpretation, meaning of words should be known from its accompanying or associated words.
(a) Mischief rule

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(b) Primary Rule
(c) Noscitur a Sociis
(d) Golden Rule (MTP 1 Mark April 22)

Answer 50 : (c)

Question 51
The preamble is most important in any legislation, it:
(a) Provides definitions in the Act.
(b) Expresses scope, object and purpose of the Act.
(c) Provides summary of the entire Act.
(d) provides side notes often found at the side of a section. (MTP 1 Mark April 22, May'20 & Oct '23)

Answer 51 : (b)

Question 52
Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:
(a) It receives the assent of the President
(b) It receives the assent of the Governor General
(c) It is notified in the official gazette
(d) It receives assent of both the houses of Parliament (MTP 1 Mark Sep'22)

Answer 52: (c)

Question 53 means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense.
(a) Noscitur a Sociis
(b) Contemporanea Expositio
(c) prima facie
(d) absoluta sententia expositore non indigent (MTP 1 Mark Oct'22 , April '23 & Oct '23)

Answer 53 : (a)

Question 55
Which among the following is an External Aid to interpretation:
(a) Illustrations
(b) Dictionary
(c) Proviso clause
(d) Title (MTP 1 Mark April '23)

Answer 55 : (b)

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Question 56

Doctrine of Mischief Rule was given under:

(a) Foss vs. Harbottle
(b) Thomson vs. Clan Morris
(c) Foster vs. DiphwysCasson
(d) Heydon's Case (MTP 1 Mark April '23)

Answer 56 : (d)

Question 57

.... interpretation concerns itself with "what the law says" and interpretation, seeks to ascertain "what the law means".

(a) Grammatical, Logical
(b) Legal, usual
(c) Usual, legal
(d) Logical, grammatical (RTP May '22)

Answer 57: (a)

Question 58

Statutory interpretation is a practice through which the courts break down the words of a legislation and give true intent to it. While the legislature makes the laws, the judiciary performs the art of interpretation to give meaning to the words of the law maker. It is correctly said that "The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient". For interpretation of statutes various tools are used, you are required to pick the option depicting correct sequence of tools in order their application.

(a) Internal Aids to Construction, External Aids to Constructions, and Literal Construction
(b) Literal Construction, Internal Aids to Construction, and External Aids to Constructions
(c) Internal Aids to Construction, Literal Construction, and External Aids to Constructions
(d) External Aids to Constructions, Internal Aids to Construction, and Literal Construction

Answer 58: (b)

59. The Rule in Heydon's case is also known as—

(a) Purposive construction
(b) Mischief Rule
(c) Golden Rule
(d) Exceptional Construction

Ans: (b)

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60. Pick the odd one out of the following aids to interpretation—
(e) Preamble
(f) Marginal Notes
(g) Proviso
(h) Usage

Ans: (d)

61. _is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widestamplitude.
(i) Rule of Literal Co nstruction
(j) Rule of Harmonious Construction
(k) Rule of Beneficial Construction
(l) Rule of Exceptional Construction

Ans: (a)

62. An internal aid that may be added to include something within the section or to exclude something fromit, is—
(m) Proviso
(n) Explanation
(o) Schedule
(p) Illustrations
Ans: (b)

63. When there is a conflict between two or more statues or two or more parts of a statute then which rule is applicable:
(q) Welfare construction
(r) Strict construction
(s) Harmonious construction
(t) Mischief Rule

Ans: (c)

Theoretical Questions Answers

Question 64
Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example.

Answer 64
Where the language used in a statute is capable of more than one interpretation,the most firmly

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established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:

(1) what was the law before making of the Act,
(2) what was the mischief or defect for which the law did not provide,
(3) what is the remedy that the Act has provided, and
(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus inthe case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

Question 65

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

Answer 65

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable. However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Question 66

(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?
(ii) Does an explanation added to a section widen the ambit of a section?

Answer 66

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(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso toa particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765] Sometimes an explanation is added to a section of an Act for the purpose of explaining (ii) the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 67

Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Answer 67

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status andtraining of the parties using the words have also to be taken into account as the same words maybeused by anordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in morethan one sense. It may happen that the same word understood in one sense will give effect to allthe clauses in the deed while taken in another sense might render one or more of the clauses in effective.In such a case the word should be understood in the former and not in the latter sense. It may also happen that there is aconflict between two or more clauses of the same documents. An effect must be made to resolve theconflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible togive effect of all of them, then it is the earlier clause that will override the latter one.

Question 68

How will you interpret the definitions in a statute, if the following words are used ina statute? (i) Means (ii) Includes Give one illustration for each of the above from statutes you are

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familiar with.

Answer 68

Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that givenin the definition section.
But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, herethe word defined is not restricted to the meaning assignedto it but has extensive meaning which alsoincludes the meaning assigned to it inthe definition section.
Example—
Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.
Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Question 69

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether aprovision is directory or mandatory?

Answer 69

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, astatute 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 aduty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

Question 70

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Answer 70

Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law. This rule, however, is subject to some exceptions:

I. Where the letter of the law is logically defective on account of ambiguity, inconsistency or

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incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature.In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

II. If the text leads to a result which is so unreasonable that it is self-evidentthat the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention ofthe legislature.

Question 71

When can the Preamble be used as an aid to interpretation of a statute?

Answer 71

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words aremeant.

Question 72

Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.

Answer 72

Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisionslaying down the meaning of words in construing statutes in pari materia will have greater weight than the meaning furnished by dictionaries. However, for technical terms, referencemay be made to technical dictionaries.

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Question 73
Preamble does not over-ride the plain provision of the Act. Comment. Also givesuitable example.

Answer 73
Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it.
However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intendedin 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 marriagemay 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: 'AnAct to amend and codify the law relating to marriage among Hindus" [Gullipoli Sowria Raj V. Bandaru Pavani, (2009)1 SCC714].

Question 74
At the time of interpreting a statute what will be the effect of 'Usage' or 'customsand Practices'?

Answer 74
Effect of usage: Usage or practice developed under the statute is indicative ofthe meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislatureto amend the same are important factors to show that the practice so followedwas based on correct understanding of the law. When the usage or practice receives judicialor legislative approval it gains additional weight.
In this connection, we have to bear in mind two Latin maxims:
(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and
(ii) 'Contemporanea Expositio est optima et fortissinia in lege' (the best way to interpret a document isto read it as it would have been read when made).
Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written. Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

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Chapter 15
The Foreign Exchange Management Act, 1999

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.	Q.60 TO Q.76											
Past Exams	Q.26	Q.27	NO	NO	NO	Q.28	Q.29 Q.31	Q.30	Q.33 Q.34	Q.31 Q.35 Q.36	Q.31	NO
MTP	Q.9 Q.10	Q.3 Q.1 Q.4	Q.5 Q.11 Q.38 Q.45 Q.46	Q.6 Q.39	Q.6 Q.40	Q.7 Q.41	Q.8 Q.42 Q.43 Q.44	Q.13 Q.12 Q.47 Q.48 Q.50 Q.49	Q.14	Q.15 Q.16 Q.17 Q.51	Q.18 Q.32 Q.52 Q.53	NO
RTP	Q.19	Q.20	Q.21 Q.22	Q.23 Q.54	Q.28 Q.49	NO	Q.24 Q.55	NO	Q.56 Q.58	Q.37 Q.59	Q.25 Q.57	NO

Question 1
Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:
(A) US $ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.
(B) Gift Remittance amounting US $10,000.
Advise him whether he can get Foreign Exchange and if so, under what condition(s)? (MTP 6 Marks Oct'18, Old & New SM)

Answer 1
(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US$ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US $ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.
(B) Gift remittance exceeding US $ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US$ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be

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gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

Question 2
Explain the earning of the term "Current Account Transaction" and the right of a citizen to obtain Foreign Exchange Management Act, 1999. (MTP 3 Marks ,Oct-18)

Answer 2
The term "current account transaction" is defined in section 2(j) of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:
(i) Payments due in connection with foreign trade, other current business, services, and short–term banking and credit facilities in the ordinary course of business.
(ii) Payments due as interest on loans and as net income from investments.
(iii) Remittances for living expenses of parents, spouse and children residing abroad and
(iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.
- According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an 1uthorized person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.
- Further, any person May sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the provisions of section 6(2).

Question 3
One of the directors, of the Abhiman Ltd. Is a person of India origin with US citizenship. He wants to acquire a commercial premises in India and then lease it to the company (Abhiman Ltd.). Is this permissible under FEMA? Will your answer be different if that director is a US citizen of non-Indian origin? (MTP 4 Marks , Aug'18)

Answer 3
According to the FEM (Acquisition and transfer of property in India) Regulations, 2018, a non-resident Indian, who is a person of Indian origin and resident outside India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

- Provided that in case of acquisition of immovable property, consideration for transfer, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules and the regulations framed thereunder.
- Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.
- Thus, in the given situation, the said director who is a person of Indian origin with US citizenship

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can acquire the commercial premises in India and can transfer to person resident in India i.e., to the Company, Abhiman Ltd.

- If the director would have been a US citizen of non Indian origin then he will not be allowed to acquire the property in India.

Question 4

Mr. Manthan, is deputed to India by his company to develop a software programme for a period of 3 years from 1st January, 2016. He is paid salary to his Indian bank account. On 1st May, 2018 he wants to remit his entire salaries ended till 30th April, 2018 to his home country USA. State in the light of relevant provision, the way the remittance of the salary may be done as per the Foreign Exchange of Management Act, 1999. (MTP 3 Marks Aug'18)

Answer 4

As per Schedule III of the FEM (Current Account Transactions) Rules, 2000, a person who is resident but not permanently resident in India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary, after deduction of taxes, contribution to provident fund and other deductions. Accordingly, Mr. Manthan can remit the salary after payment of taxes and contributions related to social security schemes.

Question 5

Mr. Rich, a resident of India, purchased a flat for Rs. 1 crore jointly with his daughter's children, who is presently residing in USA. Discuss the nature of the transaction in the light of the Foreign Exchange Management Act, 1999. (MTP 6 Marks , Mar '19)

Answer 5

According to a person resident in India may acquire immovable property outside India,-

(a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4 (acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.)

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations,2015;

(c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

- Explanation—For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.
- Thus, Mr. Rich, can purchase the property jointly with the above specified relatives. Here Daughter's Children i.e., grandchildren being lineal descendant fall within the purview of the mentioned definition of relatives. Hence, this transaction can be valid subject to that no outflow of funds from India.

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Question 6

Examine the given situations in the light of the respective laws:
Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. Determine the residential status of robotic unit in Mumbai and that of the Singapore branch in reference to FEMA, 1999? (MTP 3 Marks , Oct'19 & May '20)

Answer 6

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2 (w)]. Section 2(u) defines 'person'. Under clause (vii) of section 2(u), thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

- Section 2(v) defines 'person resident in India'. Under clause (iii) 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.
- However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore branch is 'person reside

Question 7

Milap Limited, ated in India, has obtained consultancy services from an entity based in France for setting ftware programme in their company. The consideration for such services is required to be paid in foreign currency. The compliance officer of Milap Limited requires your advice regarding threshold limit of remittance that can be made without prior approval of RBI. You as a qualified Chartered Accountant are required to advise the compliance officer considering the provisions of Foreign Exchange Management Act, 1999 and regulations there under: (MTP 6 Marks , Oct-20)

Answer 7

As per the Foreign Exchange Management Act, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000, thereunder, there are various facilities for persons other than individuals which requires the prior approval of RBI for drawl of foreign exchange. One of such facility is remittances exceeding USD 1,000,000 per project for other consultancy services procured from outside India. In the given case, the person (i.e., MilapPLiamgiteed3) 46 obtaining such service from outside India is a body corporate, other than individual and accordingly to above provisions , where the remittances is exceeding the prescribed threshold, there Milap Limited will require to seek prior approval of RBI for drawl of such foreign exchange.

Question 8

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What is an overseas direct investment? Differentiate between Automatic Route and Approval Route for direct investment? (MTP 6 Marks , March-21)

Answer 8

Direct investment outside India/overseas direct investment means investments, either under the Automatic Route or the Approval Route, by way of:

(i) contributiontothecapitalorsubscriptiontotheMemorandumofaforeignentityor

(ii) purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).

Difference between Automatic Route and Approval Route for direct investment

Automatic route for direct investment or financial commitment outside India: An Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

Approval route for direct investment or financial commitment outside India:

(i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

(ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:

(a) Prima facie viability of the JV / WOS outside India;

(b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);

(c) Financial position and business track record of the Indian Party and the foreign entity; and

(d) Expertise and experience of the Indian Party in the same or related line of activity as of the

Therefore, under the a val route (proposals not covered by the conditions under the automatic route) prior approva of the Reserve Bank would be required. For which a specific application in Form ODI with the documents pr ired to be made through the Authorized Dealer Category – I banks.

Question 9

Mr. Xing Yang a citizen of Nepal, has a ancestral residential property in India. He transferred the said property to one of his known relative residing in India on lease for 10 Years. State in the given situation the legal position on the transfer of the said property by Mr. Xing Yang. (MTP 3 Marks March '18)

Answer 9

As per the regulation 7 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, no person being a citizen of Pakistan, Bangladesh,

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Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Since in the given case Mr. Xing Yang transferred his immovable property in Indi a on lease for more than 5 years without seeking prior permission of the RBI, this transfer of property is not valid in the eyes of law.

Question 10

Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions. (MTP 3 Marks March '18)

Answer 10

Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India, and includes transactions referred to in sub- section (3) of section 6 of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per these regulations, capital account transactions may be classified under the following heads.

(1) Permissible capital account transaction of persons resident in India (schedule 1)

(2) Permissible Capital transactions of persons resident outside India (schedule II).

(3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above, an Investment by person resident in India in Foreign Securities is permissible capital account transaction.

Question 11

Mr. Sugam resided in India during the Financial Year 2016-17. He left India on 15th July, 2017 for Australia for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2017 -18?

Mr. Sugam requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Sugam to get the required Foreign Exchange and, if so, under what conditions? (MTP 6 Marks April 19, Old & New SM)

Answer 11

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999,

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'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.
Generally, a student goes out of India for a certain period. In this case, Mr. Sugam who resided in India during the financial year 2016-17 left on 15.7.2017 for Australia for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2017-18, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2017).
Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Question 12

The Adjudicating authority under FEMA Act, 1999 based on the complaints received in writing from the officer authorized by the Central Government, had issued show cause notice to following persons accused of committing contravention under the Act, to show cause as to why an inquiry should not be held against them as follows:-

Noticeissued towhom	Alleged contravention prescribed in the show-cause notice issued	Reply by the accused person to the show- causenotice
Global Shipping Ltd.	Made remittance for membership of P & I club without taking the requisite approval	The amount for the sam was remitted through th RFC Account and EEFCAccount, respectively, fo which no approval warequired.

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SiphonicLtd.	Made remittance of $ 1,10,000 to BMT Inc., a US company, without taking requisite approval, as reimbursement of pre-incorporation expenses incurred for setting up the company by bringing investment of ₹ 18 crore intoIndia. (1 USD = ₹ 75)	Such remittance does no exceed the limit a specified, so, no approvawas required.

In the context of aforesaid case-scenario, examine in the lights of the provisions of the FEMA Act, 1999 and its rules & regulations, the validity of the contentions made by the aforesaid persons? (MTP 6 Marks Oct 21)

Answer 12

i. Validity of Contention made by Global Shipping Ltd.
As per Rule 4 read with the Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for making remittance for membership of P & I Club, prior approval of Ministry of Finance (Insurance Division) is required to be taken.
No approval is required where any remittance has to be made for the transactions listed in Schedule II from an RFC account and EEFC account, respectively. However, if payment has to be made for remittance for membership of P & I, approval is required even if payment is from EEFC account.
Here, Global Shipping Ltd. was required to take approval of the Ministry of Finance (Insurance Division) for making the remittance through EEFC account and in case of RFC account only, no approval was required.
Thus, its contention is partially invalid.

ii. Validity of Contention made by Siphonic Ltd.
As per Rule 5 read with the Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules 2000, for 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, prior approval of the Reserve Bank of India shall be required.
Here, Siphonic Ltd. made remittance of $ 1,10,000 equivalent to ₹ 82.5 lakhs (1 USD = ₹ 75) to BMT Inc., a US company, as reimbursement of pre-incorporation expenses for bringing investment of ₹ 18 crore into India.

So, the amount remitted comes to approximately 4.58% (₹ 82.5 lakhs / ₹ 1800 lakhs) of the investment made into India which is lesser than the prescribed limit of 5%. However, as it exceeds $ 1,00,000 and so approval was required irrespective of whether the amount remitted exceeds 5% of the investment or not.

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Thus, the contention of Siphonic Ltd. is invalid.

Question 13

Ice Slash (P) Ltd. had taken an INR denominated ECB of ₹ 10 crore from HBSG Bank, a designated AD Category-I bank. It had last filed its Form ECB 2 Return on 5th April, 2019. The bank had send over 10 remainders vide emails during the past 9 quarters to the company to file Form ECB 2 for the month of April, 2019 and thereafter but there has been no response from either the entity or its directors till date. Also, the company had not submitted Statutory Auditor's Certificate with respect to ECB transactions for F.Y. 2019-20 and F.Y. 2020-21, respectively. During the visit by the officials of the HBSG Bank at the registered office address of Ice Slash (P) Ltd., it was found inoperative. Accordingly, HBSG bank filed form ECB 2 Return without certification from Ice Slash (P) Ltd. with 'UNTRACEABLE ENTITY' written in bold on top. The amount outstanding from the company at that time was ₹ 2 crore. In the context of aforesaid case-scenario, please answer to the following questions:-

(i) Whether HBSG Bank can be considered to have validly treated Ice Slash (P) Ltd. as an 'untraceable entity'?

(ii) How the outstanding amount of ₹ 2 crore shall be treated and what other actions would be taken in respect of Ice Slash (P) Ltd.? (MTP 6 Marks Nov 21)

Answer 13

(i) Under the ECB framework, any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

(a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more.

Ice Slash (P) Ltd. or its directors have not responded to over 10 remainders made by HBSG Bank during the past 9 quarters for filing returns and had not submitted Statutory Auditor's Certificate for F.Y. 2019-20 and F.Y. 2020-21, respectively. Also, the company was found inoperative by the officials of the HBSG Bank.

Thus, HBSG Bank can be considered to have validly treated Ice Slash (P) Ltd. as an 'untraceable entity' as all the conditions with respect to the same had been satisfied in the case of it.

(ii) Under the ECB framework, in respect of 'untraceable entities', the outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means.

Thus, the outstanding amount of ₹ 2 crore shall be written-off from the external debt liability of the country and it might be retained by the HBSG Bank for recovery.

Other actions that would be taken in respect of Ice Slash (P) Ltd. are as follows:-

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No fresh ECB application by Ice Slash (P) Ltd. should be examined/processed by the AD bank;
Directorate of Enforcement should be informed about Ice Slash (P) Ltd. being designated as 'UNTRACEABLE ENTITY';
and No inward remittance or debt servicing will be permitted under auto route for Ice Slash (P) Ltd.

Question 14

Mr. Ashok, a citizen of India, has been working in a company in Chicago, USA, since last 8 years and had been settled there with his family. However, the said company opened its branch in India last year and Mr. Ashok has been deputed there for a duration of 26 months from 25th April, 2020.He remitted an amount of $ 2,80,000 on 20th December, 2021 to his family in USA. The details of salary earned by him from 25th April, 2020 to 30th November, 2021 are as follows:-

Particulars	$*
Gross Salary	3,50,000
Contribution to Provident Fund	40,000
TDS as per Income Tax Act, 1961	40,000

*** Amount is converted to USD from INR.**
You being an expert in Foreign Exchange Matters, kindly advise on the below issues:-
(i) How much excess amount, if any, has been remitted by Mr. Ashok to his family in USA?
(i) Whether the company in USA in which Mr. Ashok was deputed, can be treated as MNC under FCRA, 2010?(MTP 6 Marks, March'22)

Answer 14

i. According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year but does not include a person who has come to or stays in India, for or on taking up employment in India. As per Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000,
For a person who is resident but not permanently resident in India and-
(a) is a citizen of a foreign State other than Pakistan; or
(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,
may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).
Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident. Fact of the case & Conclusion: Mr. Ashok is a citizen of India working in a company in USA

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and has been deputed to its branch in India for a duration of 26 months i.e. for not more than 3 years and Mr. Ashok's stay in F.Y. 2020-21 was more than 182 days in India, so, he would be considered as a resident but not permanently resident in India. Accordingly, he was allowed to remit an amount upto his net salary i.e. $ 2,70,000 ($ 3,50,000- $ 40,000 - $ 40,000) while he has remitted an amount of $ 2,80,000 to his family in USA. Thus, the excess amount remitted by him is $ 10,000 ($ 2,80,000 - $ 2,70,000).

ii. As per Explanation to Section 2(1)(g) of the FCRA, 2010,— a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,—

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
(b) carries on business, or otherwise operates, in two or more countries or territories;

Facts: Mr. Ashok has been working in a company in Chicago, USA since last 8 years and the said company opened its branch in India last year. So, it appears that the said company had been incorporated in USA and operating in USA since a long time and has also started its operations in India by opening a branch in India. Thus, the company in USA in which Mr. Ashok is deputed, can be treated as MNC under FCRA, 2010 as it is carrying on business or operating in two countries i.e. USA and India, respectively.

Question 15

Ms. Milap had resided in India for 182 days in the financial year 2019-20. She went to UK on 1st April, 2020 and returned to India on 1st July, 2021 on an employment contract in India for a year. She completed her contract and immediately left India. Under Section 2(v) of FEMA 1999, determine the residential status of Milap for the financial years:

(i) 2020-21
(ii) 2021-22 (MTP 6 Marks, Sep '22)

Answer 15

As per 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) a person who has gone out of India or who stays outside India, in either case—
(a) for or on taking up employment outside India, or
(b) for carrying on outside India a business or vocation outside India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:
(a) for or on taking up employment in India, or
(b) for carrying on in India a business or vocation in India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

In line with the above definition, Residential status of Milap for the financial years will be as follows

(i) For FY 2020-2021: As in the preceding year 2019-2020, Milap resided for 182 days which is not in compliance with the requirement of number of days of her stay (for more than 182 days).

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Here, residential status of Milap is a Person resident outside India.

(ii) For FY 2021-2022: In the preceding year 2020-2021, Milap has not resided in India as she went to UK on 1st April 2020 and returned on 1st July 2021. In this case also, the residential status of Milap is a person resident outside India.

Question 16

Surbhi deals in exporting of handicrafts items to abroad. On 1st January, 2022 Surbhi exported handicrafts items to UK. However, the payment of the same has not been realised even after passing of more than 9 months.
Explain the relevant provisions under the FEMA relating to – (i)
the realisation period of exported goods.
(ii) the delay in receipt of payment. (MTP 6 Marks Oct 22)

Answer 16

(i) Period within which export value of goods/software/ services to be realised Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 deals with the matter relating to the period within which export value of good to be realised.
Regulation 9(1) provides that-
The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export, provided that-

(a) where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of shipment of goods;

(b) further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period.

(ii) Delay in Receipt of Payment Regulation 14 provides that -
Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing-

a. the payment therefor if the goods or software has been sold and

b. the sale of goods and payment thereof, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf;

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

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Question 17

Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose.

After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK' bank account, so she planned to purchase a second flat in the UK. Based on the above facts, answer the following questions:

(i) Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?

(ii) Whether Ruchika can purchase second flat in UK after returning to India? (MTP 4 Marks Oct 22)

Answer 17

(i) Purchase of First Flat in UK Section 6(4) of the FEMA, 1999 provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

(ii) Purchase of Second Flat After returning to India and becoming the resident in India, Ruchika cannot buy another property in UK as mentioned in Section 6(4) of the FEMA.

Question 18

(i) Embryonic Club in Chennai, India was established in the year, 2019. The club was meant to impart training to the aspiring engineers for the manufacturing and repairing of the spare parts of the aircrafts. After three years of functioning, the club became non-operational. The Government supported and bought the said club into revival

during the year, 2023. To restart the training activity, the club exported two aircraft engines and spare parts for abroad and getting them back to India within 7 months for functioning of the club activities at an earliest. The club had with it one imported aircraft on lease basis which was also re -exported abroad permanently by cancelling the lease agreement and obtaining the requisite approvals / permissions of the government agencies. However, the club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export.

Referring to the provisions of the Foreign Exchange Management Act, 1999 analyse whether the club has contravened the provisions of the Act relating to export and re -export of the said goods. (MTP 3 Marks March '23)

(ii) What will be the legal position with respect to obtaining of bonus shares and the rights inherited with such bonus shares to be transferred to a person resident in India, where a person resident in India has acquired equity capital of a foreign entity. (MTP 3 Marks March '23)

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Answer 18

(i) Export of goods / software may be made without furnishing the declaration in the following cases, namely:

(a) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;

(b) re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.

In the instant case, since the Embryonic Club has reimported aircraft engines and spare parts after the required period of 7 months, which is beyond the prescribed time period. Such a re-export requires to be furnished with the declaration in compliance with export and re- export of goods read with FEM (Export of Goods and Services) Regulations, 2015. Hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is the contravention of the legal requirement from Club.

(ii) Regulation 6 of the Overseas Investment Rules, 2022 deals with the rights attached to the holding of equity shares .

According to it, any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

(a) may invest in the equity capital issued by such entity as a rights issue; or

(b) may be granted bonus shares subject to the terms and conditions under these rules.

Further, the person resident in India acquiring the rights under sub-rule (1) may renounce such rights in favour of a person resident in India or a person resident outside India.

In line with the stated legal requirement, any person resident in India who have been granted bonus shares, as a right on holding of equity shares of any foreign entity, may be refused such right which is inherited as such, in favour of a person resident in India.

Question 19

Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.

(i) State the provisions of FEMA governing such type of transaction?

(ii) On Applying the relevant provisions, can Mr. Mittal join her daughter in acquiring such a flat in Australia?

(iii) Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. Explain the relevant provisions? (RTP May '18)

Answer 19

(i) The provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the

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FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015.

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, in acquiring a Flat at Australia.

(iii) Advance payment against export:

The following are the provisions governing the advance payments against exports :

(1) Where an exporter receives advance payments (with or without interest) from a buyer/ third party named in the export declaration made by the Exporter, outside India, the exporter shall be under the obligation to ensure that:

(i) The shipment of goods is made within one year from the date of receipt of advance payment.

The rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and or other applicable benchmark as may be directed by the Reserve Bank as the case maybe – Amendment as per May 22

(ii) The documents covering the shipment are routed through the authorised dealer through whom advance payment is received.

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment or towards, no remittance towards refund of unutilised portions of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve bank of India.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

Question 20

Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1 st June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for ₹60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for ₹ 65 lacs. Mr. Henry Benjamin's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin.

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Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible. (RTP Nov '18)

Answer 20

(a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

(b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

(1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.

(2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

Question 21

Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there (RTP May '19)

Answer 21

According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Bharat wants to remit money to meet his obligation of 50% in the immovable property in USA under joint ownership with his son Arjun. Hence, as per the regulations, Mr. Bharat cannot remit amount to buy immovable property in USA.

Question 22

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Mr. Raghav, a resident of India went to Australia for a business deal. He realised foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India. Mr. Raghav was left with certain unused foreign exchange. He retained the foreign exchange with him for future use. (RTP May '19)

Answer 22

Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015]: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be. Retention of unused foreign exchange by Mr. Raghav is against the Law.

Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:
(i) Payment to be made for securing health insurance from a company abroad.
(ii) Payment of commission on exports under Rupee State Credit Route.
Advise whether he can get foreign exchange and if so, under what condition? (RTP Nov '19)

Answer 23

Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.
The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:
(i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
(ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

Question 24

A foreign tourist comes to India and he purchases a antiques from a shop. He would like to pay US$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency? (RTP May '21)

Answer 24

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As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.
Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person; Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper have taken a money changers license to accept foreign currency.

Question 25

Grand Father of Mr. Narendra Kamal was farmer in undivided India and own large chunk of land. Due to partition, his grand-father along other family members evacuated from west Punjab, hence got a piece of agricultural land in compensation under Displaced Persons (Compensation and Rehabilitation) Act, 1954 in that area of east Punjab which is present day Haryana touching NCT.
Such land was inherited by Mr. Saurabh Kamal and Mr. Varun Kamal (both resides in India) in equal portion as per the testament of their Narendra' Grandfather. Mr. Narendra is only child of Mr. Saurabh. At death of Mr. Saurabh in 2005, his will was executed and piece of land belong to him transferred to Mr. Narendra.
Mr. Narendra in 2002, shifted to New Zealand, there he operate an accounting KPO firm. Mr. Narendra surrender Indian citizenship and hold kiwi passport. Now the children of Mr. Narendra is also grown-up. His son want to enter in film-making hence need funds, Mr. Narendra decided to sell the land inherited by him from his father (in -turn from his Grandfather). He approached Mr. Balraj, a property linker for identifying buy for said land. It was decided that part of proceed will be used by son of Mr. Narendra and rest will be planned to invest in New Zealand only.
You are required to advise Mr. Narendra can he sell/transfer the land he owned in India as per the relevant provisions of FEMA. (RTP May '23)

Answer 25

According to Section 6 (5) of The Foreign Exchange Management Act 1999, it is provided that a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or the property was acquired, held, or owned by such person when he was resident in India or inherited from a person who was resident in India (like in given case inherited by Mr. Narendra in 2005). Further, a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific

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permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section as per the second schedule of the FEM (Permissible Capital Account Transaction) Regulation, 2000. Hence Mr. Narendra allowed transfer (sale) the agriculture land and after seeking permission of RBI can repatriate the sale proceeds, outside India.

Question 26

Mr. Bandha, a software Engineer, Indian Origin took employment in USA. He is a resident of USA for a long time.

He desires

(i) to acquire a farm house in Munar (Kerala).

(ii) to make investment in KLJ (Nidhi) Ltd., registered as Nidhi Company.

(iii) to make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township.

Mr. Unsatisfactory, brother of Mr. Bandha residing at Chennai is aggrieved by an order made by Appellate Tribunal established under Foreign Exchange Management Act, 1999, desires to file further appeal.

With references to the provisions of Foreign Exchange Management Act, 1999, analyse whether there are any restrictions in respect of the transactions desired by Mr. Bandha. Also determine the appeal procedure to Mr. Unsatisfactory on the order of Appellate Tribunal under the said Act. (PYP 6 Marks May'18)

Answer 26

(i) Acquisition of a Farm House

Mr. Bandha, cannot acquire a farm house in Munnar (Kerala) because a person resident outside India who is a citizen of India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

(ii) Making Investments in KLJ Nidhi Limited

Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd., as a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage as Nidhi Company.

(iii) Making Investments in Rose Real Estate Limited

The person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or an entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses. However, development of townships shall not be included in the real estate business.

Thus, Mr. Bandha can make investment in Rose Real Estate Ltd.

Appeal to High Court (Section 35)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such Order.

However, the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause

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from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Mr. Unsatisfactory can file an appeal to the High Court, as per the above procedure.

Question 27

Bharat Computer Hardware Ltd. received an advance -payment for export of high-tech hardware to a business concern in Singapore by entering into an export agreement to supply the hardware within six months from the date of receipt of advance payment. The shipment of hardware was made after 9 months and the documents covering the shipment were routed through an authorized dealer through whom the advance payment was received.
Examine whether Bharat Computer Hardware Ltd. has discharged its obligation in accordance with the provisions of the Foreign Exchange Management Act, 1999?
Is it possible to receive advance payment where the export agreement provides for shipment of goods within 15 months from the date of receipt of advance payment? Also identify the maximum rate of interest payable on the advance payment under the said Act.(PYP 6 Marks Nov '18)

Answer 27

According to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, Advance payment against exports:

(1) Where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that –

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and or other applicable benchmark as may be directed by the Reserve Bank as the case maybe – Amendment as per May 22

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment. In the light of the provisions as enumerated above,

(i) Since Bharat Computer Hardware Ltd. has exported the hardware within 9 months of the date of receipt of advance payment, it has discharged its obligations within the provisions of the Foreign Exchange Management Act, 1999.

(ii) Yes, it is possible to receive advance payment where the export agreement provides for shipment of goods extending beyond the period of one year (here in question 15 months) from the date of receipt of advance payment.

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(iii) The maximum rate of interest, if any, payable on the advance payment should not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points.

Question 28

Under the auspices of the Foreign Exchange Management Act, 1999, (the Act) examine whether thPeaggiveen359 situations fall under "Current Account Transactions" or not as defined in the Act?

(i) Mr. S, a resident in India, imports machinery from a vendor in UK for installing in his factory.

(ii) An Indian resident, imports machinery from a vendor in US for installing in his factory on a credit period of 3 months.

(iii) An Indian resident, transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York. (PYP 3 Marks Nov '20, RTP May'20)

Answer 28

(i) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

(ii) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. Under FEMA, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j)(i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is a Current Account Transaction.

(iii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction.

Question 29

GOGU Limited, a resident company in India, has achieved a turnover of ₹ 20,000 crore during the financial year 2019-20. The paid-up share capital and Free Reserves of the company as on 31st March, 2020 as per the audited financial statements was ₹ 1500 crore and ₹ 500 crore respectively. The company is planning to make an investment of INR 7800 crore in an Overseas Joint Venture in Singapore. The company approached you whether it can make the desired investment under the terms of automatic route for direct investment during the financial year 2020-

21. The equivalent currency in US $ comes to around USD 1.05 billion. Referring to the Foreign Exchange Management (Transfer of Issue of Any Foreign Security) (Amendment)

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Regulations, 2004 and notifications issued by the Reserve Bank of India, decide whether there is any restriction in the above investment.(PYP 3 Marks , Jan '21)

Answer 29

Automatic route for direct investment or financial commitment outside India: As per Regulation 6 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, an Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures (JV) or Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital
+ Free Reserves) as per the last audited balance sheet].

Here, 'Indian Party' includes a company incorporated in India. As per the facts of the question and provision of law, GOGU Limited (Indian party) will require prior approval of the Reserve Bank of India even though its total financial commitment is within the eligible limit under automatic route [i.e. {400% of (1500+500) = ₹ 8,000 crore}], because financial commitment is more than USD 1 billion.

Question 30

Mr. Joe, a resident in India had obtained an External Commercial Borrowing of $ 25,000 from a foreign lender on a collateral charge of his residential property in India. Mr. Joe, however, could not repay the loan and the lender prefers the property charged to be sold in India to any person (resident in India or not) and repatriate the same proceeds to him. You are required to provide the correct legal position to the above situation in the light of the provisions of the Foreign Exchange Management Act, 1999 and Rules made thereunder. (PYP 3 Marks July 21)

Answer 30

As per the ECB Framework, AD Category I banks are permitted to allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower.

Following are the requisite conditions for creation of Charge on Immovable Assets/ property:

(i) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017.

(ii) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.

(iii) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

Accordingly, in the given case, Mr. Joe, a resident in India, obtained an ECB of $ 25,000 from foreign

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lender on a collateral charge of his residential property in India. He failed to repay the loan. As of that, lender prefers the property charged to be sold in India to any person whether resident in India or not so as to repatriate the sale proceeds to him.
Therefore, in line with the clause (iii) of the above stated provision, in the event of enforcement of the charge, the immovable property (Residential property of the Joe) will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

Question 31

Hill Limited, a Public Limited company in India, obtained an External Commercial Borrowing ('ECB') of USD 50,000 dated 30th June 2020, from a foreign lender. On 2nd July 2021, based on mutual consent of the parties, ECB is fully converted into equity. The shares were issued to foreign lender at the par value and not at fair value. You are required to provide the correct legal position regarding the valuation of shares and state the reporting requirements by Hill Limited at the time of conversion of ECB into equity in the light of the provisions of the Foreign Exchange Management Act, 1999 and the Rules made thereunder. (PYP 3 Marks Dec '21, MTP 3 Marks Sep 22 & April '23)

Answer 31

Legal position regarding valuation of shares
For conversion of ECB dues into equity, the exchange rate prevailing on the date of t he agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only. In view of the above, Hill Limited cannot convert ECB into shares at par value. It has to issue shares to the borrower at fair value at the conversion date (i.e. based on applicable pricing guidelines prevailing on the date of conversion). Reporting requirements
Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:
In case of full conversion of ECB into equity, the reporting to the Reserve Bank will be of the entire portion, reported in Form FC-GPR. While reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully convPeartgedeto361 equity". Subsequent filing of Form ECB 2 Return is not required.

Question 32

Mr. Vivek, an Indian citizen, was working in Singapore for ten years. He is currently holding assets and bank balances in Singapore and planning to settle down in India. Mr. Vivek seeks your advice as to whether he can hold, own, transfer or invest in a foreign currency, foreign security or any immovable property situated outside India as per the Foreign Exchange Management Act, 1999. (3 Marks Dec '21)(MTP 3 Marks April '23)

Answer 32

A per Section 6 of the FEMA, 1999, a person resident in India may hold, own, transfer or invest in

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foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
Here, in the given case, Mr. Vivek, an Indian Citizen, who was working in Singapore for ten 10 years, currently planning to settle in India wanted to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India.
Hence in the given case, Mr. Vivek, earned income through employment or business or vocation when he was outside India. After his settlement in India, he may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank.
NOTE:
The residential status of Mr. Vivek that he is a 'person resident in India' is not given in the question. The word 'Indian citizen' in the question may be read as 'Indian Resident'.

Question 33

Mr. MGJ, a person resident outside India, is contemplating to invest his foreign currency funds through equity contribution in an Indian company engaged in a huge township development project consisting commercial and residential complex in Bangalore (India). Examine, referring to the provisions of the Foreign Exchange Management Act, 1999, the feasibility of his proposal of investing funds in the said company. (PYP 3 Marks May '22)

Answer 33

As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses.
Here the term "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
Conclusion: Accordingly, the proposal of investing funds in an Indian Company by Mr. MGJ, is feasible as the investment is for development of township as per the above stated laws.

Question 34

XYZ Private Limited is a Start-up company recognized by the Central Government. The company is intending to raise External Commercial Borrowing under automatic route of USD 3 million for 3 years in the form of partially convertible preference shares for working capital from one of the shareholders. You are requested to advice the company on the Maturity, Forms and Amount of External Commercial Borrowing permitted as per the provisions of the Foreign Exchange Management Act, 1999. (PYP 3 Marks May '22)

Answer 34

XYZ Limited, based on the guidelines contained in the Master Direction No 5/2018 - 19 issued by

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the Reserve Bank of India, is advised as under:
ECB facility for Start-ups: AD Category-I Banks are permitted to allow Start-ups to raise ECB under the automatic route as per the following framework:
Eligibility: An entity recognized as a Start-up by the Central Government as on date of raising ECB.
Maturity: Minimum average maturity period will be 3 years.
Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or part I convertible preference shares.
Amount of ECB: The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

Question 35

ADL Limited is eligible for External Commercial Borrowing (ECB). It raised ECB of INR 100 crore on 01.01.2021 from eligible foreign lender to establish a power plant in India. As the forest and other government clearances are getting delayed, the implementation of the project is likely to be deferred by one year. Hence, the company dropped down the ECB amount of INR 100 crore and parked the proceeds, as detailed below:

(i) INR 80 crore were parked in capital market, the break-up of which is that - INR 20 crore in equity shares, INR 40 crore in secured debentures and INR 20 crore in mutual funds.

(ii) INR 20 crore in term deposits with AD Category 1 bank in compliance with all conditions.

Referring to the provisions of the Foreign Exchange Management Act, 1999. examine the validity of the parking of ECB proceeds in the manner as detailed above. (PYP 3 Marks Nov 22)

Answer 35

ECB proceeds are permitted to be parked abroad as well as domestically.
Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.
By looking at the above provisions,
(i) Parking of ₹ 80 crore in capital market is not valid.
(ii) Parking of ₹ 20 crore in term deposit with AD category 1 bank in compliance with all condition is valid.

Question 36

A Flying Club in Indore, India was established in the year 2016. The principal activity of the club is to impart classroom and field training to the aspiring pilots. After running smoothly for first five years the club became defunct. With the initiative and support of the Government it could be revived during the year 2021. To restart the training activity the club exported two aircraft engines and spare parts for repairs abroad and getting them back to India within six months for functioning of the club activities.

The club had with it one imported aircraft on lease basis which was also re-exported abroad

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permanently by cancelling the lease agreement and obtaining the requisite approvals / permissions of the government agencies. However, the club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export. Referring to the provisions of the Foreign Exchange Management Act, 1999, analyse, whether the club has contravened the provisions of the Act relating to export and re-export of the said goods. (PYP 3 Marks Nov '22)

Answer 36

Export of goo s / software may be made without furnishing the declaration in the following cases, namely:

(i) aircrafts d spare parts for overhauling and/or repairs abroad subject to their reimport i erhauling /repairs, within a period of six months from the date of their export;

(ii) re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.

In the instant case, since Flying Club has fulfilled the requirement with respect to export and re-export of goods in compliance with FEM (Export of Goods and Services) Regulations, 2015, hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is not the contravention from Flying Club.

Question 37

EDC Computer Hardware Limited received an advance payment for export of high-tech hardware to a business concern in Abu Dhabi (UAE) by entering into an export agreement to supply the hardware within 14 months from the date of receipt of advance payment. Examine under the provisions of the Foreign Exchange Management Act, 1999 and decide:

(i) Whether it is permissible to receive advance payment in the above scenario?

(ii) If so, what are the conditions to be complied with in the relation to the advance payment against export in the above scenario? (RTP, Nov'22)

Answer 37

Advance payment against exports under Regulation 15 of the FEM (Export of Goods & Services) Regulation 2015.

(1) Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-

Bank Offered Rate (LIBOR)+ 100 basis points, and

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after

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the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Exemption: An exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

In view of the above provisions EDC Computer Hardware Limited can receive the advance payment for export of high- tech hardware to business concern in Abu Dhabi, complying the above conditions.

Multiple Choice Questions (MCQs)

Question 38

Mr. Raj, a resident of India went to Australia for a business deal in January 2019. He realised foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India in 28th of February, 2019. Mr. Raj was left with certain unused foreign exchange. He retained the foreign exchange with him for future use. Mr. Raj have to return the unused foreign exchange- (MTP 2 Marks , Mar-19)

(a) Latest by 27th August 2019

(b) Latest by 28th August 2019

(c) Latest by 29th August 2019

(d) Latest by 31st August 2019

Answer 38: (a)

Question 39

A highly reputed construction company of Mumbai, decided to launch an ultra modern residential project in Goa especially for non-resident HNI Indians. For the purpose it appointed 4 agents worldwide to look for prospective buyers for 12 exclusive flats. The terms of their appointment clearly mentioned that they themselves will be responsible for inward remittance on the flats booked by them. As the project was one of its kind, so it got overwhelming response and all the flats got booked. However only 2/3 of the price of each flat could be remitted into India through proper channel during the financial year ended on 31st March 2019. Price of per flat was USD 1500000 inclusive of all. From the following how much maximum commission can be given to each agent, without any intervention of any authority. Each agent booked 3flats. (MTP 2 Marks , Oct-19)

(a) 75000USD

(b) 150000USD

(c) 225000USD

(d) 300000USD

Answer39 : (b)

Question 40

Mr. Z was appointed as representative of ABC Company for a 10 days corporate programme

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organized in USA.
During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a treatment done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad. (MTP 1 Mark ,May-20)
(a) USD 1,25,000
(b) USD 2,25,000
(c) USD 2,50,000
(d) As estimated by a medical institute offering treatment

Answer 40: (d)

Question 41
Mr. Raman, a non-resident, has a Special Investment Plan (SIP) with a mutual fund in India. Mr. Raman, due to some financial problems, requested his brother Mr. Raghav who is an Indian resident, to make the payment of few subsequent instalments of SIP on his behalf. You are required to advise Mr. Raghav whether such transaction is permitted considering the provisions of Foreign Exchange Management Act (FEMA), 1999. (MTP 2 Marks ,Oct-20)
(a) Such transaction is not permitted as it amounts to payment for the credit of non-resident.
(b) Such transaction is permitted as Mr. Raghav can enter into such transaction on behalf of his non – resident brother.
(c) Such transaction is not permitted as Mr. Raghav cannot enter into such transactions on behalf of his non- resident brother.
(d) Such transaction is permitted if Mr. Raghav obtains prior permission of the Reserve Bank of India.

Answer 41 : (a)

Question 42
Mr. A is an authorized dealer holding a valid Authorization issued by the Reserve Bank of India under section 10 of the FEMA, 1999. During the course of his business, he violated one of the conditions subject to which the Authorization was granted to him. The Adjudicating Authority imposed a penalty of Rs. 1,50,000 under section 13 (being 3 times the amount involved in the violation, i.e. Rs. 50,000). Mr. A accepted the default. State the time limit before which Mr. A should pay the penalty, assuming he does not prefer an appeal to the Appellate Authority: (MTP 1 Mark , March-21)
(a) Within 30 days from the date of the Order imposing the penalty.
(b) Within 45 days from the date of the Order imposing the penalty.
(c) Within 60 days from the date of the Order imposing the penalty.
(d) Within 90 days from the date of the Order imposing the penalty.

Answer 42 :(d)

Question 43

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A Limited, an Indian company holds a commercial plot in Chennai, India. It intends to sell the same. M/s Super Seller is a real estate broker with Head Office in the USA. M/s Super Seller is appointed to find buyers for the land. A company Glory Inc., based out of USA is identified as a buyer. Glory Inc., is controlled from India and is hence a Person Resident in India under FEMA provisions. Glory Inc., agrees to buy the land for USD 6,00,000 (assume 1 USD = Rs.70). M/s Super Seller is to be paid commission at the rate of 7% of the sale proceeds. The commission is to paid to the H.O of M/s Super Seller in USA. Decide, in light of the relevant provisions of FEMA, 1999, which of the following is correct (Ignoring TDS implications arising under the Income Tax Act, 1961):

(a) Prior permission is not required for remittance of commission upto USD 25,000. For balance commission of USD 17,000, permission of RBI is to be sought by A Limited.
(b) Prior permission is not required for remittance of commission upto USD 30,000. For balance commission of USD 12,000, permission of RBI is to be sought by A Limited.
(c) Prior permission is not a tall required for remittance of the entire commission.
(d) Prior permission is required to be taken from The Reserve Bank of India for the entire amount of commission. (MTP 2 Marks March-21)

Answer 43 : (b)

Question 44

Minimum Average Maturity Period prescribed for ECB raised for working capital purposes or general corporate purposes under the ECB framework is:

(a) 1 year
(b) 5 year
(c) 7 year
(d) 10 year (MTP 1 Mark April 21)

Answer 44 (d)

Question 45

Peter a citizen and resident of India, in the year 2011, got a job in a MNC in Germany. He planned to shift. Due to travelling and shifting, studies of his daughter Lisa was effected a lot, so he decided to admit her into Mayo College at Ajmer for her further studies. On 23rd March 2017, Peter, along with his wife and daughter reached India from Germany. On 22nd April 2017, Lisa got admission in the college and since then she is living in India only. Peter and his wife returned Germany on 1 st May 2017. Peter did not visited India during the financial year 2017-18, however his wife was in India from 2nd December 2017 to 2nd January 2018. During the financial year 2018-19, Peter was in India for 185 days due to his deployment and Lisa's ill health. From the following who will be treated as person resident in India for the financial year ended on 2018-19 ---

(a) Lisa
(b) Peter
(c) Peter's wife

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(d) Lisa and Peter's wife (MTP 2 Marks ,April '19)

Answer 45: (a)

Question 46

Rahul, Son of Mr. Manish was going to USA under cultural exchange programme of his college. For meeting Rahul's expenses in USA, Mr. Manish purchased 5000 USD from an authorized person on 15th February 2018. Rahul came back to India on 15th March 2018. At the time of his return to India he was having 1850 unspent USD with him. From the following which option is the best suited for the above situation –

(a) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of his return to India.
(b) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of purchase of foreign exchange.
(c) Unspent foreign exchange shall be surrendered to the authorized person within 90 days from the date of his return to India.
(d) Unspent foreign exchange not exceeding 2000 USD may be retained by a person resident in India. (MTP 2 Marks April '19)

Answer 46: (d)

Question 47

Dhruv, is a pilot in Bangkok airways. He flies for 15 days in a month and thereafter takes a break for 15 days. During the break, he is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, he was based at Delhi. During the financial year, he was accommodated at Delhi for 182 days. Determine the legal position as regards the residential status of Dhruv under the given situation:

(a) Dhruv cannot be considered to be a Person Resident in India.
(b) Dhruv can be considered to be a Person Resident in India due to her stay for 182 days in India
(c) Dhruv cannot be considered to be a Person Resident in India due to her stay for less than 183 days in India.
(d) Dhruv can be considered to be a Person Resident in India due to her stay in Delhi for security consideration. (MTP 2 Marks Oct 21)

Answer 47: (a)

Question 48

The dealers in precious metals/ precious stones, can be considered as persons carrying on designated businesses or professions, when-

(a) they engage in any cash transactions with a customer of Rupees ten lakhs, carried out in a single operation
(b) they engage in any cash transactions with a customer of Rupees ten lakhs, carried out

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in a single operation or in several operations that appear to be linked.
(c) they engage in any cash transactions with a customer of equal to or above Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked
(d) they engage in sale or purchase of precious metal/precious stones and having annual turnover of Rupees twenty lakhs or above (MTP 1 Mark Oct 21)

Answer 48 : (c)

Question 49

Mr. V, brother of Mr. R , is a resident of Singapore and he owns an immovable property in Chennai which he inherited from his father, who was a resident of India, Can Mr. V continue to hold the property?

(a) No, he cannot hold transfer or invest In India, since he is resident outside India.
(b) Yes, he can continue to hold in India, since he is person of India Origin and the property is located In India
(c) Yes, he can continue to hold the property, since this was inherited from a person who was resident in India.
(d) Yes, he can continue to hold the property, since his brother (Mr. R) uses the property whenever he travels to Chennai. (MTP 1 Mark Nov 21, RTP May'20)

Answer 49: (c)

Question 50

In September 2016, Mr. P, went to USA, London and Germany on a month long business trip. For this trip he got foreign exchange of US $ 50,000 from an authorized dealer. In December 2016 he remitted US$ 50,000 to his son in Canada, who was studying there. In January 2017 he sent his mother and wife to America for his mother's treatment and for the purpose he remitted US$ 75,000 to his younger brother, who was living there. In March 2017 his daughter got engaged and she opted for a destination marriage to be held in May 2017, in Switzerland. While on trip to Dubai in the March end, 2017, he spent US $ 35,000 for his daughter's shopping in Dubai. Later, the event manager gave an estimate of US $ 250,000 for the wedding. As per the provisions of FEMA, for how much remittance does he need to take prior approval of the Reserve bank of India.

(a) He does not need any prior approval at all
(b) For US $ 210000
(c) For US $ 250000
(d) For US $ 15000 (MTP 1 Mark Nov 21)

Answer 50 : (a)

Question 51

Priti, on 1st September, 2021 went to UK for doing one year MBA course. Her MBA course completed on 31st August, 2022 and she returned India on the next day. What shall be her residential status for the FY 2022-23 and 2023-24:

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(a) Resident in India for FY 2022-23 and FY 2023-24
(b) Resident in India for FY 2022-23 and Resident outside India for FY 2023-24
(c) Resident outside India for FY 2022-23 and FY 2023-24
(d) Resident outside India for FY 2022-23 and Resident in India for FY 2023-24 (MTP 2 Marks Oct 22)

Answer 51 : (d)

Question 52
Overseas Investment as per the Foreign Exchange Management (Overseas Investment) Rules, 2022 means:
(a) Financial Commitment by a PRII
(b) Overseas Portfolio Investment ('OPI') by a PROI
(c) Financial Commitment or Overseas Portfolio Investment ('OPI') by a PROI
(d) Financial Commitment and Overseas Portfolio Investment ('OPI') by a PRII (MTP 1 Mark March '23)

Answer 52 : (d)

Question 53
The bench mark rate for calculating the all in cost for foreign currency ECBs is amended, due to Libor transition made vide circular dated 8.12.2021, by-
(a) 30 bps
(b) 40 bps
(c) 50 bps
(d) 60 bps (MTP 1 Mark March '23)

Answer 53 : (c)

Question 54
Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.
(1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019
(2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019
(3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019-2020
(a) Both the statement (1) & (3) are correct
(b) Both the statement (2) & (3) are correct
(c) Only statement (1) is correct

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(d) Only statement (2) is correct (RTP Nov 19)

Answer 54 : (b)

Question 55

Mr. X, a resident of India planned a tour of 15 days to visit Paris and to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit :

(a) INR 2000
(b) INR 5000
(c) INR 10,000
(d) INR 25,000 (RTP May '21)

Answer 55: (d)

Question 56

After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2019, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ₹ 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brassware, jewelry, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA.

You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2020 -21 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

(a) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
(b) For the financial year 2020-21, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
(c) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
(d) For the financial year 2020-21, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India. (RTP May 22)

Answer 56 : (c)

Question 57

In September, 2020, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US$ 50,000 from his banker, State Bank of India, New Delhi branch. In December, 2020 he further, withdrew US$ 50,000 from SBI and remitted the same to his son

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Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2021, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US$,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2021, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2021 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2021, he again withdrew US$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker, State Bank of India.

(a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2020-21, Mr. Purshottam Saha is not required to obtain any prior approval.

(b) In respect of withdrawal of US$ 35,000 in the last week of March, 2021, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US$ 1,75,000.

(c) After withdrawing US$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

(d) After withdrawing US$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals. (RTP May 23)

Answer 57 : (a)

Question 58

Nandeesh, a resident Indian, remitted USD 1,00,000 on 7th June, 2021, to his son Ishaan who is settled in California, USA, since he urgently required funds. On 9 th July, 2021, Nandeesh again remitted USD 71,000 to meet expenses to be incurred in respect of his ailing wife, Medhavi who had recently gone to USA to meet his son IshaanPbaugt head370 developed serious coronary disease. For specialised treatment of Medhavi at a specialised hospital, a sum of USD 79,000 was remitted for the second time on 30 th July, 2021 by Nandeesh. Within next 10 days, Medhavi recovered and was allowed to return to her son's residence from the hospital. Choose the correct option from those stated below as to when Nandeesh can send further foreign exchange to his son Ishaan for the purpose of purchasing a house without obtaining the prior approval of Reserve Bank of India:

(a) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further

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foreign exchange to his son Ishaan only in the month of April, 2022 or thereafter.

(b) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of January, 2022 or thereafter.

(c) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of July, 2022 or thereafter.

(d) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of November, 2021 or thereafter. (RTP May '22)

Answer 58 : (a)

Question 59

Mr. X, a person comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he stays till 31st March 2020. Thereafter he continues to stay in India. He decided to live in India for next 6 months by the time his parents recovers. In the light of the given case, determine the correct residential status of Mr. X from the given statements.

(a) Mr. X is PRII as he did reside in India in the FY 2019-2020.

(b) Mr. X is PRII as he reside in India for more than 182 days in the FY 2019 -20.

(c) Mr. X is PROI in the FY 2019-20, but will be treated as PRII from 1st April, 2020, as he resides in India for more than182 days in the previous FY.

(d) His stay in India is neither for employment, nor for business, nor for circumstances which show that his stay in India for an uncertain period. In FY 2019-20, he is a PROI as he did not reside in India for more than 182 in FY 2018-19. (RTP ,Nov'22)

Answer 59 : (d)

60. In September, 2021, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2021 he further, withdrew US$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2022, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2022, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2022 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2022, he again withdrew US$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign

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Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr.
Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India. Page 371

(a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.
(b) In respect of withdrawal of US$ 35,000 in the last week of March, 2022, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US$ 1,75,000.
(c) After withdrawing US$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021- 22, otherwise SBI would not have permitted further withdrawals.
(d) After withdrawing US$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.

Ans: (a)

61. M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and othersimilar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the fourgiven below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:

(a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
(b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
(c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
(d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

Ans: (c)

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62. Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident inIndia' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalizedand Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = ₹ 70).According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to remitted in USD to the Head Office of M/s. Super Seller located in USA.
Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement
out of the fourgiven below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

(a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.

(b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.

(c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

(d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

Ans: (d)

63. Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:

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(a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 50,000,000.
(b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 10,000,000.
(c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 5,000,000.
(d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 1,000,000.

Ans: (d)

64. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October25, 2021, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ₹ 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2022-23 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:
(a) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
(b) For the financial year 2022-23, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
(c) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
(d) For the financial year 2022-23, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

Ans: (c)

Theoretical Questions Answers

Question Illustration 65

Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

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Answer 65

As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident inIndia' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

Question Illustration 66

Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021- 2022?

Answer 66

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Question Illustration 67

Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Answer 67

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u)defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned orcontrolled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses

(i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it

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would be 'person resident in India'.
The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

Question Illustration 68
Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer 68
Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Question 69
Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Answer 69
Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.
Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'
However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Question 70
Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:
(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

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(ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.
Advise him whether he can get Foreign Exchange and if so, under what conditions?

Answer 70

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited andthe same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

Question 71

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.

(ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Answer 71

Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

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Question 72
Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V, an exporter is bound to make declaration of a gift of Jewellery valued at ₹ 20,000 exported from India to United Kingdom.

Answer 72
In accordance with provisions of the FEMA, 1999 as contained in section 7 read with section 8, an exporter shall make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign exchange due to India in respect of such exports to India in the manner within the time as may be prescribed. Under section 8, the exporter is under an obligation to realise and repatriate to India such foreign. However, if there is an delay in the receipt of export, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps, depending upon the individual case.
There are certain categories of export for which declaration need not be made. These are given under the Regulation 4 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. According to the regulation, export of goods by way of gift shall be accompanied by a declaration by the exporter that they are not more than five lakh rupees in value. Taking into consideration the above, since the value of gift of jewellery to V's friend in the United Kingdom is less than ₹ 5 lac in value, the gift does not need any declaration to be furnished by exporter to the specified authority.

Question 73
Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
(i) M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.
(ii) P requires U.S. $ 2,000 for payment related to call back services of telephones.

Answer 73
Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

i. It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
ii. Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose

Question 74
Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?

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Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, ifso, under what conditions?

Answer 74

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.
Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period' RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.
Mr. Suresh will not be resident during the Financial Year 2015-2016 as he did not stay in India during the relevant previous financial year i.e. 2014-15.
However during the FY 2015-16 Mr. Suresh will not be considered as resident as he left India on 15th July, 2014. He is determined to be person Resident outside from 16th July 2014 for the FY 2015-16.
Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May , 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Question 75

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Answer 75

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999):
According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such

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reasonable restrictions for current account transactions as may be prescribed.
As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawalof foreign exchange, and

Transactions which require RBI's prior approval for drawl of foreign exchange

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.
Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

Question 76

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) US$ 120,000 for studies abroad on the basis of estimates given by the foreign university.
(B) Gift Remittance amounting US$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Answer 76

(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission ofthe RBI is not required.

(B) Gift remittance exceeding US $ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Ruleshave been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

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Case Scenarios

Attempts Coverage	MAY 2018	NOV 2018	MAY 2019	NOV 2019	MAY 2020	NOV 2020	MAY 2021	NOV 2021	MAY 2022	NOV 2022	MAY 2023	NOV 2023
Study Mat.		NO										
Past Exams	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
MTP	NO	NO	NO	NO	Q.8 Q.11	Q.9.Q.10	Q.5 Q.6 Q.7 Q.8	Q.1 Q.2 Q.3 Q.4	Q.12 Q.13 Q.14 Q.15	Q.2 Q.16 Q.17 Q.18	Q.19	Q.12 Q.14
RTP	NO	NO	NO	NO	Q.26 Q.27	Q.24 Q.25	Q.22 Q.23	Q.20 Q.21	Q.27	Q.28 Q.29	Q.30	Q.31

Case Scenario 1 (MTP Oct 21)

Ramola Textiles is a listed public company with the share capital of ten crores. The share value of the share is ₹ 100/share. The company has maintained the following registers:

(a) Register of Members indicating separately for each class of equity and preference shares held by each member residing in or outside India

(b) Register of Debenture-holder

The company has a registered office in Ahemdabad (Gujarat) and its Corporate office is situated in Mumbai. Around 17% of members who are equity share holders and 10% of the members who are preferential shareholders resides in Jaipur (Rajasthan). So out of these members 9% equity share holders and 5% preferential share holder made an application addressed to the company to shift its register of members to its liaison office in Jaipur. The company refused the request of the members by quoting that the register can only be maintained at registered office of the company. Mr. Raheem, a shareholder of the company, wants to sell all his shares in the company and wants to settle abroad. Mr. Raheem sold his equity shares to Mr. Ram on 7 th May 2021. After completing all the formalities of transfer of shares Mr. Raheem left India on 10th May 2021. After three days span Mr. Ram figured out that his name was still not registered in company Register of Members (ROM). The Annual General Meeting was scheduled to be held on 25th May 2021. So, Mr. Ram wrote an e-mail to the company regarding addition of his name in ROM. But finally, after no response from the company, Mr. Ram approached the Tribunal to get his name registered in ROM. The Tribunal passed the order on 20th May 2021 to enter Mr. Ram's name in register of members of the company.

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In the Annual General Meeting (AGM) the company declared to pay 10% dividend to all its shareholders out of the profits which it earned in previous financial year. Mr. Krish, a member of the company is holding 1000 equity shares in the company. Two years back Mr. Krish jointly bought fully paid 1000 equity shares of the company, with Mr. Azim, who is also a member of the company holding 1000 equity shares. Mr Krish needs to pay final call of ₹ 20 per share.
After the Annual General Meeting a report on the meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder is required to be filed. A copy of the report was filed with the Registrar in Form No. MGT-15 with prescribed fees.
Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks Oct 21] (Chapter 7 Management & Administration)

(i) The Tribunal passed an order dated 20.05.2021. Latest by what date should the entry of Mr. Ram's name be made in the register of members?
(a) 25.05.2021
(b) 27.05.2021
(c) 30.05.2021
(d) 31.05.2021

Answer : (c)

(ii) Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
(b) No, the signing is not in order as only the Chairman is authorised to sign the report
(c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.

Answer : (d)

(iii) According to the provision of Companies Act, 2013, till what date the company should submit report of AGM to the registrar?
(a) 04.06.2021
(b) 09.06.2021
(c) 24.06.2021
(d) 25.06.2021

Answer : (c)

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Case Scenario 2 (MTP Oct 21 & Sep '22)

Atul want to wear a new coat for his seminar which is to be held (after 15 days). He bought cloth material from the market to make a new coat. Atul gives material to Babu, a tailor, to make the coat. Babu promised Atul to deliver the coat within the stipulated time of one week. Atul paid 10% advance so that he stitches his coat on priority basis. After one week when Atul went to the tailor he was shocked to see that the coat is still unstitched. The tailor demanded two more days time from Atul to stitch the coat, but Atul refused and asked the tailor to return his piece of cloth. Tailor retained the cloth and asked Atul to pay the price, as he already did the cutting of the cloth. Yash, Atul's friend left his car at the company's authorised showroom for servicing. As Yash house is located in the remote area of the city, so he instructed the manager of the showroom to park the vehicle at Atul's residence. So as per Yash's instructions the car was sent to Atul house after servicing. The worker of the showroom parked the car outside Atul's residence and handed over the key to Atul's servant. Next day when Yash went to pick up his car he found that somebody has hit the car while it was parked there.

Yash found a mobile phone and a branded pen lying on the road outside Atul's residence. Yash tried to enquire about the real owner. He took the phone and pen with him and kept it in the drawer of his study table. Next day, Yash's wife came to the room searching for a pen, she saw the pen and took the pen and went out. Unfortunately, Yash's wife lost the pen. After two days the real owner, approached him (Yash), Yash humbly delivered his phone and apologized for the loss of pen.

Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks Oct 21](Chapter 11 The Indian Contracts Act, 1872)

(i) According to the provisions of the Indian Contract Act, 1872, do you think the tailor has a right of lien over the cloth?

(a) Yes, he is entitled to retain the coat until he is paid.

(b) No, he has not completed the work within the agreed time

(c) Yes, in case of particular lien he can retain the cloth.

(d) No, but he is not required to return the advance amount

Answer : (b)

(ii) Referring to the provision of the Indian Contract Act, 1872, what are the repercussions, when Yash found goods belonging to another and takes them into his custody? Choose the correct statement.

(a) He becomes subjected to the same responsibility as of a bailee.

(b) merely possession of the goods does not make him a bailee

(c) No act is done by owner for placing the goods in the possession of Yash, so he cannot be treated as bailee.

(d) In the absence of any express or implied contract, absolves Yash's liabilities as bailee

Answer : (a)

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Case Scenario 3.(MTP Nov 21)

Mr. Hari Dutta is an Operation head of North India region of Hilton Ltd. He was a full- time employee of the company. Mr. Hari draws a monthly salary of Rs. 1,00,000. On 14th May 2020, Mr. Hari applied for a loan of Rs. 10,00,000, to buy 1000 fully paid-up equity shares of Rs. 1000 each in Mohan Limited (holding company of Hilton Ltd). The company refused to grant loan to Mr. Hari saying he is not eligible for the loan for the said amount of Rs. 10,00,000.

Hilton Ltd. is a listed company, authorized by its articles to purchase its own securities. According to the balance sheet and Annual statements of the company for the year 2020-21:

- **Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of Rs. 100 each, fully paid-up)**
- **Free Reserves Rs. 30,00,00,000**
- **The security premium account Rs. 20,00,00,000**
- **The secured and unsecured Debt Rs. 50,00,00,000**
- **Accumulated losses Rs. 50,00,000**

The company issued a circular as it wanted to buy back shares worth Rs. 10,00,00,000 from the funds it has in its free reserve and security premium account. The board of directors passed a resolution for the same on 28th April, 2021.

The company has filed with the Registrar of Companies a Letter of Offer in e-form SH-8 on 1st May 2021. The company had also filed with the Registrar of Companies, along with the letter of offer, a declaration of solvency.

The Letter of Offer was dispatched to all the shareholders on 3rd May, 2021. The company announced to avail the buy back offer latest by 10th May, 2021. Many shareholders who approached the company after the due date were not considered applicable for this buy back scheme. The shareholders raised strong objection on giving just 7 days time to avail the offer by the company.

A special resolution has been passed at a general meeting of the company authorizing the buy-back of shares, which was accompanied by an explanatory statement containing the particulars required to be mentioned as per the provisions of the Companies Act, 2013.

Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks Nov 21] (Chapter 4 Share Capital & Debentures)

(i) The company has planned to buy back shares worth rupees 10,00,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?

(a) Rs. 2,00,00,000

(b) Rs. 5,00,00,000

(c) Rs. 7,00,00,000

(e) Rs. 8,00,00 000

Answer : (b)

(ii) Suppose the company intends to buy back some partly paid equity shares. Which of the following statement is correct?

(a) The company is allowed to buy back partly paid equity shares

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(b) The company is allowed to buy back partly paid equity shares if the total amount of such partly paid equity shares does not exceed 2% of the total buy back.
(c) The company is allowed to buy back partly paid equity shares but it cannot buy back partly paid other specified securities.
(d) All the shares or other specified securities for buy back must be fully paid up.

Answer : (d)

(iii) Some shareholders and officers of the company are of the opinion that it was not necessary for the company to pass a special resolution in general meeting with respect to buy back. Choose the correct reasoning:
(a) It was not necessary to pass the special resolution as the approval of Board had already been granted for such buy back of shares
(b) It was necessary to pass special resolution as the amount of buy back exceeds ten percent of the total paid up equity share capital and free reserves
(c) It was not necessary to pass the special resolution as the buy back was authorized by the articles of the company
(d) It was necessary to pass special resolution as the amount of buy back exceeds fifteen percent of the total paid up equity share capital and free reserves

Answer : (b)

Case Scenario.4 (MTP Nov 21)

Kirtee Agarwal and Kishan Shaw are two friends studying in the Mumbai City College. They both are pursuing Bachelor of Commerce (Hons) and are in their Semester V. Kirtee Agarwal is also pursing Chartered Accountancy Course. She has completed her Foundation Level and is presently preparing for the Intermediate Level. On the other hand, Kishan Shaw is interested in Fashion Designing and is preparing to become a fashion designer after completing B.COM (Hons). One fine morning over a cup of tea both Kirtee and Kishan heard two persons promising to financially help each other. One person named Mr. P promised the other Mr. Q, that he will pay him a certain sum of money on the 76th Independence Day of India. To this Mr. Q asked Mr. P to pay this sum to Mr. R (friend of Mr. Q). After a moment's thought Mr. P changed his mind and promised to pay a reduced sum of money to Mr. R along with an I-Pad.

Over hearing this conversation both Kirtee and Kishan started discussing over Promissory Notes. Since Kirtee is a CA Student she shared her knowledge about Promissory notes and explained Kishan about Section 4 of the Negotiable Instrument Act, 1881.

Having heard the details Kishan was curious in his mind regarding Promissory Notes. He had the following questions for which he needed answers. Considering the above data and assuming you are Kirtee, answer the following questions of Kishan:

Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks Nov 21] (Chapter 12- The Negotiable Instruments Act, 1881)

(i) Kishan asks, 'If Mr. P promises Mr. Q that he will pay Rs. 4,00,000. However, he will pay the sum to Mr. Q on the 76th Independence day of India'. Will this promise constitute a valid Promissory Note?

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(a) No. This is not a valid promissory note as it is conditional and promissory note should be unconditional.
(b) No. This is not a valid promissory note as there is no express of promise. It is a mere statement.
(c) Yes. This is a valid promissory note as the event stated in the promise is bound to happen.
(d) Yes. This is a valid promissory note as there is a promise to pay irrespective of the promise being conditional or unconditional.

Answer : (c)

(ii) Kishan asked, 'when Mr. P promises to pay a friend of Mr. Q, Rs 2,00,000 along with an I-Pad, on his birthday'. Will that be a valid Promissory Note?
(a) No. It is not a valid Promissory note as the order to pay must consist of money only.
(b) No. It is not a valid promissory note as there is no clarity on which birthday the payment will be made. It is a promise for an indefinite period.
(c) Yes. It is a valid promissory note as the maker and payee are certain, definite and different person.
(d) Yes. It is a valid promissory note as there is an express promise to pay Rs 2,00,000 along with I Pad on friend's birthday.

Answer : (a)

Case Scenario 5 (April 21)

Mr. Anay, a business graduate from a leading B-School, has been running a chain of restaurants as a sole proprietor concern. The business is based in Chennai. Mr. Anay, in order to develop the business; decided to corporatize his business but he is concerned with dilution of his control over business decisions.

Mr. Anay, during a journey met Mr. Dsouza; one of his old school friends. Mr. Dsouza is presently working in one of leading corporate advisory firms. Mr. Anay seeks advice from Mr. Dsouza, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the ent ire control in his hand. Mr. Dsouza informed Mr. Anay, about a new type of company, called One Person Company (OPC), which can be formed under Companies Act, 2013. Mr. Dsouza quoted section 2(62), which defines 'one person company' as a company which has only one person as a member.

Mr. Anay felt OPC is correct form of business for him, hence he promoted an OPC 'Casa Hangout
Private Limited' (One Person Company) on 14th September 2019, to which he sold his sole proprietory business and became the sole member. Mr. Anay, appointed his younger son Mr. Amar, who was 21 year old then, as Nominee to OPC. Mr. Anand who is a famous food blogger and old friend of Mr. Anay was appointed as director of OPC, Mr. Anay himself also become director of company.

Mr. Amar is a professional photographer, and went abroad for a certification course on 23 rd October 2019. He came back on 1st of March 2020. He established a photo-studio as an OPC called
'Best Click Private Limited' (one Person Company) on 20th March 2020, in which Mr. Anay is nominee and he became sole member. In the mean time, Mr. Amar also gave his consent as

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nominee to another OPC in which his elder brother Mr. Shankar is sole member.
Mr. Anay met with an accident on 25th March 2020, in which he lost his life. Nomination clausewas invoked, as a
result Mr. Amar has to take charge over 'Casa Hangout Private Limited' (One Person Company) as member with immediate effect. On 30th March 2020 Mr. Shankar was appointed as a new nominee to 'Casa Hangout Private Limited' (One Person Company), who gave written consent on31st March 2020. Mr. Shankar who is an investment banker by profession, is of the opinion that 'Casa Hangout Private Limited' (One Person Company) needs to amend its object clause and add 'carry out investment in securities of body corporate' as one of the objects.

The Financial year closed on 31st March 2020. Financial statements of 'Casa Hangout Private Limited' (One Person Company), which is not containing cash flow statements were signed by Mr. Anand who left as only director after death of Mr. Anay. Multiple Choice Questions [3MCQs of 2 Marks each: Total 6 Marks April 21] (Chapter 2 Incorporation of Company & Matters Incidental There to)

(i) With reference to appointment of Mr. Amar and Mr. Shankar as nominee to 'Casa Hangout Private Limited' (One Person Company)', out of followings, who is eligible to be nominee of

(ii) Mr. Shankar if he wishes to withdraw his consent as nominee, can do so by giving written notice to

(a) Director of OPC and to sole member of company
(b) Director of OPC and to Registrar of companies
(c) Sole member of company and to OPC
(d) Sole member of company and to Registrar of companies

Answer (ii) : (c)

(iii) With reference to legal position of Mr. Amar as member/s and nominee/s to various OPCs, which of the following statement is correct with reference to ceiling limit in relation to membership and being nominee to OPC? A person, other than minor; at specific point of time; (a) Can be member in any number of OPCs but nominee in one OPC

(b) Can be member in one OPC and nominee in any number of OPCs
(c) Can be member in one OPC and nominee in another one OPC
(d) Can be member and nominee both in any number of OPCs

Answer (iii) : (c)

Case Scenario 6 (MTP Apr 21)

Sehzad Color Limited (SCL) was incorporated on 12th August 2018 with its registered office situated in Dehradun and branch offices at Delhi and Jaipur. The company was engaged in the business of manufacturing herbal products used as cosmetics. The company had prepared its "books of accounts" and other relevant books and records and financial statements for the year ending 31 st March 2019.

The company maintains its books of accounts on a double entry system of accounting on an

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accrual basis and keeps the books of account and other relevant books and papers and financial statements in the city of Jaipur in Rajasthan, which happens to be its major branch office.
Gradually, the activities of the company grew and it opened its first branch office outside India in Colombo, Sri Lanka. The business started developing well and necessary records and documents including the books of account of the branch were maintained. One of the Directors, Mr. Mac, felt it necessary to inspect the books of account and other relevant documents maintained at Colombo branch. However, due to his busy schedule, he could not personally inspect the records and accordingly sought necessary financial information through his attorney holder.
The board of directors of the company had entrusted Ms. Anjali, the General Manager of the Company to fulfil all the duty with regard to the complying with the provisions of the company law in relation to maintaining the books of account, place of keeping the books of account, time period for preservation of books and all relevant papers and such things as prescribed under the Companies Act, 2013 in this regard.
In view of the aforesaid scenario relating to "books of account" of SCL, answer the following questions:(Chapter 9 Accounts of Companies)

Multiple Choice Questions
[3MCQs of 2 Marks each: Total 6 Marks April 21]
(i) As observed in the case scenario above, Mr. Mac (a director) has sought financial information maintained outside the country (i.e. financial information relating to books of account maintained in Colombo). Can a director do so under the provisions of the Companies Act, 2013?
(a) A director can inspect and seek information from any Branch of the Company located within the country only.
(b) The director can seek the information through his attorney holder with respect to financial information maintained outside the country also.
(c) The director can seek the information only individually and not through his attorney holder with respect to financial information maintained outside the country.
(d) The director can seek the information through his representative with respect to financial information maintained outside the country.
Answer (i) (c)

(ii) With regard to preservation of the books of SCL, the books of accounts for the FY 2018-19 needs to be kept in good order until at least which of the following years?
(a) FY 2025-26
(b) FY 2026-27
(c) FY 2027-28
(d) FY 2028-29
Answer (ii) (b)

(iii) The board of directors of the company had entrusted Ms. Anjali, the General Manager of the

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Company to fulfil all the duty with regard to complying with the provisions of the company law in relation to maintaining the books of account. Which of the statement is correct with respect to entrusting Ms. Anjali for maintaining the books?

(a) Only the Managing Director can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(b) Only the Managing Director or any Whole time director can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(c) Only Whole time director (in charge of finance) or Chief Financial Officer can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(d) Only the Managing Director or the Whole time director (in charge of finance) or Chief Financial Officer or any other person of a company charged by the Board with the duty can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

Answer (ii) (d)

Case Scenario 7 (MTP Mar 21)

Kaisha Packers and Movers Limited, a reliable and well-established company, was incorporated on 20th September, 2014 with an aim to provide convenient and innovative ways of moving customers' household items, re-location of businesses and offices, shifting of vehicles, etc. in the northern region. Their services have been professionally designed to ensure maximum customers satisfaction. The company had been formed by the directors Kashi Sharma, Pranav Chaturvedi, Abhinav Mehra, Anoop Bhargava and Vikash Kumar whose friendship had developed during their college days. Due to hard work and their business acumen, the promoters had successfully created a niche for themselves amid cut-throat competition.

The company has a fleet of over 500 vehicles, 55 branches, professionals and technical and non - technical employees. Over a period of time, Kaisha Packers and Movers has become a trusted brand and prospective customers prefer to engage it whenever they want to re-locate their offices or homes since services are provided in a convenient and cost-effective manner. The authorised capital of the company is Rs. 150.00 lacs divided into 15,00,000 equity shares of Rs. 10 each. At the time of incorporation, its paid-up capital was Rs. 1,00,00,000 and there were 50 shareholders. The registered office of the company is situated in Hyden Park, Bangalore.

With a view to provide world-class relocation and moving solutions throughout the country, the directors decided to enlarge the capital base of the company. During the mid of the current financial year, it offered remaining 5,00,000 shares to another 120 persons at a premium of Rs. 10 per share on private placement basis. Among others, Ruchi, a freelance software consultant and her younger sister Rumi, a management consultant in Info Solutions Limited which is well-known company for its high export turnover, were also identified as the prospective subscribers. However, they requested the company to offer them only the

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minimum number of shares. Similar requests were also received from another twelve persons. Their requests were given due consideration by the directors. All the identified persons who were offered shares paid the required amount (including premium) as per the terms of the offer. The allotment of the shares was made much before the statutory period. Immediately after the aforesaid allotment of shares, the company rolled out its expansion plan as envisaged earlier and utilised the funds so obtained for the requisite purpose. However, the company is desirous of tapping more prospective investors by offering them equity shares on private placement basis during the remaining part of the current financial year. For this purpose, it is proposed to increase the authorised capital from the present Rs. 150.00 lacs to Rs. 300.00 lacs. In addition to the further allotment of shares on private placement basis, the company is also contemplating to raise deposits from the members. However, Kashi Sharma and Anoop Bhargava are of the opinion that the company should consider raising of deposits only in the next financial year since the funds already raised need to be properly utilized.

Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks March 21]

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

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

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

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

(d) In order to raise deposits from public besides members, the company should have net worth of minimum Rs. 100 crores or a turnover of minimum Rs. 500 crores.(Chapter 5 Acceptance of Deposits by Companies)

Answer (i) (d)

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

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

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

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

(d) The company can offer equity shares maximum up to the 130 prospective shareholders in the

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remaining part of the current financial year.(chapter 4 Share Capital & Debentures)

Answer (ii) (c)

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

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

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

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

(d) The application money must be refunded within fifteen days from the expiry of statutorily allowed period within which the allotment of shares ought to have been made. .(chapter 4 Share Capital & Debentures)

Answer (iii) (d)

Case Scenario 8 (MTP Mar 21 & May 20)

Krishnakant Limited was incorporated on 24th September, 2010 under the jurisdiction of Registrar of Companies, Rajasthan with its registered office located in Jaipur and its manufacturing units spread out in Mumbai, Kanpur, Delhi and Ludhiana. Under the dynamic leadership of Hans Rajpal, the Chairman and Managing Director (CMD) of the company, the company had reached new heights of success. The directors of the company numbered eight including CMD out of which two were the independent directors.

The turnover of the company for the Financial Year 2019-2020 was Rs. 750.00 crores – a whopping rise of more than 20% from the previous year and the net profit stood at an impressive figure of Rs. 6.60 crores – an increase of Rs. 1.80 crores as compared to the net profit of the previous year. The company had a net worth of Rs. 250.00 crores; and it was noticed that the net worth had also registered a northern- western trend by more than 15%. The authorised and paid-up share capital of the company was Rs. 8.00 crores. Keeping in view the applicability of forming a CSR Committee for the current financial year 2020-21, a CSR Committee was formed with four directors as members of which one was an independent director. The Committee was, among other objectives, given the responsibility of formulating and recommending to the Board, a Corporate Social Responsibility Policy which would indicate the activities to be undertaken by the company within the framework specified in Schedule VII.

As the company has huge profits it has proposed a dividend @ 10% for the year 2019-20 out of the profits of current year.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous of shifting its registered office to Mumbai from Jaipur which will help the company in carrying on the new business for effectively. Another

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strategically important segment which the company tapped earlier and now wishes to engage itself in on a large scale relates to manufacturing of stationery items.
During the current Financial Year 2020-21, the company provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana as part of its CSR activities. In addition, the company contributed towards establishment of Digital Smart Classroom, Libraries and computer labs in these cities. The company also deployed mobile medical units equipped with medical facilities and qualified doctors. In addition to this a large number of public health and sanitation activities had been initiated under Swachh Bharat Abhiyan. The total amount spent on these activities was, till date, almost equal to the minimum amount prescribed and it is hoped that as the current Financial Year 2020-21 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure.

(Chapter 9 Accounts of Companies) Multiple Choice Questions
[3 MCQs of 2 Marks each: Total 6 Marks March 21]

(i) Which of the following factors would have prompted Krishnakant Limited to mandatorily form a Corporate Social Responsibility (CSR) Committee for the current financial year? (Chapter 9 Accounts of Companies)
(a) The net profit had increased to Rs. 6.60 crores and it was more by Rs. 1.80 crores in comparison to previous year's net profit.
(b) The turnover was Rs. 750.00 crores which was an increase of more than 20% as compared to the previous year.
(c) The net worth was Rs. 250.00 crores which when compared to the previous year had registered an increase by more than 15%.
(d) The paid-up share capital was Rs. 8.00 crores.

Answer (i) (a)

(ii) What is the minimum amount (in percentage) that Krishnakant Limited is required to spend during the Financial Year 2020-21 on the CSR activities? (Chapter 9 Accounts of Companies)
(a) 2% of the average net profits made during the two immediately preceding financial years.
(b) 2% of the average net profits made during the three immediately preceding financial years.
(c) 2.5% of the average net profits made during the two immediately preceding financial years.
(d) 2.5% of the average net profits made during the three immediately preceding financial years.

Answer (ii) (b)

(iii) In the given case scenario, Krishnakant Limited decided to undertake CSR activities on its own. In case, it had decided to engage an external Section 8 company for undertaking its CSR activities and such charitable company is not established by Krishnakant Limited nor it is established by the Central/State Government or by any entity established under an Act of Parliament or a State Legislature, then what should be the established track which this Section 8 company should have in undertaking similar programs or projects which Krishnakant Limited wants it to accomplish? (Chapter 9 Accounts of Companies)
(a) Track record of minimum one year

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(b) Track record of minimum two years
(c) Track record of minimum three years
(d) Track record of minimum four years

Answer (iii) (c)

Case Scenario 9 (MTP Oct 20)

Mr. Abhinav Gyan is a tech expert and one among the promoter of Doon Technology Limited (DTL). He did his engineering from one of the prestigious IIT in CSE and then perused masters in management from IIM. He started DTL fifteen years back. DTL is famous for advance technologies such as artificial intelligence, block-chain solutions and many others. The company went public a decade ago but not listed. Since DTL is expanding its operations in wake of opportunities arises out of industrial revolution, hence willing to retain the profit for growth of the company, but shareholders are seeking dividend; because for shareholders larger the bottom line means larger the dividend. The outbreak of COVID-19 is another reason which forced the directors to retain the earnings. After the closure of books of account for year 2019-20, directors proposed the dividend of 10% against the expectation of 20% by shareholders. But considering the extended lock-down which causes a delay in delivering the projects (results in deferment of revenue and additional cost), directors are of the opinion to revoke the dividend. Shareholders seeks appointment of internal auditor for audit on a concurrent basis, whereas management of DTL states it does not require to appoint an internal auditor under the law and it will cause an unnecessary financial burden on the company. The excerpts from financial statements of the preceding financial year 2019-20 are as under:

Particulars	Amoun in Crore
Paid-up share capital	45
Turnover	495
Outstanding loans or borrowings*	105
Outstanding deposits	22#

*Includes inter-corporate loan of INRs 25 crores

up-till 31st January, 2020 the outstanding deposit was INRs 30 crores

Mr. Gyan, one of the shareholder of DTL, out of his savings bought 40,000 shares of another company Time Consultancy Services (TCS) of face value 10 each. On such shares, the final call of 2 is due but unpaid by Mr. Gyan. In the meantime, TCS declared the dividend at a rate of 15%. Out

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of total dividend of INRs 8.4 crores declared on 31st August 2020, INRs 0.42 crores remain unpaid as on 30th September 2020 at the end of TCS. Out of such INRs
0.42 crores, INRs 12 lakhs are on account of the operation of law and INRs 3 lakhs on account of legal disputes of right. The unpaid dividend was finally paid on 12th December, 2020 in full.
Mr. Gyan came from humble background, hence as part of ethical commitment to uplift the society by promoting education to children of the economically weak section, he decided to form a section 8 company around 2 years back with the support of fellow professional, who later become a member of such a company. Receipts are excess of expenditure hence it was decided that Gyan foundation will declare some dividend to its members.
On the basis of above facts, answer the following MCQs [4 MCQs of 2 Marks each: Total 8 Marks Oct 20]:
(i) Regarding un-paid call money by Mr. Gyan, in light of dividend due to him from TCS, state which of following statements hold truth?
(a) Dividend can't be adjusted against the unpaid call money
(b) The dividend of INRs 48,000 can be adjusted against unpaid call money
(c) The dividend of INRs 48,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan
(d) The dividend of INRs 64,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan (Chapter 8 Declaration & Payment of Dividend)
Answer (i) (b)

(ii) Does DTL is required to appoint Internal Auditor under section 138 of Companies Act, 2013?
(a) No, because DTL is unlisted company
(b) No, because paid-up share capital is less than INRs 50 crores
(c) Yes, because turnover is more than INRs 200 crores
(d) Yes, because outstanding loan is above INRs 100 crores (Chapter 9Accounts of Companies)
Answer (ii) (c)

(iii) With reference to the declaration of dividend by Gyan Foundation, state which of following statements hold truth?
(a) Gyan Foundation can declare dividend out of the capital as well.
(b) Gyan Foundation can declare dividend either out of current years or previous year s' profit, but need to transfer a certain % to reserve.
(c) Gyan Foundation can't declare the dividend because three years has not been elapsed since its incorporation.
(d) Gyan Foundation can't declare the dividend in any case. (Chapter 8 Declaration & Payment of Dividend)
Answer (iii) (d)

(iv) What will be the amount of penalty which TCS needs to pay under section 127 of the Companies Act, 2013?
(a) Up-to INRs 1000 per day till the default continues
(b) INRs 64,800

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(c) INRs 97,200
(d) INRs 1,08,000 (Chapter 8 Declaration & Payment of Dividend)

Answer (iv) (c)

Case Scenario 10 (MTP Oct 20)

Mr. Mohit Aggarwal is the director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Aggarwal (father of Mr. Mohit) on 05 th July 1995 as a public company. SCCL accepts a loan from Mr. Mohit of INRs 1.5 crores for short term purpose and expected to repay after 24 months. SCCL in its book of accounts, records such receipt as loan and borrowing under non-current liabilities. At the time of advancing loan, Mr. Mohit affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transactions are furnished in the board report.

SCCL has its registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members' register are residents of Nainital (Uttarakhand). At Nainital, SCCL has Liaison Office. Management of the company is willing to place, register of members at Nainital Liaison Office.

SCCL convene its 7th AGM on 10th September, 2020 at the registered office of the company. Notice for same was served on 21st August, 2020. More than 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting fr om 11th September 2020 on account of the second wave of COVID-19.

On the basis of above facts, answer the following MCQs (3 MCQ of 2 Marks each: Total 6 Marks Oct 20)

(i) With reference to the loan advanced by Mr. Mohit to SCCL, apprise whether same is classified as deposit or not?

(a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit
(b) Deposit, because the length of the loan is for a period; more than six months.
(c) Not a deposit, because such amount is recorded as loan in books of account of SCCL
(d) Not a deposit, because the written declaration is provided by Mr. Mohit that said sum of loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. (Chapter 5 Acceptance of Deposits by Companies)

Answer (i) (d)

(ii) Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office.

(a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL can't place it at Nainital liaison office
(b) Register of members can't be kept at any other place by SCCL, without passing an ordinary resolution
(c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there

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(d) Register of members can't be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there. (Chapter 7 Management & Administration)

Answer (ii) (c)

(iii) Considering the provision dealt with length of Notice of AGM, pick the right option depicting the validity of notice served by SCCL.

(a) Notice served by SCCL is not valid, because shorter length needs to be consented by all the members entitled to vote at AGM.

(b) Notice served by SCCL is not valid, because shorter length needs to be consented by atleast 95% of members entitled to vote thereat.

(c) Notice served by SCCL is valid because the shorter length is consented by 75% of members entitled to vote thereat.

(a) Notice served by SCCL is not valid, because shorter length need to be c onsented by at-least 50% of the members entitled to vote at AGM that too in writing. (Chapter 7 Management & Administration)

Answer (iii) (b)

Case Scenario 11 (MTP May 20)

Vivek Shah is the Chief Finance Officer (CFO) and Sachin Bhatt is the Company Secretary of Jitendra Iron Works Private Ltd (JIWPL), in Manipal, Karnataka. JIWPL is an integrated set up of foundries and machine shops that add value by machining more than 75% of the castings manufactured to fully finished condition. JIWPL is one of the largest jobbing foundries producing grey iron castings required for automobile, farm equipment sector and diesel engines industry. JIWPL serves customers globally. The turnover of JIWPL is about Rs. 600 Crores, including export turnover of about Rs. 250 Crores.

During the year 2019, JIWPL planned expansion to enhance its production capacity to meet the increasing demand from its customers, by importing fully automatic plant and equipment from Germany for the unit at Manipal. The means of finance of the expansion project:-

(a) JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter director of JIWPL, Mahesh Shetty. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of Deposits.

(b) The Board and the CFO also approached the main banker of the company viz., Bank of Baroda. The Bank after proper credit analysis, sanctioned an amount of Rs. 50 Crores for meeting the working capital needs of the expansion project, which included interchangeable limits of cash credit, foreign and inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, inventory and other current assets of the expansion project in Manipal of JIWPL.

The CFO and the CS together coordinated with the legal department of the Bank on procedures relating to creation of security and registration of charges.

The registered office of JIWPL is located in Manipal. Out of the company's 180 members, 20 members, who are entered in the Register of Members reside in Mangaluru, a nearby city,

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requested the company for some reasons to maintain the Register of Members in the company's liaison office in Mangaluru, instead of Manipal henceforth. Multiple Choice Questions (2 Marks each*3= Total 6 Marks)

(A) JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter directors Mahesh Shetty of JIWPL. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of deposits. The CS has to ensure -:

(i) That the particulars of amount received are immediately entered in the register of deposits maintained in such manner and in such format as prescribed;
(ii) To issue immediately a circular to the members of the company with a statement of deposits accepted as on date with the names of each depositor, amount(s) received as on date, the due date(s) and the liability(ies) on the due date(s) in respect of each depositor
(iii) That a declaration is to be obtained to the effect that the amount given is not sourced from borrowed funds or accepting loans or deposits from others and disclose the details in the Board's Report;
(iv) To file the particulars of deposits received within 30 days from the date of its receipt with the Registrar. (Chapter 5 Acceptance of Deposits by Companies)

Answer (A) (iii)

(B) JIWPL was also sanctioned an additional amount of Rs. 50 Crores for meeting the working capital needs of the expansion project., which included interchangeable limits of cash credit, foreign and Inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, Inventory and other current assets of the expansion project of JIWPL. A floating Charge, in general is created by way of :

(i) Passing a board resolution
(ii) Signing and acknowledging the Credit Sanction letter (iii) Mortgage

(v) Hypothecation or lien. (Chapter 6 Registration of Charges)

Answer (B) (iv)

(C) The registered office of JIWPL is located in Manipal. Out of the company's 180 Members, 20 members, who are entered in the register of members (ROM) reside in Mangaluru, a nearby city. These members requested the company for some reasons to maintain the Register of members (ROM) in the company's liaison office in Mangaluru, instead of Manipal henceforth.

(i) The ROM shall be maintained only at the registered office in Manipal and maintaining in a place other than the registered office is not permitted under the Companies Act 2013 and the relevant Rules there under.
(ii) By passing a Special Resolution in a General Meeting, the ROM can be maintained in Mangaluru.
(iii) The Board of Directors by passing a Board Resolution in one of its meetings, may direct the Company Secretary to maintain the ROM in Mangaluru.
(iv) If more than 1/3rd of the members, whose names are entered in the ROM request for the change, then only the ROM can be maintained at Mangaluru after passing a Special Resolution in a General Meeting.(chapter 7 Management & Administration)

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Answer (C) (ii)

Case Scenario 12 (MTP Mar 22 & Sep 23)

Sourabh Publishers Ltd., a listed entity, passed a resolution in its Board meeting for appointment of Jain & Jain, a Chartered Accountants firm, as Statutory Auditor of the company. The company obtained the consent in writing from Jain & Jain and also placed this recommendation before the general meeting of the shareholder and got it approved.

The company thereafter informed the CA Firm about their appointment and also filed a notice of appointment with the Registrar of Companies within the prescribed time.

Jain & Jain, Chartered Accountants firm is having 3 partners namely, Mridula Jain, Shyamla Jain, Parul Jain. In this firm Mayank Jain and Shashank Jain were associates and were being paid on case-to-case basis and not on fixed salary.

Prior to the appointment of Jain & Jain, the previous auditor was Agrawal Jain & Associates. In this CA firm there were 6 partners namely, Prashant Agrawal, Vikas Agrawal, Vishal Agrawal, Vyom Agrawal, Mayank Jain and Shashank Jain.

Mayank Jain and Shashank Jain were common persons in both the firms.

While working with Sourabh Publishers Ltd., Jain & Jain started facing a lot of issues with the management of the company. After sometime, due to these disputes with the management, Jain & Jain resigned from the company.

Multiple Choice Questions (Chapter 10 Audit & Auditors)

1. The newly appointed CA Firm (Jain & Jain) and retiring CA Firm (Agrawal Jain & Associates) have common persons i.e., Mayank Jain and Shashank Jain. Whether the appointment of Jain & Jain in Sourabh Publishers Ltd. is valid as per the provisions of the Companies Act, 2013:

(a) It not valid since both the CA Firms (New and Old) have common persons

(b) Mayank Jain and Shashank Jain are the associates in Jain & Jain and not the partners, hence appointment of Jain & Jain, is valid

(c) Jain & Jain should expel Mayank Jain and Shashank Jain in order to retain its appointment Agrawal Jain & Associates

(d) should expel Mayank Jain and Shashank Jain (2 Marks Marc'h22)

Answer 1 (b)

2 What would have been the position if, Mayank Jain and Shashank Jain are partners in Jain & Jain:

(a) The position will remain same as MCQ 1 above

(b) There shall be no change and the Jain & Jain may continue as audit firm

(c) The appointment of Jain & Jain would not have been in terms of the provisions of the Companies Act, 2013

(d) The company may obtain permission from the shareholders in the general meeting by way of Special Resolution for continuation of appointment of Jain & Jain (2 Marks March'22)

Answer 2 (c)

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3. In the given case, Jain & Jain due to some dispute with the management on some issues resigned from the company. Choose the correct option in respect to filling of this vacancy:

(a) Jain & Jain cannot resign and has to hold the office till the conclusion of the next annual general meeting

(b) The resignation is tendered by the auditor, the Board of Directors shall appoint new auditor within 30 days and such appointment shall also be approved by the shareholders in the general meeting within 3 months of the recommendation of the Board

(c) This vacancy of auditor can be filled by the shareholders in consultation of the Central Government

(d) This vacancy of auditor can be filled by the Board of Directors in consultation of the Comptroller and Auditor- General of India (2 Marks March '22)

Answer 3 (b)

Case Scenario 13 (MTP Mar 22)

Rupesh took a house loan of ₹ 80 lakhs from Best Bank Ltd. While granting the house loan, the bank insisted to provide a guarantee. Rupesh's neighbour, Mithun gave the guarantee for such housing loan. Rupesh also purchased a life insurance policy on his life from A-One Life Insurance Company Ltd., for a sum assured of ₹ 1 crore for a policy term of 20 years. He paid the first premium to the insurance company. This policy was purchased by Rupesh in order to protect his family, in case of untimely death of Rupesh. Rupesh made nomination of the policy in favour of Archana, his wife. After some time Rupesh's business started running into losses and he was not able to pay the instalments of housing loan to the bank. As a result, his loan account was classified by the bank as Non- Performing Asset (NPA) and the bank initiated to recover its pending dues. The Bank first sent the reminder letters/ mails to both the borrower and his guarantor and thereafter a legal notice was served.

Even after notices, when the loan account was not regularised, the bank fi led a suit in Debt Recovery Tribunal (DRT) against the guarantor. The guarantor objected and asked the bank to first get it recovered from the borrower and if the borrower does not pay, then only the guarantor will be liable to pay. But the bank continued to follow up the matter in DRT and ultimately the decree was passed in favour of the Bank to recover the dues from the guarantor.

Bank recovered entire outstanding loan from the guarantor as per the decree. Now the guarantor filed a suit against Rupesh to pay the amount, which he paid to the bank. Mithun also requested to the court to provide the possession and ownership of the house, if Rupesh is not able pay such amount.

Meanwhile, Rupesh met with an accident and died on the spot. Claim was lodged by his wife and the insurance company paid the sum assured along with bonus amount to Archana (nominee of the deceased). Archana paid the amount to Mithun, which had been paid by Mithun to the bank in discharge of his guarantee and settled down all the issues. (March '22)

Multiple Choice Questions (Chapter 11 The Indian Contracts Act, 1872)

1. In the given case, who is discharging the liability of a third person in case of his default in

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relation to the contract of guarantee?
(a) Mithun
(b) Rupesh
(c) Archana
(d) The Bank (2 Marks)

Answer 1 (a)

2. What is the consideration in case of contract between Mithun and the Bank?
(a) Promise made for the benefit of the principal debtor to avail loan on the guarantee of the surety
(b) In contract of guarantee, there is no consideration involved between surety and the creditor
(c) Mithun can freely utilise the house
(d) Any past consideration (2 Marks) Answer 2 (a)

Case Scenario 15 (MTP Apr 22)

Ramji Lal is in the business of selling wheat, rice, pulses and other food grain items under the banner of Ramji Lal & Sons. Bhim Singh was working as an employee with Ramji Lal, since past 10 years and have earned good image and trust. In the absence of Ramji Lal, Bhim Singh takes care of the business of Ramji Lal as a prudent person.

Ramji Lal executed a Power of Attorney in favour of Bhim Singh for doing the banking transactions i.e., to withdraw money, issue of cheque for making payment to creditors etc.

One day, Bhim Singh went to bank for withdrawal of ₹ 50,000 to make payments for utility bills and for some petty expenses. When Bhim Singh was counting cash after taking it from the cash window, some unscrupulous persons just standing behind him, snatched the cash from his hands and disappeared quickly. Bhim Singh immediately informed the manager of the Bank, lodged FIR with nearby Police Station and also informed Ramji Lal. Police visited the bank premises and asked for the CCTV footage. However, the incident was not recorded since the CCTV were found damaged. Ramji Lal was annoyed with this news and asked Bhim Singh that he should be very careful while dealing the banking transactions, and advised to take care in future. Due to demand of the food grains in the nearby city, Ramji Lal opened a branch in that city and Bhim Singh was asked to take care of the business at the branch under the banner of Ramji Lal & Sons and shall not act beyond his delegated authority, nor he shall employ any staff or agent, with out having the express authority of him (Ramji Lal). Bhim Singh started doing the business activity under the banner of Ramji Lal & Sons. He also appointed Chatur Singh, as manager there to look after this business, but this fact was not made known to Ramji Lal. Chatur Singh was a very cunning person. Since 'Ramji Lal & Sons' has established a good reputation in the market, so Chatur Singh started taking advantages of brand image. He raised money from several sources, in the name of 'Ramji Lal & Sons' and one day, ran away, without informing anyone and is absconding from that day.

The fraud came to the light when creditors started demanding money from Ramji Lal on the pretext that the branch was running the business in the name and style of Ramji Lal & Sons'. (April 22)

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Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks]

1. When Bhim Singh was returning to shop after withdrawing money from the bank, theft had occurred. Who is to bear such loss?
(a) Ramji Lal will bear the loss of money due to theft.
(b) Bhim Singh will bear the loss of money due to theft.
(c) Bank will be liable since the dacoity occurred in the bank's premises.
(d) The person in charge of the CCTV in the bank is responsible. (Chapter 11 The Indian Contracts Act, 1872)

Answer: (a)

2. Bhim Singh while doing business in the banner of 'Ramji Lal & Sons', appointed another person Chatur Singh as
manager of the business without informing his principal, Ramji Lal. Whether Bhim Singh have the authority to do so?
(a) It is usual to appoint staff to take care of the business. Looking to the volume of busines s, Bhim Singh has appointed Chatur Singh to manage the business.
(b) Bhim Singh has done beyond the express authority of his principal (Ramji Lal) in employing Chatur Singh as Manager of that branch.
(c) It is an implied authority to appoint sub-agent since the big business transactions cannot be handled by a single person.
(d) Chatur Singh should have directly inform to Ramji Lal that he has been appointed as sub - agent. Chapter 11 The Indian Contracts Act, 1872)

Answer: (b)

Case Scenarios 16 (MTP Sep'22)

Question 1

The aggregate value of the paid-up share capital of Sai Ram Limited, a listed company, was ₹ 200 crore divided into 20 crore equity shares of ₹10/- each at the end of the financial year 2021-22 having its registered office at Pune. This company had been registered with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹10/- each. The company has very good reputation in compliance of all legal requirements on time. The company produces health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures–

Particulars	Amount (₹ in crore)
Free reserves created out of profits	200
Securities Premium account	80
Credit balance of Profit & Loss account	50

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Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	10

Turnover of the company during the financial year 2021-22 was ₹ 700 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was ₹4 crore only.

The Board of Directors of the company constituted of the following persons as directors- a Chartered Accountant 'Sai Ram' as the Managing Director, 'Roshan' and 'Prachita' as independent directors, 'Hari Om', 'Bindu', 'Reddy' and 'Komal'. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2022 a CSR committee was formed to act and comply the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR Policy as under –

1. The CSR projects for the benefit of employees of the company and their families only.

2. A contribution of ₹ 10,000/- to a political party under section 182 of the Companies Act, 2013.

3. A contribution to the PM CARES Fund during Covid pandemic.

4. Local activities like promotion of child and women education.

5. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.

6. CSR projects undertaken through a Section 8 company.

On the basis of above facts and by applying applicable provisions of Companies Act, 2013 and the applicable Rules therein, choose the correct answer.

Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks] (Sep'22)

Chapter 9: Accounts of Companies

1. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of the Companies Act, 2013. On what basis of the following he arrived at this conclusion -

(a) On the basis of turnover of the company.
(b) On the basis of turnover and net profit of the company taken together.
(c) On the basis of net worth of the company.
(d) On the basis of net worth and turnover of the company taken together. (Sep'22)

Answer 1: (c)

Chapter 9: Accounts of Companies

2. For the purpose of section 135 of the Companies Act, 2013, the net worth has to calculated as defined under section 2(57) of the Act. In this context, which of the following

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statements is correct with reference to the above case –

(a) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹520 crore.
(b) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹530 crore.
(c) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹555 crore.
(d) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹620 crore.(Sep'22)

Answer2: (a)

Chapter 9: Accounts of Companies

3. Sai Ram Limited constituted a Corporate Social Responsibility Committee as per the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014 , therein consisting of-

(a) Sai Ram, Hari Om, Bindu and Reddy
(b) Hari Om, Bindu, Reddy and Prakash
(c) Sai Ram, Hari Om, Bindu and Prakash
(d) Sai Ram, Hari Om, Bindu and Roshan(Sep'22)

Answer 3: (d)

Case Scenarios17 (MTP Oct'22)

Question 1

Jai and Veeru, two friends, formed a private limited company as Basanti Taanga Private Limited and got it registered on 10th January, 2018. The registered office of the company was situated at Kolkata, West Bengal. The company had an authorised share capital of ₹ 50 lacs divided into 5 lacs equity shares of ₹ 10/- each. The issued, subscribed and paid-up share capital of the company was of ₹ 30 lacs divided into 3 lacs equity shares of ₹ 10 each. The company was engaged in supplying various motor parts to the vehicles companies. 'Basanti' was a registered Trade mark of Basanti Motorwala Private Limited of Mumbai since 15th January, 2016 under the Trade Marks Act, 1999. This company was also engaged in manufacturing and supplying various auto parts to the vehicles companies.

Basanti Motorwala Private Ltd. of Mumbai came to know on 20th January, 2022 about Basanti Taanga Private Limited of Kolkata who was using identical name and mark. Being a registered proprietor of a trade mark, Basanti Motorwala Private Ltd. filed an objection with an appropriate authority under Companies Act, 2013 on 15th March, 2022 that the name Basanti Taanga Private Limited or the mark the company was using is found to be identical with or too nearly resembles to the registered trade mark of Basanti Motorwala Private Ltd. and as such the appropriate authority should direct Basanti Taanga Private Limited to change its name. The appropriate authority after going through all the details rejected the application of Basanti Motorwala Private Ltd.

Thereafter on 14th July, 2020, Basanti Motorwala Private Ltd. requested Basanti Taanga Private Limited to change its name and Basanti Taanga Private Limited accepted the same in good relationship. Basanti Taanga Private Limited complied with all the formalities under Companies Act, 2013 such as passing of all necessary resolutions, taking approval from appropriate authority, filing of documents with the Registrar of Companies etc. The name of the company Basanti Taanga Private Limited was changed to Jai Veeru Private Limited. A

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fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Subsequent to the issuance of the new incorporation certificate, steps were taken up to incorporate the new name in all copies of the Memorandum of Association, Articles of Association and other documents of the company. Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks] (Oct'22)

Chapter 2: Incorporation of Company & Matters Incidental There to

1. In the above case scenario, what can be the most evident reason for the appropriate authority to reject the application of Basanti Motorwala Private Ltd?

(a) The appropriate authority rejected the application on the basis that the names of both the companies are different- Basanti Motorwala Private Ltd and Basanti Taanga Private Limited.

(b) The appropriate authority rejected the application as Basanti Motorwala Private Ltd (owner of the registered mark) should had filed the objection within three years of the registration of company with identical name.

(c) The appropriate authority could have rejected the application on the basis that both the companies are located in different cities and thus can use almost similar names.

(d) The appropriate authority could have rejected the application on the basis that both the companies have different years of incorporation and both are located in different cities. (Oct'22)

Answer 1:(b)

Chapter 2: Incorporation of Company & Matters Incidental There to

2. In the above case scenario, what ought to have been the time limit within which Basanti Motorwala Private Ltd, should have filed the objection for wrong name:

(a) On or before 9th January, 2021

(b) On or before 9th January, 2022

(c) On or before 9th January, 2023

(d) They can file the objection at any time (Oct'22)

Answer 2:(a)

Chapter 2: Incorporation of Company & Matters Incidental There to

3. According to above case, a fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Which of the following statements is correct in this context?

(a) The change in name of the company is said to be complete and effective from the date of passing of resolution in the general meeting of members.

(b) The change in name of the company is said to be complete and effective from the date of issue of fresh certificate of incorporation by the Registrar.

(c) The change in name of the company is said to be complete and effective from the date on which documents were filed with the Registrar.

(d) The change in name of the company is said to be complete and effective from the date of the order of Ministry of Corporate Affairs approving the change of name.(Oct'22)

Answer 3:(b)

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Case Scenarios 18 (MTP Oct'22)
Question 2
I. Prem and Amar are friends. Prem is the owner of three cars. Amar is a resident of Bhiwadi. He had to daily commute from Bhiwadi to Gurugram. He was using the services of various cab providers for commuting. Due to the rising prices and daily tension of booking a cab, Amar asked his friend Prem to rent one of his cars to him for a period of two month. They mutually agreed for a monthly rent of ₹ 8,000.
Prem bought a new car to gift to his son on his 19th birthday. Prem's son Guddu, wanted to take his friends out for a ride in the new car for a treat. They went the famous Labela Café. Guddu found a Rado watch in the cafe; lying on the floor. Guddu tried to find the owner of the watch but all his efforts went in vain. Guddu got the watch repaired from the showroom by paying ₹ 9,500. Three days after Guddu found the watch, he came to know about the real owner of the watch, from the advertisement newspaper stating the loss of a watch in Labela Café, along with the reward of ₹ 10,000 to the finder of the watch. Guddu went to the owner to return the watch. Guddu demanded ₹ 15,000 as he had paid ₹ 9,500 for the repair of the watch.
After the expiry of one month from the date of lending the car to Amar, Prem went to Paris for 1.5 months. Prem informed Amar to return back the car at his residence. After the expiry 2 months (from the date of renting the car), Amar thought to retain the car with him for a further period of 1 month, for the ease of commuting. However, he did not inform Prem about the same and thought of paying ₹ 4,000 for this extra 15 days to Prem (Prem was already not in India for 15 days, so in any case car could not be delivered to him directly).

Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks]

Chapter 11:The Indian Contracts Act, 1872
4. With reference to the provision of the Indian Contract Act, 1872, which of the statement is correct?
(a) Amar can retain the car as he had no malicious intention and was ready to pay ₹ 4,000 for retaining the car for 15 days
(b) Amar being a friend of Prem is authorised to retain the car after 2 months and also Prem was not in India at that time
(c) After the expiry of 2 months, the car can be retained at least for the time of 15 days when Prem was not in India but not for the balance 15 days for which Amar was ready to pay ₹ 4,000
(d) It was not justifiable for Amar to retain the car after the expiry of 2 months (Oct'22)
Answer 4:(d)

Chapter 11:The Indian Contracts Act, 1872
5. According to the provision of the Indian Contract Act, 1872, choose the correct statement.
(a) Guddu has a right to claim only the amount spent on repairing the watch.

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(b) Guddu has no right to claim the prize money.
(c) Guddu can retain the watch till the owner pays him at least the prize money.
(d) The owner is not liable to pay anything to Guddu. Rather, he can sue Guddu for stealing the watch. (Oct'22)

Answer 5:(c)

Case Scenarios (MTP March 23) (Chapter Registration of Charges)

Shiv IT Solutions Ltd. is a company engaged in the business of providing customized software to its clients. These software's are usually related to the employee's attendance, leave management, salary preparation, tax calculation and other matters incidental to HR.
The company is having its own building and other infrastructure in Bengaluru and also at Brussels, Belgium. The company have patent rights over few of its software's and also have the trade mark right over the company's logo.
The company got sanctioned term loan facility of ₹ 10 crores from Best Bank Ltd on 1st January, 2022 by creating a charge on the assets of the company which includes the company's own buildings and intangible assets. The charge should have been created by the company within the time prescribed under the Companies Act, 2013 with the Registrar, however, the company could not get registration of charges within the prescribed time line.
During the course of Secretarial Audit of the company, for the year ended March 2022, it came in the knowledge of the Company Secretary in Practice, that charge was not registered with the Registrar. He mentioned it in the report and advised the company to get it registered. However, the Action Taken Report (ATR) on the audit objection made by the Company Secretary was not apprised to the Board and no follow up was made by the company thereafter.

Bank's concurrent auditor and statutory auditor also pointed out this issue and narrated that since charge was not created by the company, hence this advance be treated as clean advance and interest rate of clean / unsecured advance, which is 22% (as against the normal rate of 11%) should be applied from the date of disbursement on the outstanding amount till date. Bank also asked a professional, whether it can get the charge registered, at its own, to satisfy the audit objection.
The Bank applied for registration of charge which was considered by the Registrar and registration of creation of charge was granted. The Bank in order to address the audit objections, applied the interest @ 22% on the outstanding amount in the loan account of the company. The company aggrieved with the decision of the Bank, managed to liquidate the term loans account by raising funds from other sources and filed the 'Satisfaction of Charge' with the Registrar.

Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks]

1. The company can create charge in favour of the lender on the the assets which are:
(a) Tangible Assets and situated in India only
(b) Intangible Assets and situated in India only
(c) Assets that are tangible or otherwise and situated in India or Brussels (Belgium)
(d) Assets that are tangible or otherwise and situated in India only

Answer 1 (c)

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2. Where the company fails to get the registration of charge, whether the Best Bank Ltd, in whose favour the charge was to be created, can move the application for creation of charge:

(a) No. It is the responsibility of the borrower company only to get the charge registered in favour of the lender.

(b) If the company do not get the charge registered in favour of the lender, the lender suo-moto cannot move application for registration of charge in its favour.

(c) The borrower company can be held liable to pay the penalty only.

(d) Yes. The lender company can move the application for registration of charge in its favour, if the borrower do not get the charge registered with the prescribed time.

Answer 2 (d)

Case Scenarios 20.(MTP April 23) (Chapter Declaration & Payment of Dividend)

I. Waste Papers Ltd. is company engaged in the business of collecting waste papers and old newspapers and manufacture from these wastes the corrugated boxes which are used in packing of the products by various suppliers.

The company is earning good profit margin and paying dividend consistently, which can be seen by the following information:

(₹ in Lakh)

Year	Payment ofdividend	Paid-up sharecapital	Free Reserves
2012-13 to 2017-18	10	100	45
2018-19	15	100	60
2019-20	20	100	75
2020-21	22	100	95
2021-22	24	100	120

During the year 2022-23, the company's business was severally affected due to low demand of the corrugated boxes on account of recession situation (slow- down of economy) prevailing all over the country. The company showed a loss of ₹ 20 lakh in the annual accounts.

However, the company wants to maintain its image of consistently dividend paying company and for this year also, it also wants to declare dividend. The company have accumulated free reserves in its hand and want to declare dividend @ 26% (since there is increasing trend of 2% from the preceding years).

During the year 2022-23, Somesh, a shareholder of the company died due to cardiac arrest. He was having 10,000 shares in his D-mat account in which he has made nomination in favour of his son Romesh. When Romesh applied for transmission of the shares, his sister Sanjana, objected and filed a case in the court that she also has right in the property of her father and mere making of nomination do not dilute the rights of the legal heirs to claim share in the property. The matter is

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sub-judice in the court of law awaiting decision.
The company has business dealing with Mahesh Kumar, who is also a shareholder of the company. The company has supplied some goods to Mahesh Kumar worth ₹ 10,000, but he was not making payment to the company. The company while making payment of the dividend to Mahesh Kumar deducted the due amount, and as a result, nothing was payable to Mahesh Kumar towards the dividend. Mahesh Kumar threated to take action against the company.
Based on the above facts, answer the following MCQs [3 MCQs of 2 Marks each: Total 6 Marks]

1. Whether Waste Papers Ltd, who suffered losses in year 2022-23, can make payment of dividend to the shareholders:
(a) In case of losses, the company can't pay dividend
(b) Company may pay dividend out of profits of previous years (which are free reserves), subject to the fulfilment of conditions prescribed for declaration of dividend when there is inadequacy of profits in a particular year
(c) Company may dividend out of Asset Revaluation Reserve Account
(d) Company may dividend without any restriction as it has enough amount in its Free reserves

Answer (b)

2. Romesh (son of the deceased) made a complaint, that even after declaration of dividend, the company has not posted the dividend warrant at the address given in his transmission form. Which is the most correct statement in this regard:
(a) The company is not liable to pay dividend to a deceased person
(b) The company is not liable to pay dividend to the legal heirs of the deceased person
(c) The company should deposit the dividend in the court, where the matter is under consideration (d) The company is not liable where there is a dispute regarding the right to receive the dividend.

Answer (d)

3. In the given case, the amount due to be recovered from Mahesh Kumar was deducted by the company and nothing was now payable to him on account of dividend. Is the action of the company right:
(a) No, payment of dividend is a separate matter and should not be clubbed with any other matter
(b) Yes, Mahesh Kumar can take action against the company for not paying any dividend to him
(c) The company can adjust the any sum, due to it, from the shareholder
(d) The company should take into confidence and consent of Mahesh Kumar's family members to adjust its dues

Answer (c)

Case Scenario)20 (RTP Nov 21)

(Chapter 2 Incorporation of Company & Matters Incidental There to)
Ramesh started a new venture of on-line business of supply of grocery items at the door- step of consumers. Initially it was having the area of operations of Jaipur City only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and

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Mobile App to receive the orders on-line. His friend Sudhanshu who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Ramesh agreed and a OPC was incorporated in the name of "Ask Ramesh4Online Grocery (OPC) Pvt Ltd." (for short OPC-1). In this OPC Ramesh became the member and director and Sudha (the mother of Ramesh) was made as nominee.
After a year Ramesh got married with Rachna. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of "Rachna Milk Products (OPC) Pvt Ltd" (for short OPC-2) was incorporated with the help of his professional friend Sudhanshu. In this OPC-2, Rachna (his wife) became the member and director and Ramesh was named as Nominee.
To summarise the position, the information is tabulated as under:

Name ofOPC	**Ask Ramesh 4Online Grocery(OPC) Pvt Ltd [OPC-1]**	**Rachna Milk Products (OPC)Pvt Ltd [OPC-2]**
Memberand Director	**Ramesh**	**Rachna**
Nominee	**Sudha (Mother of Ramesh)**	**Ramesh (Husband of Rachna)**

After some time, Sudha (the mother of Ramesh) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Suresh be made nominee in the OPC-1. When Suresh came to know this fact, he argued with Ramesh to fulfil the wish of Sudha as per her WILL (Mother of Ramesh and Suresh), but Ramesh denied this and appointed Rachna (his wife) as nominee. Aggrieved from the decision of Ramesh for not nominating him (Suresh), Suresh threatened Ramesh to take appropriate legal action against him for not honouring the WILL of mother Sudha and consulted his lawyer. Meanwhile due to continuous threatening and hot talks between Suresh and Ramesh, Rachna became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Ramesh being the nominee in OPC-2 became member and director of this OPC-2. One of the friends of Ramesh advised him to do some charitable work of providing free education to the girl children of his native village near by Jaipur. Ramesh thought about this proposal and asked his professional friend Sudhanshu to convert this OPC-2 into Section 8 company. Based on the above facts, answer the following MCQs: (Nov 21)

1.1 Since Rachna, being insane, lost the capacity to contract, Ramesh (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:

(a) Ramesh in the capacity of husband of Rachna can nominate any person as Nominee of OPC-2
(b) Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.

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(c) When no person is nominated, the Central Govt. will make nomination of such OPC-2.
(d) When no person is nominated the Registrar shall order the company to be wound up.

Answer 1.1 : (b)

1.2 Whether conversion of OPC-2 into a company governed by Section 8 is permissible?

(a) Yes, OPC can be converted into Section 8 company
(b) No, OPC cannot be converted into Section 8 company
(c) This OPC-2 can be converted into section 8 company, provided the Central Govt give license
(d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company

Answer 1.2 : (b)

1.3 Ramesh is a member in OPC-1 and became a member in another OPC-2 (on 2nd April, 2020) by virtue of his being a nominee in that OPC-2. Ramesh shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:

(a) 17th May 2020
(b) 25th August 2020
(c) 26th August 2020
(d) 29th September 2020

Answer 1.3 : (d)

1.4 After the demise of Sudha (the mother of Ramesh), Rachna was nominated by Ramesh for OPC-1 as Nominee. But now Rachna has become insane, so what recourse you will suggest to Ramesh:

(a) Ramesh is required to nominate another person as nominee
(b) Ramesh should wait till Rachna becomes good of her health and able to have the capacity to contract
(c) Although Rachna has become insane, but if she is able to sign, her nomination in OPC-1 may continue
(d) Sudhanshu (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Rachna

Answer 1.4 : (a)

Case Scenario 21 (RTP Nov 21)
(Chapter 11 The Indian Contracts Act, 1872)
Ronak and Bhowmik are brothers and they are engaged in the business of dairy. Ronak is having 10 cows. The monthly revenue and expenses of the cows is tabulated as under:

S.No.	Particulars	(₹)

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1.	Revenue: (25 litres per cow per day) *(10 cows) *(Sale Price ₹ 40 per litre) * (30 days in amonth) = 3,00,000.	3,00,000
2.	Expenses: i. For feeding: (300 per cow per day) *(10 cows) * (30 days in a month) = 90,000 ii. Medical Expenses (Salary to a Veterinary Doctor per month: 10,000 iii. Labour's Salary: (2 person *10,000) = 20,000 iv. Petrol exp for milk delivery van: Lump sum = 10,000 Total Exp= 90,000+10,000+20,000+10,000 =1,30,000	(1,30,000)
3.	Savings per month	1,70,000
4.	Yearly savings = 1,70,000*12 months	20,40,000
5.	Salary to Bhowmik for looking after Ronak's Diary business: 10,000*12 = 1,20,000	(1,20,000)
6.	Less: Contingency Expenditure	(20,000)
7.	Net Revenue to be collected (after a year)	19,00,000

Ronak's son Chirag is doing Engineering in Dairy Science from Denmark and is in Final Year. He learnt a lot by his engineering education and want to invite his father to know the technical aspects of dairy business. Chirag insisted his parents to come to Denmark and stay for a year to learn the nitty gritty of the dairy business and also enjoy the life in travelling nearby places. Ronak, talked to his brother Bhowmik and explained his plan to visit to Denmark for a year and requested to take care of his cows. The labourers are engaged for the maintenance of cows and delivery of the milk, and Bhowmik is just to have a watch over it, collect the revenues etc. and take care of the cows, till he returns back from Denmark. Ronak also offered Bhowmik that for taking care of his dairy business, he will pay to him Rs 10000 per month. Ronak also told Bhowmik that the cows are covered under the Insurance Policy, for which he has already paid advance premium and also shared the Insurance Policy with Bhowmik. However, Ronak did not disclosed that one cow is under sickness, it very often falls sick and needs to be taken care. Bhowmik agreed and the cows were shifted to Bhowmik's Dairy Farm House.
Ronak and his wife went to Denmark to stay with their son and to understand the dairy business there and to visit the near places. Bhowmik was now looking after the dairy business of Ronak along with his dairy business. During the year, 2 cows gave the birth to 2 calves.

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One cow, which often used to fall ill, had also influenced the other cows, as a result, one cow of Bhowmik, and one cow of Ronak which remained in close contact with this sick cow, also fell sick. All the three cows (2 of Ronak and 1 of Bhowmik) died.
When the insurance claim was lodged, the insurance company refused to pass on the claim on the following reasons:

- **One cow of Ronak which was running sick was not insured.**
- **Post mortem Report of another two cows (one of Ronak and another of Bhowmik) revealed that these two cows were in close touch of the sick cow and due to infections, these two cows also died.**

When Ronak returned back to India, he demanded his cows back. Bhowmik returned 8 cows (10-2) but did not returned calves. Bhowmik informed Ronak that due to one sick cow (of Ronak) his cow also became sick and died and no insurance claim was admitted.
Based on the above facts, answer the following MCQs: (Nov 21)

1.5 What was the fault on the part of Ronak (bailor) in this case?
(a) Ronak has not taken the Insurance Policy of the sick cow.
(b) Ronak have not informed the continuous sickness of his cow, to Bhowmik
(c) Ronak has left the cows to his brothers and went to Denmark to enjoy the travelling and tourism.
(d) Ronak, before going to Denmark, should have sold this sick cow.
Answer 1.5 : (b)

1.6 Can Bhowmik claim damages for loss of his cow, which died, since this cow, remained in the close contact of the sick cow of Ronak:
(a) Ronak is not liable for such loss.
(b) Bhowmik should himself take care of his cow.
(c) Ronak is liable to pay the price of the deceased cow of Bhowmik, since this cow died on account close contact of sick cow of Ronak.
(d) Bhowmik should be vigilant in taking care of the cows.
Answer 1.6 : (c)
1.7 Whether Bhowmik is responsible to give delivery of two calves which took birth during the year, when Ronak was on his tour to Denmark:
(a) Bhowmik is not bound to give delivery of two calves, since he has already lost his own cow due to mistake of not disclosing the sickness of Ronak's cow by him (Ronak).
(b) Bhowmik is duty bound to hand over the delivery of two calves.
(c) Ronak should not insist for delivery of the calves.
(d) Bhowmik can keep the calves with him as the calves were born when the cows were in Bhowmik's custody.
Answer 1.7 : (b)

1.8 Bhowmik returns only 8 cows, since 2 cows of Ronak died. Whether Ronak is entitled to claim damages for 2 cows:
(a) Ronak is not entitled to claim damages.

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(b) Ronak is entitled to claim damages only, if he can prove that Bhowmik has not taken care of the cows as a prudent person, not taken the medical help of the doctor etc.
(c) Bhowmik should morally paid the loss of cows to his brother Ronak
(d) Bhowmik should not claim his salary, since Ronak has already suffered the loss of two cows.

Answer 1.8 : (b)

Case Scenario 22 (RTP May 21)

Mr. Ajay is a renowned finance professional with wide experience in banking operations. Due to his experience, he has been appointed as director on the Board of various companies. He is working as the Executive Director

- Finance of Doon Carbonates Limited (DCL) for the past 4-5 years and heading the finance department there. As per the object clause of the Memorandum of Association of DCL, it can raise funds by way of loans for the advancement of its business. Articles of Association of DCL authorizes the directors to borrow up to INR 50 lakhs on behalf of the company after passing a valid board resolution and any loans for amounts exceeding the above limit can be raised only after approval at a general meeting.

Board of Directors of DCL raised INR 80 lakhs from Srikant Finance Services after passing a board resolution and out of this amount, INR 60 lakhs was used to pay a legitimate liability of DCL by the directors. DCL is a widely held company with around 5600 members as per the members register.

The 21st AGM of DCL is convened on 1st September 2020. A total of 34 members attended the meeting out of which 7 members attended through proxy. 6 of such members are represented by single proxy, Mr. Das. The articles of DCL is silent about the quorum.

Mr. Ajay is also director of Padmani Silk Limited (PSL). PSL was established around 25 years back as a private company operating as a micro business with 10 employees in a three- room building. During these years, the company grew exceptionally and went public and was also listed on SME exchange. PSL declares the interim dividend out of the previous year's undistributed profit on 31st August th anniversary of the company. PSL deposited the amount of said

2020 on the occasion of the 25 dividend in a separate bank account with a NBFC on 4th of September, 2020.

Mr. Ajay hails from a farming family and carries on the business of cultivation and milling of paddy. He is also the sole member of New-Deal Limited (NDL), a one person company. NDL is operated as rice sheller and also deals in trading of high quality basmati rice. Mr. Ajay's father is operating as a nominee for the purposes of this OPC. The accounts department of NDL prepared and published only Profit and Loss Account and Balance Sheet as a financial statement and did not prepare cash flow statements and explanatory notes to accounts. A statement of changes in equity is not required in the case of NDL.

Multiple Choice Questions

1.1 Regarding compliance for declaration and distribution of Interim dividend by PSL,

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which of the following statements is correct? (Chapter 8 Declaration & Payment of Dividend May 21)

(a) There is a violation of the provisions because interim dividend can only be declared out of current year's profits.
(b) There is no violation at all, and all the provisions prescribed by law have been complied with.
(c) There is a violation because the bank account shall be designated and shall be one of existing banks account of company.
(d) There is a violation because the bank account shall be opened with scheduled banks only. **Answer 1.1: (d)**

1.2 Which of the following statements is correct, with reference to the requirement for financial Statements of 'New Deal Limited' (One Person Company) (Chapter 9 Accounts of Companies May 21)

(a) NDL fails to meet the requirement because its financial statement do not include explanatory notes to accounts
(b) NDL fails to meet the requirement because its financial statements do not include cash flow statement
(c) NDL fails to meet the requirement because its financial statements do not include explanatory notes to account and cash flow statement
(d) NDL has complied with the requirements related to financial statements

Answer 1.2 (a)

1.3 The borrowing of the sum of INR 80 lakhs by the directors of DCL is (Chapter 11 Indian Contract Act, 1872 May 21)

(a) Void-ab-initio (b) Void
(c) Voidable
(d) Valid

Answer 1.3 (c)

1.4 Regarding the validity of the 21st Annual General Meeting of DCL, which of the following statements is correct?

(Chapter 7 Management & Administration May 21)

(a) The meeting doesn't have a quorum, because 30 members need to be present in person at the meeting.
(b) The meeting is valid and has a quorum because 30 members are present at meeting either personally or through a proxy.
(c) The meeting is valid and has a quorum, because only 5 members are required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand
(d) The meeting is valid and has a quorum, because only 15 members are required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand

Answer 1.4 (a)

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Case Scenario23 (RTP May 21)
Mr. M. Mishra is a director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Mishra (father of Mr. M. Mishra) on 05th July 1995 as a public company. SCCL accepts a loan of ₹ 1.5 crores from Mr. M. Mishra for short term purpose and the loan is expected to be repaid after twenty four months. SCCL in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. M. Mishra 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 his loan transactions are furnished in the boards' report.
DBSL which is an unlisted public company, also accept the deposits from the public as on 1st November 2018, which is due for repayment on 30th September 2023. DBSL also accepts a LAP (Loan against property) for a term of 10 years from a financial institution on 18th June 2020. Charge was created on that day, but DBSL has neglected to register the charge with the registrar. Finally, the application for registration of charge is furnished on 18th August 2020.
SCCL has registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members register are residents of Nainital (Uttarakhand). SCCL has a liaison Office at Nainital. Management of the company is willing to place, the Register of Members at the Nainital Liaison Office. DBSL convene its 7th AGM on 10th September 2020 at the registered office of the company. Notice for same was served on 21st August 2020. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19.

Multiple Choice Questions

2.1 Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office. (Chapter 7 Management & Administration May 21)

(a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL is not correct in placing it at the Nainital liaison office
(b) Register of members cannot be kept at any other place by SCCL, without passing an ordinary resolution
(c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there
(d) Register of members cannot be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there

Answer 2.1 (c)

2.2 With reference to deposit accepted by DBSL and its duration, you are required to identify which of the following statements is correct: (Chapter 5 Acceptance of Deposits by Companies May 21)

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(a) There is no requirement relating to the duration of deposit, DBSL can accept a deposit for any duration.
(b) Since DBSL is an unlisted company, provision relating to the duration of the deposit is not applicable.
(c) There is a provision of a minimum duration of six months, but no upper cap to length is provided. Hence deposit accepted by DBSL is in compliance to provisions of Law.
(d) Acceptance of deposits by DBSL is in violation of provision of law, because the maximum period of acceptance of deposit cannot exceed thirty -six months.

Answer 2.2 (d)

2.3 With reference to application to the registrar for registration of charge by DBSL, which of the following statements is correct? (Chapter 6 Registration of Charges by Companies May 21)

(a) The charge cannot be registered now, even if the Registrar permits the same.
(b) The charge can be registered, if registrar permits with payment of ad-valorem fee.
(c) The charge can be registered, if registrar permits but with payment of an additional fee.
(d) The charge can be registered, with payment of a standard fee.

Answer 2.3 (b)

2.4 With reference to the loan advanced by Mr. M. Mishra to SCCL, state whether the same is to be classified as a deposit or not? (Chapter 5 Acceptance of Deposits by Companies May 21)

(a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit.
(b) Deposit, because the tenor of the loan is for a period of more than six months.
(c) Not a deposit, because such amount is recorded as loan in books of account of SCCL.
(d) Not a deposit, because the written declaration is provided by Mr. M. Mishra, who was a director when the loan was advanced that the loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Answer 2.4 (d)

2.5 Considering the provision relating to length of Notice for AGM, pick out the right option: (Chapter 5 Acceptance of Deposits by Companies May 21)

(a) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by all the members entitled to vote at AGM.
(b) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by at- least 95% of members entitled to vote thereat.
(c) Notice served by DBSL is valid because the shorter length has been consented to by 75% of members entitled to vote thereat.
(d) Notice served by DBSL is not valid, because notice given within a shorter length duration needs has to by at- least 50% of the members entitled to vote at AGM that too in writing.

Answer 2.5 (b)

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Case Scenario 24 (RTP Nov '20)

Mr. B R Mohanty, around two-decade back; along with two of his elder brothers and few friends, who are pharma and chemical engineers by profession promoted two companies; first being WellMount Limited (WML) dealing in wellness products and pharmaceuticals ; whereas other is TexMount Limited (TML) dealing in textile products. During these two decades, both WML and TML has grown magnificently as both the sectors expanded beyond imagination. Both companies went public and stock of same listed on leading stock exchanges of countries.

TML did well in the past and emerged as a major export unit but in recent years the textile sector witness stiff competition due to new entrants. The increased cost of the workforce and other input materials is also made sector unprofitable and recent lockdown hit the sector further adversely. TML's bottom line for the current financial year is red. TML was declaring dividends since the very first year of operation and willing to continue the tradition considering dividend as signalling effect to an investor for valuation purpose. Rate of dividend for the recent five years was 9%, 10%, 8%, 5% and 2% (9% being five years ago and 2% being the previous year) respectively. The management at TML decided to declare dividends out of the profit of previous years. TML deals in export hence came under the scanner of enforcement authority, who seek financial statements and books of accounts of TML for scrutiny for the last 10 preceding financial years. In response to notice, TML furnish financial statements and books of accounts for last 8 immediately preceding financial years only, stating as per its Article of Association; TML is required to maintain and keep the books of accounts for 8 immediately preceding financial years only and that too without any record of vouchers pertaining to such accounts.

WML is doing well, it seizes outbreak of COVID-19 as a business opportunity and registers significant growth in both top and bottom line. For the past many years, WML declare a dividend at a constant rate of 20%. During the financial year 2019-20, WML earns a profit of 580 Crores. Board of directors of WML declares 25% dividend without transferring any % to reserve on 15th June, 2020. On 14th July, 2020 some of the amount remaining unpaid, due to operation of law; has been transferred to unpaid dividend account on 20th July, 2020. CA. Dev was appointed as auditor under section 139 of Companies Act, 2013 of WML in individual capacity during 17th AGM for against the financial year 2018-19

A. In case of TML, which of the following statements are correct regarding the declaration of dividend?

.(Chapter 8 Declaration & Payment of Dividend)

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

(ii) TML can declare the dividend but only up to 9% (iii) TML can declare the dividend but only up to 5%

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

Answer A (iii)

B. CA. Dev, who is the auditor of WML have to vacate the office of the auditor in and can be reappointed again only in .(Chapter 10 Audit & Auditors)

(i) 22nd AGM and 27th AGM

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(ii) 27th AGM and 32nd AGM
(iii) 22nd AGM and 23rd AGM
(iv) 22nd AGM and can't be re-appointed again.

Answer B (i)

C. In case of WML, which of the following statements is correct regarding the declaration of dividend? .(Chapter 8 Declaration & Payment of Dividend)

(i) WML can't declare the dividend at a rate more than 20%
(ii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 20% to reserve first.
(iii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 10% of paid-up share capital to reserve first.
(iv) WML can declare the dividend out of current years' profit without transferring any % to reserve.

Answer C (iv)

D. In case of TML, regarding maintenance and keeping the books of account; which of the following statements hold truth? .(Chapter 9 Accounts of Companies)

(i) TML needs to maintain and keep the books of account for 10 preceding financial years, hence TML violate the law.
(ii) TML doesn't violate the provision of law because it keeps the books of account for 8 immediate preceding financial years.
(iii) TML violate the provision of law because it keeps the books of account for 8 immediately preceding financial years without keeping relevant vouchers in the record pertaining to such books of account.
(iv) TML doesn't violate the provision of law because it is complying to its Article of Association.

Answer D (iii)

E. Regarding declaration and distribution of dividend by WML, which of the following statements is correct from the view of the timeline? .(Chapter 8 Declaration & Payment of Dividend)

(i) WML violates the law, because some of the dividend remain unpaid; irrespective of reason for non-payment
(ii) WML violates the law, because unpaid dividend need to transfer to unpaid dividend account by 19th July 2020.
(iii) WML doesn't violate the law, because an unpaid dividend transferred to unpaid dividend account prior to 21st July 2020.
(iv) WML doesn't violate the law, because an unpaid dividend can be transferred to unpaid dividend account at any time within 90 days from the date of declaration.

Answer E (iii)

Case Scenario 25 (RTP Nov '20)

Mr. Purshottam Prasad, a business graduate from leading B-School, running the chain of

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restaurants; as sole proprietor concern; based in Chennai. Mr. Prasad being dynamic businessman, in order to develop the business; decided to give corporate form to his business; but concerned with dilution of the control over business decisions.

Mr. Prasad, during some journey met Mr. Chinmay Dass; who is school days friend of Mr. Prasad and presently working in one of leading corporate advisory firm. Mr. Prasad seeks advice from Mr. Dass, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the entire control in his hand. Mr. Dass told, about new type of company; which can be formed under Companies Act, 2013; One Person Company (OPC). Mr. Dass quoted section 2 (62), which define 'one person company' , a company which has only one person as a member.

Mr. Prasad, felt OPC is correct form of business for him, hence promotes an OPC 'Casa Hangout Private Limited' (One Person Company) on 14th September 2019, to which he sold his sole proprietor business and himself became sole member. Mr. Prasad, appointed his younger son Mr. Vijay, who was 21 year old then; as Nominee to OPC. Mr. Anand who is old friend of Mr. Prasad was appointed as director of OPC, Mr. Prasad himself also become director of company.

Mr. Vijay is professional photographer, and for some certification course went to abroad on 23rd October 2019. He came back on 1st of March 2020. He established photo-studio in form of OPC 'Best Click (OPC) Private Limited' on 20th March 2020, in which Mr. Prasad is nominee and he became sole member. In mean time, Mr. Vijay also gave his consent as nominee to another OPC in which his elder brother Mr. Shankar is sole member.

Mr. Prasad met an accident on 25th March, 2020, in which he lost his life. Nomination clause invoked, resultantly Mr. Vijay has to take charge over 'Casa Hangout (OPC) Private Limited' (One Person Company) as member with immediate effect. On 30 th March, 2020 Mr. Shankar was appointed as new nominee to 'Casa Hangout (OPC) Private Limited', who gave written consent on 31st March 2020. Mr. Shankar who is investment banker by profession, is of opinion that 'Casa Hangout (OPC) Private Limited' need to amend its object clause and add 'carry out investment in securities of body corporate' as one of object.

Financial Period closed on 31st March 2020. Financial statements of 'Casa Hangout (OPC) Private Limited', which is not containing cash flow statement; signed by Mr. Anand (who left as only director after death of Mr. Prasad).

A. With reference to appointment of Mr. Vijay and Mr. Shankar as nominee to 'Casa Hangout (OPC) Private Limited', out of followings, who is eligible to be nominee of OPC? .(Chapter 2 Incorporation of Company & Matters Incidental There to)

(i) Any natural person excluding minor
(ii) Any legal person excluding minor
(iii) Any natural person, who is resident of India; but excluding minor
(iii) Any natural person, who is resident as well as citizen of India; but excluding minor

Answer A (iv)

B. Mr. Shankar if wish to withdraw his consent as nominee, can do so; by giving written notice

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to (Chapter 2 Incorporation of Company & Matters Incidental There to)
(i) Director of OPC and to sole member of company
(ii) Director of OPC and to Registrar of companies
(iii) Sole member of company and to OPC
(iv) Sole member of company and to Registrar of companies

Answer B (iii)

C. With reference to legal position of Mr. Vijay as member/s and nominee/s to various OPCs, Which of the following statement is correct in reference to ceiling limit in relation to membership and being nominee to OPC? A person, other than minor; at specific point of time; (Chapter 2 Incorporation of Company & Matters Incidental There to)
(i) Can be member in any number of OPCs but nominee in one OPC
(ii) Can be member in one OPC and nominee in any number of OPCs
(iii) Can be member in one OPC and nominee in another one OPCs
(v) Can be member and nominee both in any number of OPCs

Answer C (iii)

D. Which of following statement is correct, in reference to requirement for financial Statements of 'Casa Hangout (OPC) Private Limited' (Chapter 9 Accounts of Companies)
(i) Must be signed by one director
(ii) Must be signed by at-least by two directors
(iii) Must contain cash flow statement as part of financial statements (iv) None of the above

Answer D (i)

E. With reference to opinion of Mr. Shankar to add 'carry out investment in securities of body corporate' object, 'Casa Hangout (OPC) Private Limited' (Chapter 2 Incorporation of Company & Matters Incidental There to)
(i) Can't carry out non-banking financial investment activities & investment in securities of body corporate
(ii) Can't carry out non-banking financial investment, but can invest in securities of body corporate'
(iii) Can carry-out non-banking financial investment & invest in securities of body corporate'
(iii) None of the above

Answer E (i)

Case Scenario 26 (RTP May '20)

A private company by the name of Neha Pvt. Limited was incorporated in the year 2002. The registered office of the company Neha Pvt. Limited was situated in city K of state Y. During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the turnover of the company Neha Pvt. Limited was ₹ 1010 crore. The net profit of the company Neha Pvt.

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Limited for the financial year 2018-19 was ₹ 4 crore.
The Board of Directors of Neha Pvt. Limited consisted of only two directors namely Mr. M and Mr. N. Mr. M and Mr. N were the only directors of company Neha Pvt. Limited since its incorporation in the year 2002.
Mr. M one of the two directors of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of the Board was required to be formed as for the financial year 2019 – 20 due to the reason that net profit of the company Neha Pvt. Limited for financial year 2018-19 was ₹ 4 crore which was less than ₹ 5 crore.
Mr. N the other director of Neha Pvt. Limited was not having the same opinion as Mr. M. He was of the opinion that Corporate Social Responsibility Committee of the Board must be formed for the company Neha Pvt. Limited.
The net profit of the company Neha Pvt. Limited for the financial year 2015-16, 2016-17 and 2017-18 were ₹ 1 crore, ₹ 2 crore and ₹ 3 crore respectively.
Keeping the basic provisions of Companies Act in mind answer the following multiple choice questions:(Chapter 9 Accounts of Companies)

(A) Mr. M one of the director of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of Board was required to be formed for financial year 2019-20 but Mr. N other director was of opinion that it was required to be formed.
According to your understanding which one of the two director is right and why:
(a) Mr. M because net profit of Neha Pvt. Limited for financial year 2018-19 was less than ₹ 5 crore.
(b) Mr. N because turnover of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 1,000 crore.
(c) Mr. N because net profit of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 2 crore.
(d) Mr. M because turnover of Neha Pvt. Limited for financial year 2019-19 was less than ₹ 1,500 crore.

Answer A (b)

(B) The company Neha Pvt. Limited must give preference to spend the amount of contribution towards Corporate Social Responsibility in area of:
(a) City O of State Y
(b) City A of State Z
(c) City G of State Z
(d) City K of State Y

Answer B (d)

(C) According to law Corporate Social Responsibility Committee shall consist of three or more directors, so for company Neha Pvt. Limited the Corporate Social Responsibility Committee will:
(a) Not be formed as it has only two directors namely Mr. M and Mr. N
(b) Be formed only after appointing one more director apart from Mr. M and Mr. N
(c) Be formed with two directors only namely Mr. M and Mr. N
(d) Be formed only after appointing two more directors apart from Mr. M and Mr. N

Answer C (c)

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(D) The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of at least:
(a) ₹ 0.04 crore
(b) ₹ 0.12 crore
(c) ₹ 0.18 crore
(d) ₹ 0.06 crore
Answer D (a)

Case Scenario27 (RTP May '20)
GHWX Private Limited was incorporated in the year 2009. The registered office of the company GHWX Private Limited was situated in city T of state V. The Board of Directors of GHWX Private Limited comprised of five directors namely Mr. K, Mr. N, Mr. R, Mr. U and Mr. W. During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018.
Out of 5 directors, Mr. K, Mr. N, Mr. R and Mr. W were present for the said meeting. During the meeting of Board of Directors a resolution on one of the important matters was passed. While three directors namely Mr. K, Mr. N and Mr. R agreed with the resolution and voted in favour of resolution, however, Mr. W did not agree with the resolution and voted against the resolution.
The minutes of the second meeting of Board of Directors of GHWX Private Limited held on 7 September, 2018 were prepared and they were entered in Minutes Book of meeting of Board of Directors of GHWX Private Limited. One of the director Mr. K was of the opinion that minutes of second meeting of Board of Directors of GHWX Private Limited must be prepared and entered in Minute Book of meeting of Board of Directors of GHWX Private Limited by end of October, 2018. The remaining four directors namely Mr. N, Mr. R, Mr. U and Mr. W did not agree with the opinion of Mr. K because they thought that it was not within the time limit as prescribed by the law.
One of the directors, Mr. N. opined that minute books of meetings of Board of Directors of GHWX Private Limited for the years starting with 2009 to 2015 should be shredded to ruins as these papers were taking a lot of space. He further added that since the Companies Act, 2013 is silent as to maintaining the minute book of meetings of Board of Directors, it is not necessary to maintain such minute books.
The Board of Directors of GHWX Private Limited did not decide any place where minute book of meetings of Board of Directors of GHWX Private Limited will be kept. Keeping the provisions of the Companies Act, 2013, in mind answer the following multiple choice questions:(Chapter 7 Management & Administration)
(A) The second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018 for the financial year 2018-19. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018 -19 must contain:
(a) Name of director Mr. U who was absent from the meeting of Board of Directors held on 7 September, 2018.
(b) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W comprising Board of Directors

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of GHWX Private Limited.
(c) Name of one director Mr. U who was absent and atleast one director who was present in the meeting of Board of Directors held on 7 September, 2018.
(d) Names of directors Mr. K, Mr. N, Mr. R and Mr. W who were present in the meeting of Board of Directors held on 7 September, 2018.

Answer A (d)

(B) In case of the resolution talked in the case study, the minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018 -19 held on 7 September, 2018 must contain:
(a) Name of any two directors who were present in meeting and voted in the resolution.
(b) Name of director Mr. W who voted against the resolution.
(c) Name of directors Mr. K, Mr. N and Mr. R who voted in favour of the resolution.
(d) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W who all had the right to attend the meeting and vote in the resolution.

Answer B (b)

(C) The opinion of one of the director, Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:
(a) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 201819 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018.
(b) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.
(c) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.
(d) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 201819 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018.

Answer C (a)

Case Scenario27 (RTP May '22) (Chapter 8 Declaration & Payment of Dividend)
Perfect Tyres and Rubbers Ltd. is a listed entity engaged in the business of manufacturing of tyres and tubes for Light and Heavy Commercial Vehicles. During the financial year 2019-20, the company has declared interim dividend of 5% on the equity shares in its Board meeting held on 17th October, 2019, out of the profits earned during the first quarter of FY 2019-20. Further, the Board of Directors of the company after reviewing results of the fourth quarter of FY 2019-20 again recommended for second Interim Dividend @ 5% on 25th April, 2020. The Board of Directors of the company approved the financial result for the FY 2019-20 in

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its meeting held on 5th August, 2020, and recommended a final dividend of 15% (including the interim dividends paid earlier) in this board meeting. The general meeting of the shareholders was convened on 31st August, 2020. The shareholders of the company demanded that since interim dividend @10% (5% + 5%) was declared by the company, so the final dividend should not be less than 20% (including the interim dividends). When the Company Secretary emphasised that final dividend cannot exceed, what the Board of Directors have recommended in their board meeting, some of the shareholders boycotted the meeting and moved out of the meeting hall, in protest of the company's decision. However, the agenda for declaration of the dividend was passed unanimously by rest of the shareholders present in the meeting hall, fulfilling the criteria of requirement of quorum, as per the provisions of the Companies Act, 2013.

After approval of the shareholders, the dividend amount was paid to the shareholders, however dividend to some of the shareholders could not be paid within the prescribed period for variety of reasons. The company transferred the unpaid dividend amount to a separate bank account on 15th October, 2020.

The details of the unpaid dividend amount for the previous year's lying in the unpaid dividend account is as under:

S. No.	Dividend pertaining to the FY	Date of declaration of Dividend	Date when the amount was transferred to Unpaid dividend Account	Amount in the Unpaid Account (₹ in lakhs)	Dividend
1	2019-20	31.08.2020	15.10.2020	92.50	
2	2018-19	25.08.2019	28.09.2019	85.14	
3	2017-18	20.08.2018	22.09.2018	80.00	
4	2016-17	05.09.2017	07.10.2017	75.25	
5	2015-16	01.09.2016	04.10.2016	45.15	

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6	2014-15	07.09.2015	09.10.2015	35.26
7	2013-14	05.05.2014	08.06.2014	15.10
8.	2012-13	06.06.2013	08.07.2013	07.25

Sustram, one of the investors who is holding 1000 shares in physical form, by visiting web-site of the company, came to know that company had declared the dividends in some previous years, but have not been paid to him. This happened due to the fact the company was not having his current address and bank account details. Sustram approached the company, along with all the supporting evidence to his claim and demanded the dividend amount.

The company after being satisfied, paid all the dividend amount pertaining to the FY 2013-14 to FY 2019-20. However, for FY 2012-13, the company informed that since the amount of dividend has been transferred to Investor Education and Protection Fund, it cannot be taken back now. Aggrieved from this, Sustram threatened the company officials to take appropriate legal action.

Based on the above facts, answer the following MCQs:

1.1 When the shareholders demanded for increase in the rate of dividend, but since the shareholders cannot increase the rate of dividend what the Board of Directors have recommended, some of them walked out of the meeting hall. What shall be the consequences of it:

(a) If, even after boycott, quorum is present, all the time during the course of general meeting and they have approved with majority, the rate recommended by the Board shall be treated as approved.

(b) Members present at the beginning of the meeting shall remain present all the time during the general meeting, to approve any agenda, else it will be treated as nullified.

(c) The approval of the dividend is an ordinary business resolution of the company, so if some of the members have boycotted the meeting, it will have no effect, even if the quorum is not present.

(d) The recommendation of the Board of Directors of the company relating to the rate of dividend shall stands withdrawn.

Answer (a)

1.2 At which date, the unpaid dividend not claimed by the shareholders, shall be transferred to a separate bank account, in the above case:

(a) On 5th August, 2020 (the date of Meeting of Board)

(b) On 31st August, 2020 (the date of Meeting of Shareholders)

(c) On 30th September, 2020 (the date, after 30 days from the meeting of shareholders)

(d) Latest by 7th October, 2020 (within seven days from the date of expiry of 30 days)

Answer (d)

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1.3 The company transferred the amount of unpaid dividend to a separate bank account on 15th October, 2020. What is the interest liability on the part of the company?

(a) No liability.

(b) Interest @ 10% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

(c) Interest @ 12% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

(d) Interest @ 15% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

Answer (c)

1.4 In the given case, when and how much amount, the company shall transfer the funds to the Investor Education and Protection Fund:

(a) Four years after 01.09.2016; Rs 45.15 lakh

(b) Five years after 07.09.2015; Rs 35.26 lakh

(c) Six years after 05.05.2014; ₹ 15.10 lakh

(d) Seven years after 08.07.2013: ₹ 07.25 lakh

Answer (d)

Case Scenario 28(RTP Nov '22)

Question 1

Shree Tyres Ltd. is an unlisted public limited company. The company's accounts for the financial year ending on 31st March, 2022 were finalised and audited by the Statutory Auditor. The meeting of the Board of Directors was convened and approved the financial accounts of the company and proposed to convene the Annual General Meeting of the shareholders on Thursday, the 25th August, 2022 at 10 am.

The total number of members is 3500. The Article of the company provides that the quorum for the general meeting of the shareholders shall be at least fifty members. On the day of the meeting only 10 members were physically present. Even after waiting of 30 minutes, the quorum was not present. Accordingly, the meeting was adjourned. According to the provisions of the Companies Act, 2013, the meeting shall adjourn to the same day in the next week at the same time and place.

However, on the same day in the next week i.e., on Thursday, the 1st September, 2022, the same venue (which is a Hotel's Conference Hall) was available from 3 pm only. The Board agreed to conduct the meeting from 3 pm and the all the members were informed individually via mail and also published it in the newspapers (one in English and another in vernacular language)

The adjourned meeting started at 3 pm on 1st September, 2022, the quorum required as per the Articles was 50, however 75 members were present. Out of the 75 members attending the meeting 25 persons were having the residence near the venue of Annual General Meeting and rest of the members were staying far away. Due to heavy rainfall and scarce availability of public transportation, 40 persons left the meeting so that they can reach home on time.

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By that time only the ordinary business resolutions were approved and two special business agendas were pending for approval by the members.
Based on the above facts, answer the following MCQs: (Nov'22)

Chapter 7: Management & Administration
1.1 In the light of the given facts, the General Meeting of the shareholders was decided to be scheduled . Determine by which date the notices to the shareholder should have been given to the members:
(a) 1st August, 2022
(b) 2nd August, 2022
(c) 3rd August, 2022
(d) 4th August, 2022 (Nov'22)
Answer 1: (c)

Chapter 7: Management & Administration
1.2 Whether adjournment of the general meeting of shareholders of Shree Tyres Ltd. for want of quorum, was justified as per the requirement of the Companies Act, 2013:
(a) Yes, it was justified, since the quorum was not present within 30 minutes from the time appointed for holding the meeting
(b) No, it was not justified since the waiting time for the arrival of the requisite quorum is 30 minutes as per the provisions of the Companies Act, 2013, whereas the decision of the adjournment of the meeting was just taken after 15 minutes.
(c) Yes, if the quorum is not present at the given time (sharp) of meeting, the meeting stands to be adjourned, and there is no requirement of waiting time.
(d) Yes, it was justified, since the quorum was not present within 45 minutes (as per statutory requirement) from the time appointed for holding the meeting. (Nov'22)
Answer 1.2: (a)

Chapter 7: Management & Administration
1.3 What shall be the quorum for the General Meeting of the Shareholders, where the number of members is 3500:
(a) Five
(b) Fifteen
(c) Thirty
(d) Fifty: (Nov'22)
Answer 1.3: (d)

Chapter 7: Management & Administration
1.4 As some members left the meeting, the quorum was not present all the time during the Annual General Meeting. The agendas for special business transactions remained un-approved. What is your opinion:
(a) The quorum once present in the beginning of the meeting is enough.
(b) The quorum should be present all the time when the meeting is in progress. Any items which

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could not approved by members for want of quorum, shall be treated as NIL.

(c) When the quorum is present in the beginning of the meeting, it may be assumed that all the resolutions have been approved, until and unless objected later on by the members present therein.

(d) The Board may seek special written consent from the all the members later on. : (Nov'22)

Answer 1.4: (b)

Case Scenario 29 (RTP Nov '22)

Chapter 11: The Indian Contracts Act, 1872

Question 2

Yukti has opened a showroom of electronic goods, viz: Air-Conditioner, Colour TV, Refrigerator, Washing Machines etc. which are commonly used for house- hold purposes. She also has a godown, in which the white goods are stored.

Since the electric items are costly and require heavy investment, so she availed a working capital finance from OKEY Bank Ltd. (the Bank), by pledging the white goods lying in her godown, with the Bank. The Bank put its lock, on the godown and whole of white goods were now in possession of the Bank. The Bank granted a working capital finance of ₹ 100 lakhs to Yukti by keeping the pledged goods.

The drawing power limit (DP Limit) was kept as 60% of the value of the goods pledged.

As and when, Yukti needs to withdraw some white goods from the godown, she requests the Bank, deposits the value of goods to be withdrawn. A godown keeper of the Bank comes with her, opens the lock of the godown and allows Yukti to draw the specified goods, of which she has made payment to the Bank.

The Bank got the comprehensive insurance policy on the value of the goods pledged to cover it from theft, fire, flood and earthquake etc.

Yukti, after some time, availed another loan of ₹ 20 lakh from the same Bank for her sister's marriage. This was a personal loan and no security was insisted by the Bank.

Yukti hired a locker from the Bank, in which she kept some jewellery, which was to be given to her sister on her marriage.

After a year, Yukti decided to transfer its running business to Shekhar, for which Shekhar paid the amount to Yukti as agreed between them. Yukti thereafter repaid al l the outstanding loan amount given by the Bank towards the working capital finance and asked the Bank to open the lock of the godown, to get goods, in order to hand over the same to Shekhar. However, there was some dispute over the insurance charges paid by the Bank. The Bank insisted to first pay the interest amount then only it will allow her to remove the goods.

The Bank also asked Yukti to settle her personal loan account and only thereafter the Bank will allow to take the goods lying in the godown.

Based on the above facts, answer the following MCQs: : (Nov'22)

Chapter 11: The Indian Contracts Act, 1872

2.1. In the light of the given facts, state which statement is correct as regards the right of the Bank

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on retaining of the goods lying in the godown:

(a) When the outstanding amount taken for working capital, has been paid, the Bank cannot retain the goods

(b) The Bank can retain the goods till all the charges, including the interest, insurance and other charges are paid by Yukti

(c) The Bank can retain only a portion of the goods to cover its dues and may release the rest of the goods.

(d) The Bank may first release the goods and then for recovery of its dues file suit against Yukti. : (Nov'22)

Answer 2.1: : (b)

Chapter 11: The Indian Contracts Act, 1872

2.2. If in the given case, Yukti pays all the expenses (including the disputed insurance premium) but the Bank insist to clear the personal loan account also, then only it will release the goods. Determine whether the Bank is entitled to do so:

(a) Yes, the Bank can do so

(b) The Bank can sale the part amount of the goods lying in the godown in order to liquidate the personal loan account of Yukti

(c) The Bank can ask the Shekhar to give guarantee for the personal loan taken by the Yukti

(d) No, the Bank has no right to retain the goods pledged with it, since the personal loan was not taken on the security of such goods : (Nov'22)

Answer 2.2: (b)

Chapter 11: The Indian Contracts Act, 1872

2.3. Yukti disputed the amount demanded by the Bank towards the insurance premium paid by the Bank. Yukti emphasised that there was no need to take the insurance policy on the goods pledged, because it is an extra burden on the part of the borrower. Identify the correct statement:

(a) Yes, it is an extra financial burden on the part of the borrower and is dependent on the will of the borrower.

(b) Every bank has a policy to get the security insured on which it grants loan, so in this case also, the Bank for the purpose of protection of the goods took the insurance policy and paid the premium, so demand of the Bank is justified.

(c) The godown is just near by the Police Station, hence there should not be the fear of theft. No need of taking insurance policy.

(d) Happening of the Earthquake and Flood are the remote possibility, so the expenses on the insurance premium could have been avoided as it is not a mandatory requirement.(Nov'22)

Answer 2.3: (b)

Chapter 11: The Indian Contracts Act, 1872

2.4. When Yukti is availing the working capital finance from the Bank on the security of the white goods, by submitting these goods in the custody of the Bank, said course of transaction can be termed as:

(a) Bailment of goods

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(b) Pledge of goods
(c) Safe keeping of goods
(d) Lessor and Lessee relationship (Nov'22)

Answer 2.4: (b)

Case Scenario30 (RTP May 23)

Question 1

Modern Limited is a company limited by shares that manufactures furniture items apart from material used in modular kitchens. Modern Limited is an unlisted company with a registered office in Mumbai, Maharashtra. It has a corporate office in Delhi and branch offices throughout the country. Following are facts regarding the 18th annual general meeting (AGM) of Modern Limited.

Modern Limited is the lead sponsor of the furniture trade event India Furniture EXPO 2022 and a member of the Association of Furniture Manufacturers and Traders. Modern Limited, on behalf of the Association, booked the Expo Hall in Mumbai for the event and also decided to convene its 18th AGM at the same hall after the conclusion of EXPO 2022.

But later, they found that the India Furniture Expo 2022, which was scheduled to be held from September 16– 19, 2022, had to be postponed as Bombay Municipal Corporation (BMC) continued to occupy the hall as a vaccination center. Therefore, Modern Limited has to rethink its plan and now convene its 18th annual general meeting on September 27, 2022, at the IMA Auditorium in Delhi, near its corporate office. All the members consented to same. The notice of the said meeting was posted on September 5, 2022, specifying place, date and day, in additions to business to be transacted. In case of Mr. Ashok, who is declared insolvent but undischarged, notice was sent to assignee, while a wilful omission was made in giving notice in case of Ms. Anjum.

At the meeting, Mr. Singh was elected as chairman of the meeting by a show of hands, while Mr. Manohar registered his dissent on the appointment of Mr. Singh as chairman of the meeting and sought a poll to elect the chairperson. Mr. Manohar has substantial voting right of company being part of promoter group. A poll was held to elect the chairman of the meeting, and Mr. Singh voted twice in his capacity as a member as well as chairman while the poll was taking place. Mr. Singh was elected chairman through the poll as well, by overwhelming majority.

Ms. Varnika, who is not a member of company, attended the meeting as Mr. Alok's proxy, voted both times: when Mr. Singh was elected by show of hands and when he was elected by poll. When she initially voted, she raised her hand in favour of electing Mr. Singh as chairman of the meeting, while during the election through a poll, she cast a vote against.

Mr. Manohar raises the question on a vote that is casted by Mr. Singh in his capacity as chairman, hence he pass the remarks on him and his allies; which can be considered defamatory in nature.

Chairman at his opinion, instructed the company secretary to exclude the remarks passed by Mr. Manohar while preparing the minutes; but some members raised a voice against the discretion of Mr. Singh, because they find remarks didn't carry any matter which can be considered defamatory, while some other members feel remarks are made with intent to

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defame chairman. Chapter Management & Administration

1. Regarding the notice of meeting given by Modern Limited, you are required to pick the correct option in light of provisions of the Companies Act, 2013 and rules notified thereunder.

I Modern Limited observe the length of notice, as required.

II Notice shall be given to member irrespective he is solvent, adjudged or declared insolvent, or discharged insolvent; Modern Limited committed default

III Notice shall be given to assignee of insolvent member, Modern Limited correctly did so

IV Willful omission in giving notice will invalidate the proceeding of the meeting in case of Modern Limited Options

(a) Only I, II and IV are correct
(b) Only III and IV are correct
(c) Only I is correct
(d) Only IV is correct

Answer: (b)

Chapter Management & Administration

2. Regarding the place of 18th AGM of Modern Limited, decide whether applicable provisions violated or not; in light of provisions of the Companies Act, 2013 and rules notified thereunder.

(a) Violation, because Modern Limited shall convene and conduct AGM only at its registered office
(b) Violation, because AGM 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 situate
(c) No violation, because AGM shall be held either at the register or corporate office of the company or even at some other place within the city, town or village in which the registered or corporate office of the company is situate
(d) No violation, because AGM of the said company may be held at any place in India

Answer: (d)

Chapter Management & Administration

3. Regarding vote casted by Ms Varnika, which of following statements hold truth; in light of provisions of the Companies Act, 2013 and rules notified thereunder.

(a) Being proxy Ms. Varnika is not allowed to cast vote on a poll, while she can cast vote by show of hand
(b) Being proxy Ms. Varnika is not allowed to cast vote by show of hand, while she can cast vote on a poll
(c) Despite being non-member Ms. Varnika can be proxy, but can't cast vote either by show of hand or on a poll
(d) Ms. Varnika can cast vote in both the cases; by show of hand as well as on a poll Answer: (b)

Chapter Management & Administration

4. Regarding the inclusion/exclusion of the remarks by Mr. Manohar, advice the company

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secretary; which of the following statement hold truth, in light of provisions of the Companies Act 2013 and rules notified thereunder.

(a) Mr. Manohar's remark shall be included in minutes because minutes shall contain fair summary of the proceedings.
(b) Mr. Manohar's remark shall be excluded from minutes because remarks are made with intent to defame chairman, the chairman's opinion of inclusion and exclusion is immaterial in such case.
(c) Mr. Manohar's remark shall be excluded from minutes because chairman has absolute discretion to exclude any matter which is defamatory in his opinion
(d) Mr. Manohar's remark shall be included in minutes because many members challenge the chairman's opinion and feels remarks were not defamatory.

Chapter Accounts of Companies

6. ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?

(a) 2018-2019
(b) 2016-2017
(c) 2013-2014
(d) 2014-2015

Answer:(d)

Chapter Declaration & Payment of Dividend

7. The amount accumulated in the Investor Education and Protection Fund shall not be used for:

(a) refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.
(b) reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
(c) grants or donation to the Central Government for the purpose of investor's education and training.
(d) distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.

Answer:(c)

Chapter The Negotiable Instruments Act, 1881

8. Which among the following will not be considered as a "Foreign Instrument" under the provisions of the

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Negotiable Instruments Act, 1881?
(a) A bill drawn on a person residing outside India but payable in India or outside India
(b) A bill drawn on a person resident outside India but payable outside India
(c) A bill drawn on a person residing outside India but payable in India
(d) A bill drawn on a person resident in India but payable outside India
Answer:(d)

Chapter Management & Administration

9. Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:
(a) Any member of the company
(b) The Creditor of the company
(c) Persons other than member and creditor of the company
(d) No person is allowed to inspect the register of charges
Answer:(c)

Chapter Acceptance of Deposits by Companies

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

Case Scenario 31(RTP Nov 23) Question 1

Bharat Sanskar Limited having its registered office at Haridwar, is a listed public company. It is registered with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10/- each. The paid-up share capital of the company is ₹ 200 crore divided into 20 crore equity shares of ₹ 10/- each. The company is very renowned in manufacturing and supplying devotional items such as high-quality worship materials, fragrances, various types of decorative goods, idols etc.

The Board of Directors of the company constituted of Sagar as the Managing Director and Hari, Rahi, Sansar & Nabh as directors of the company. In the company Raju was holding the post of Company Secretary, Sonu designated as Chief Financial Officer and Moti as Assistant Accountant. The company prepared its Financial Statement for the year 2022 -23, the Board of Directors approved the same and it was signed by the concerned authorities and thereafter submitted to the auditors on 10th May, 2023 for their report. The turnover of the company was ₹ 100 crore during the year 2022-23. The auditor's report was duly received and the

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annual accounts with Board's report and all necessary annexures were ready on 15th July 2023 after complying with all the formalities as per company law.
The Board Meeting was called on 25th July, 2023 and the Annual General Meeting was fixed on 20th August, 2023. At the Annual General Meeting the Financial Statement along with all annexures was duly received and adopted by the members present. However, the company could not file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting, with the Registrar.
It is also informed that in April, 2023, the company had destroyed all the books of account together with relevant vouchers up to financial year ending on 31st March, 2018.
On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following queries given herein under: -

Chapter Accounts of Companies
1. The Companies Act, 2013 provides that the financial statement should be approved by the Board of Directors, signed by the prescribed authorities and submitted to the auditors for their report. Accordingly, the financial statements of Bharat Sanskar Limited shall be signed by:
(a) Sagar, Raju and Sonu
(b) Sansar, Hari, Raju and Sonu
(c) Sagar, Sansar, Raju and Moti
(d) Sagar, Sansar, Raju and Sonu
Answer: (d)

Chapter Accounts of Companies
2. As per provisions of company law, the Board's report with annexures thereto of the above company is required to be duly signed by -
(a) Sagar only
(b) Sagar and Hari
(c) Sagar and Raju
(d) Sagar and Sonu
Answer: (b)

Chapter Accounts of Companies
3. In the above case scenario, the company failed to file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting with the Registrar. In this context, which of the following statements is correct?
(a) Sagar, Raju and Sonu shall be liable to a penalty.
(b) The company, Sagar and Raju shall be liable to a penalty.
(c) The company, Sagar and Sonu shall be liable to a penalty.
(d) Sagar, Raju and Sonu shall be liable to a penalty.
Answer: (c)

Chapter Accounts of Companies

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4. As per provisions of the Companies Act, 2013, the act of the company in destruction of all books of account together with relevant vouchers was not correct because –

(a) The books of accounts etc. relating to a period not less than 6 preceding financial years are required to be kept in good order.

(b) The books of accounts etc. relating to a period not less than 8 preceding financial years are required to be kept in good order.

(c) The books of accounts etc. relating to a period not less than 10 preceding financial years are required to be kept in good order.

(d) The books of accounts etc. relating to a period not less than 12 preceding financial years are required to be kept in good order.

Answer: (b)

Chapter Interpretation of Statutes

5. A method of interpretation which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.

(a) Rule of Literal Construction

(b) Rule of Harmonious Construction

(c) Rule of Beneficial Construction

(d) Rule of Exceptional Construction

Answer: (c)

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