

Attempt All MCQs (1 marks each X 10 MCQs = 10 Marks)

- Q1: 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 owned subsidiary of Modern Books Publishers plc. which is a foreign company.
 - (c) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the Regional Director having jurisdiction over New Delhi for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.
 - (d) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the New Delhi Bench of National Company Law Tribunal for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.
- Q2: Small LLP means an LLP which satisfies the following criteria:**
- (a) the contribution of which, does not exceed INR 25 lakh or such higher amount, not exceeding INR 5 crore, as may be prescribed;
 - (b) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed INR 40 lakh or such higher amount, not exceeding INR 50 crore, as may be prescribed;
 - (c) Both (a) and (b)
 - (d) Either (a) or (b)
- Q3: 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
- Q4: 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
- Q5: 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

- Q6: A foreign company incorporated outside India is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows year ending December as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to state the timelines within which such documents shall be filed with the Registrar considering the provisions of Chapter XXII of the Companies Act, 2013.**
- (a) Within a period of 30 days of the close of the financial year of the foreign company.
 - (b) Within a period of 3 months of the close of the financial year of the foreign company.
 - (c) Within a period of 60 days of the close of the financial year of the foreign company.
 - (d) Within a period of 6 months of the close of the financial year of the foreign company.
- Q7: ABC LLP has three partners A, B and C. C dies on 22 January 2023 due to heart attack. However, B and C continue to run the LLP in the name of ABC till December 2023. In May 2023, the LLP takes a loan of INR 10 lacs from a bank. In this context, which of the following statement is true:**
- (a) Since C's name still appears in LLP's name, C's legal representative is liable for the loan taken by the LLP
 - (b) Since C's name still appears in LLP's name, C's estate is liable for the loan taken by the LLP
 - (c) Both C's legal representative and his estate is liable for the loan taken in May 2023
 - (d) Neither C's legal representative nor his estate is liable for any act of the LLP done after his death.
- Q8: 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.**
- (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.
- Q9: For how long are the books of accounts required to be preserved in case of LLP?**
- (a) 1 year
 - (b) 6 years
 - (c) 8 years
 - (d) No such period is prescribed
- Q10: A meeting of the creditors of Ariana LLP was convened under the orders of the NCLT to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 70 creditors with the total outstanding due of ₹ 30,00,000. The meeting was attended by 40 creditors with outstanding due of ₹ 20,00,000. As per the provisions of LLP, 2008; approval of how many creditors is required for sanctioning the scheme of compromise and arrangement. Assume that all creditors present at the meeting participated in the voting.**
- (a) Approval of creditors with an outstanding due of least ₹ 22,50,000 is required
 - (b) Approval of 35 creditors with an outstanding due of least ₹ 22,50,000 is required
 - (c) Approval of creditors with an outstanding due of least ₹ 15,00,000 is required
 - (d) Approval of 21 creditors with an outstanding due of least ₹ 15,00,000 is required

Questions 1 is compulsory

Attempt any 3 out of remaining 4

(5 marks each)

1. In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company' -
 - a. 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.
 - b. 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.
 - c. 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.

2. What are the grounds on which a Limited Liability Partnership can be wound up by the Tribunal as per the provisions of the Limited Liability Partnership Act, 2008?

3. 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.

4. 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. What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership Act, 2008?

CA Intermediate (Batch Aug 2024)

SOLUTION – Test of Chapter 11 and 12

Chapter 11 – Companies incorporated outside India

Chapter 12 – LLP

Part 1- MCQ questions

Q1	(a)	Q2.	(c)	Q3.	(d)	Q4.	(d)	Q5.	(d)
Q6.	(d)	Q7.	(d)	Q8.	(b)	Q9.	(c)	Q10.	(d)

Part II – Descriptive questions

1. Foreign company means a company means any company or body corporate incorporated outside India which -
- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - conducts any business activity in India in any other manner

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 in securities, 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

Now, in the current case –

- 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 conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.
 - 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.
 - 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.
2. An LLP may be wound up by the Tribunal, -
- if the LLP decides that LLP be wound up by the Tribunal;
 - if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;

- c. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- d. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
- e. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

3. 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

- a. one or more citizens of India or
- b. one or more companies or bodies corporate incorporated in India, or
- c. 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.

Total of ordinary shares held by Indian citizen or corporation in aggregate are 3 million (i.e. 2932780 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.

4. (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 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:

- (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.
- (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 their respective details as per the rules.
- (d) 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;
- (e) the full address of the office of the company in India which is deemed to be its principal

5.

Books of Account

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Statement of Account and Solvency

Every LLP shall, within a period of 6 months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency with the Registrar every year within 60 days from the closure of the Financial year.

Audit

The accounts of LLPs shall be audited in accordance with such rules as may be prescribed.

Provided that CG may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.



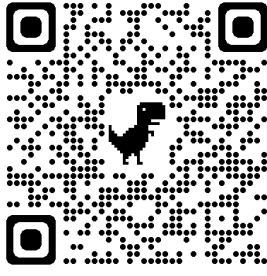
As per the rules, the accounts are audited by a Chartered Accountant in practise.

Provided that an LLP whose

- TURNOVER does not exceed, in any financial year, INR 40 lakh, and
- whose CONTRIBUTION does not exceed INR 25 lakh

shall NOT be required to get its accounts audited

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