

**INDEX**

<b>Sr No.</b>	<b>Chapter Name</b>	<b>Page No.</b>
<b>1.</b>	<b>PRELIMINARY</b>	<b>3</b>
<b>2.</b>	<b>INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO</b>	<b>20</b>
<b>3.</b>	<b>PROSPECTUS AND ALLOTMENT OF SECURITIES</b>	<b>52</b>
<b>4.</b>	<b>SHARE CAPITAL AND DEBENTURES</b>	<b>84</b>
<b>5.</b>	<b>ACCEPTANCE OF DEPOSITS BY COMPANIES</b>	<b>136</b>
<b>6.</b>	<b>REGISTRATION OF CHARGES</b>	<b>159</b>
<b>7.</b>	<b>MANAGEMENT AND ADMINISTRATION</b>	<b>176</b>
<b>8.</b>	<b>DECLARATION AND PAYMENT OF DIVIDEND</b>	<b>232</b>
<b>9.</b>	<b>ACCOUNTS OF COMPANIES</b>	<b>253</b>
<b>10.</b>	<b>AUDIT AND AUDITORS</b>	<b>291</b>
<b>11.</b>	<b>COMPANIES INCORPORATED OUTSIDE INDIA</b>	<b>331</b>
<b>12.</b>	<b>THE GENERAL CLAUSES ACT, 1897</b>	<b>350</b>
<b>13.</b>	<b>INTERPRETATION OF STATUES</b>	<b>372</b>
<b>14.</b>	<b>LIMITED LIABILITY PARTNERSHIP ACT, 2008</b>	<b>394</b>
<b>15.</b>	<b>THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999</b>	<b>418</b>

# Chapter I

## PRELIMINARY

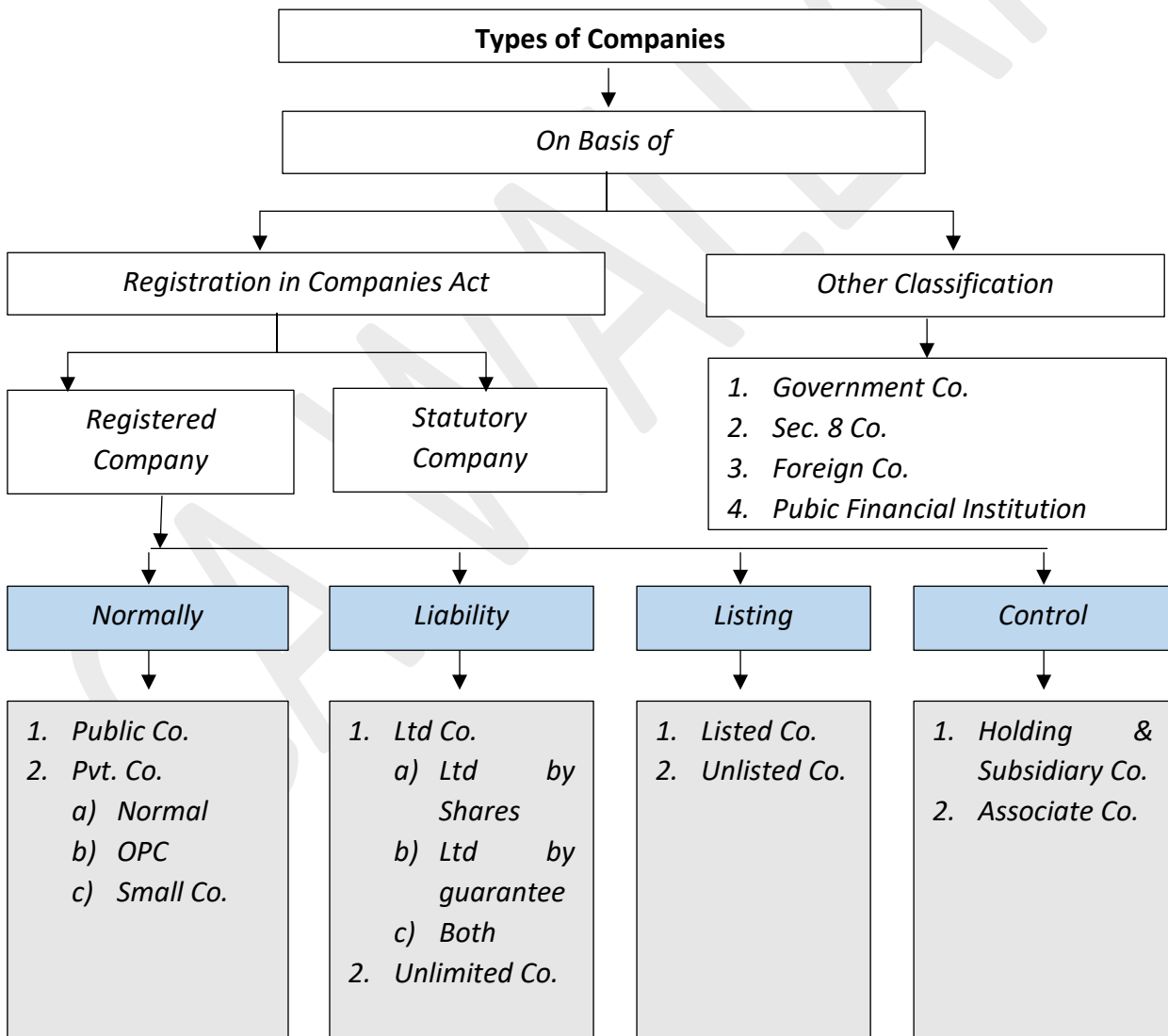
Short Title, Extent, Commencement and Application [Sec.1]	
<b>Application</b> [Sec. 1(4)]	<p>The provisions of this Act shall apply to:</p> <ul style="list-style-type: none"> <li>(a) Companies defined u/s 2(20);</li> <li>(b) Insurance Companies, except if inconsistent with Insurance Act, 1938 or IRDA Act, 1999;</li> <li>(c) Banking Companies, except if inconsistent with Banking Regulation Act, 1949;</li> <li>(d) Companies engaged in the generation or supply of electricity, except if inconsistent with Electricity Act, 2003;</li> <li>(e) Statutory Companies unless inconsistent with its Special Act;</li> <li>(f) Body corporate, incorporated by any Act for the time being in force, as the CG may, by notification, specify in this behalf.</li> </ul>
<b>Company</b> [Section 2(20)]	<p>Company means a company incorporated:</p> <ul style="list-style-type: none"> <li>(a) Under this Act; or</li> <li>(b) Under any previous company law.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The word "Company" when used in Companies Act, does NOT include Foreign Companies or Company Incorporated Outside India</li> </ul>
<b>Body Corporate or Corporation</b> [Section 2(11)]	<p>Section 2(11) of the Companies Act, 2013 provides that body corporate or corporation <b>includes a company incorporated outside India, but does not include-</b></p> <ul style="list-style-type: none"> <li>(i) a <b>co-operative society</b> registered under any law relating to co-operative societies; and</li> <li>(ii) <b>any other body corporate</b> (not being a company as defined in this Act), which the <b>Central Government</b> may, by <b>notification</b>, specify in this behalf.</li> </ul> <p><b>Note –</b></p> <ol style="list-style-type: none"> <li>1 Body Corporate is an entity which has these characteristics:- <ul style="list-style-type: none"> <li>• Separate Legal Entity (Artificial Person)</li> <li>• Perpetual Succession</li> <li>• Common Seal (optional)</li> </ul>           Incorporate under any Statute.         </li> <li>2 Thus the term body corporate includes not only companies within the meaning of Companies Act, 2013 and corporations established under Special Acts of Parliament but also foreign companies. It will further include all public financial</li> </ol>

	<p>institutions as well as nationalized banks. Thus the term '<b>body corporate</b>' is <b>wider than the expression company.</b></p> <p>3 LLP is also a Body Corporate.</p> <p>4 <b>All companies are body corporate but all body corporate are not company.</b></p>
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- 1 The provisions of Companies Act, 2013 apply to:
- a. XYZ Ltd., a company incorporated under Indian Companies Act, 1913

- b. ABC Private Limited, incorporated under Companies Act, 1956
- c. **Both (a) and (b)**
- d. Neither (a) nor (b)

## Types of Companies



### Statutory Company

- Company which is not formed under companies act, but **formed under special act of parliament.**
- Such special act governs this company
- E.g. → LIC, ICAI, ICSI, RBI etc.
- Normally these Companies are formed for some public utility.

### Private Company [Sec. 2(68)]

Private company means a company whose articles have following restrictions:-

- (i) Restriction on right to transfer shares.
- (ii) They cannot invite public to subscribe for any securities of the company.
- (iii) Limits the number of members to 200.

**Note :**

- 1 If no. of members exceeds 200, it is deemed to be public co. and all rules of public co applies to it.
- 2 **Only for purpose of this clause**, while calculating no. for 200 calculation:-
  - a. Past and present employee members are not counted.
  - b. Joint holders on single shares are counted as 1.
- 3 There can be restriction but not prohibition on transfer of shares.
- 4 Limit on 200 is for membership and no other cases
- 5 A private company **cannot** make a **public offer** of securities like IPO, FPO. However, a private company can issue securities on **private placement** basis u/s 42, whereby it invites only selected persons to subscribe for Securities.

- 1 A private company has 210 members including 11 members who have been employees of the company and acquired shares while in employment of the company. In view of provisions of Companies Act, 2013, which of the following statement is correct?
  - a. The private company has to convert to a public company since the number of

- members exceed 200.
- b. The private company will have to forfeit the shares of 10 members so that the number of members can be limited to 200.
- c. **For the purposes of reckoning the limit of 200, the shares held by ex-employees of the company are excluded.**
- d. None of the above

### Public Company [Sec. 2(71)]

A Company which:

- a. Is not a private company
- b. Is a private company, but is subsidiary of public company;

**Is a public company.**

**Note** - Provided that a Private company which is a subsidiary of a Public 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.

<b>One Person Company [Sec. 2(62)]</b>	
<b>Read with Rule 3 of The Companies (Incorporation) Rules, 2014)</b>	
<b>Definition</b> [Sec. 2(62)]	'One Person Company' means a company which has only one person as a member.
<b>Basics</b>	<ul style="list-style-type: none"> <li>(i) It is basically a <b>private company</b> with some unique features.</li> <li>(ii) As regards the name of a one person company, the act provides that the words "one person company" or OPC" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.</li> </ul>
<b>Qualifications for being a Member/Nominee</b>	<ul style="list-style-type: none"> <li>(i) Only a natural person who is an <b>Indian citizen</b> whether <b>resident in India or otherwise</b> shall be eligible                             <ul style="list-style-type: none"> <li>(a) to incorporate OPC;</li> <li>(b) to be a nominee for the sole member of a OPC.</li> </ul> </li> <li>(ii) For the purpose of this rule, the term 'resident in India' means a person who has stayed in India for a period of not <b>less than 120 days</b> during the <b>immediately preceding FY.</b></li> </ul>
<b>Restrictions</b> [Rule 3]	<ul style="list-style-type: none"> <li>(i) A natural person shall not be member of more than 1 OPC at any point of time and the said person shall not be a nominee of more than 1 OPC. [Rule 3(2)]</li> <li>(ii) However, if a natural person is member in a OPC and becomes a nominee in another OPC, such person shall meet the eligibility criteria specified in Rule 3(2) <b>within 180 days.</b> [Rule 3(3)]</li> <li>(iii) <b>A minor shall no become a member or nominee of the OPC.</b> [Rule 3(4)]</li> <li>(iv) <b>Such company cannot be incorporated or converted into a company under section 8 of the Act.</b> [Rule 3(5)]</li> <li>(v) OPC cannot carry out non-banking financial investment activities and cannot invest in securities of a body corporate.</li> </ul>
<b>Rule 4</b>	<p><b>1. Withdrawal by Nominee and new appointment</b></p> <p>The person nominated by the subscriber or member of a OPC may, withdraw his consent by giving a notice in writing to</p> <ul style="list-style-type: none"> <li>• <b>such sole member and to OPC.</b></li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Appointment of New Nominee</b> Sole member shall:-</p> <ul style="list-style-type: none"> <li>• nominate another person as nominee within <b>15 days</b> of the receipt of the notice of withdrawal and</li> <li>• send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in <b>Form</b></li> </ul> </div>

	<p><b>No.INC.3.</b></p>
	<p><b>2. Change of Nominee by Member</b> The member may change the Nominee at any time for any reason.</p>
	<p>The company shall file with the Registrar:-</p> <ul style="list-style-type: none"> <li>• a notice of such change in Form No INC.4 and</li> <li>• the written consent of the new nominee in Form No.INC.3 within <b>30 days</b> of receipt of intimation of the change.</li> </ul>
	<p><b>Intimation to ROC of withdrawal &amp; new appointment</b></p> <p>The company shall within <b>30 days</b> of receipt of the notice of withdrawal of consent, file with the Registrar:-</p> <ul style="list-style-type: none"> <li>• a notice of such withdrawal of consent and</li> <li>• the intimation of the name of another person nominated by the sole member in Form No INC.4 and Form No.INC.3.</li> </ul>

<b>Small Company [Sec. 2(85)]</b>	
<b>Conditions for being a ‘Small Company’</b> [Sec. 2(85)]	A company shall be a small company only if it satisfies both the following conditions: <ul style="list-style-type: none"> <li>(i) Its <b>paid-up share capital</b> does not exceed <b>Rs. 4 crore</b>; and</li> <li>(ii) Its <b>turnover</b> (as per profit and loss account for the immediately preceding FY) does not exceed <b>Rs. 40 crore</b></li> </ul>
<b>Certain Companies not to be ‘Small Companies’</b> [Proviso to Sec. 2(85)]	A company <b>shall not</b> be a small company, if: <ul style="list-style-type: none"> <li>(i) It is a public company; or</li> <li>(ii) It is a holding or a subsidiary company; or</li> <li>(iii) It is a company registered u/s 8 ; or</li> <li>(iv) It is a company or body corporate governed by any special Act.</li> </ul>
<p><b>1 Define the term ‘Small Company’ as contained in the Companies Act, 2013.(MAY 2015)</b></p> <p><b>2 MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of 2cr and turnover of 60cr crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:</b></p> <ul style="list-style-type: none"> <li>(i) <b>Whether the MNP Private Ltd. can avail the status of small company?</b></li> <li>(ii) <b>What will be your answer if the turnover of the company is 30 crore?(MTP NOV 2020)(module)</b></li> </ul>	

1. As on 31st March 2023, paid up capital of ABC Pvt. Ltd. was 2.5 crores and turnover was 36 crores. For categorizing it a small company, ABC Pvt. Ltd. needs to have following paid up capital and turnover which shall not exceed, as per sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Companies Act, 2013 : (Nov 23)
- Paid up capital Rupees two crores or turnover Rupees twenty crores.
  - Paid up capital Rupees two crores and turnover Rupees twenty crores.
  - Paid up capital Rupees four crores or turnover Rupees forty crores.**
  - Paid up capital Rupees four crates and turnover Rupees forty crores.
2. Roma along with her six friends has incorporated Roma Trading Ltd. in May 2019. The paid-up share capital of the company is 2 cr. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below 40 crores. Advise whether the company can be treated as a 'small company'. (module)
- Roma Trading Ltd. is definitely a 'small company' since its paid- up capital is much below 4cr and also its turnover has not exceeded the threshold limit of 40 crores.
  - 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'.**
  - 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-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'.
3. The paid-up capital of Akash Ltd. is 25 Lakh and its turnover as per profit and loss account for the year ended 31st March, 2020 is 1.80 Crore. In view of provisions of Companies Act, 2013, which of the following statement is correct?
- Akash Ltd. is a 'small company' since it fulfils both, the paid-up capital and turnover criteria.
  - The concept of 'small company' is applicable only to private companies and therefore, Akash Ltd. cannot be categorised as a small company.**
  - The paid-up capital and turnover criteria has to be fulfilled for minimum 2 successive years. Therefore, Akash Ltd. cannot be categorised as a small company.
  - None of the above
4. The provisions relating to 'small company' as given in Section 2(85) of the Companies Act, 2013 does not apply to:
- A Holding company or a Subsidiary company
  - A company registered under Section 8
  - A company or body corporate governed by any special act
  - All of the above**

On the basis of liability				
Point of Distinction	Company Limited by Shares [Sec.2(22)]	Company Limited by Guarantee without Share Capital [Sec.2(21)]	Company Limited by Guarantee with Share Capital	Unlimited Company [Sec. 2(92)]
Extent of Liability	Amount unpaid on the shares held by the members	Amount agreed by the Members and stated in the MOA.	(a) Amount unpaid on the shares held by the members; and (b) Amount agreed by the Members and stated in the MOA	Liability of members is unlimited
Timing of Liability	(a) During the continuance of the Company ; or (b) At the time of winding up	After commencement of winding up of company	(a) During the continuance of the Company ; and (b) At the time of winding up	

On the basis of listing on Stock Exchange	
<b>Listed Company</b> [Sec. 2(52)]	<p>'Listed company' means a company which has any of its securities listed on any recognised stock exchange.</p> <p><b>Newly Inserted [The Companies (Amendment) Act, 2020]</b></p> <p>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 SEBI (Securities and Exchange Board of India), shall <b>NOT</b> be considered as listed companies.</p> <p>The CG has notified that the following companies <b>shall NOT be considered as Listed Company for the purpose of compliance with provisions of Companies Act 2013:-</b></p> <ol style="list-style-type: none"> <li><b>PUBLIC</b> Companies which have <b>NOT</b> listed their Equity Shares on a recognized Stock Exchange BUT have listed their             <ol style="list-style-type: none"> <li>Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis.</li> <li>Non-Convertible Redeemable Preference Shares (NCPS) issued on Private Placement basis.</li> </ol> </li> <li><b>PRIVATE</b> Companies which have listed their Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis on a recognized Stock Exchange.</li> <li><b>PUBLIC</b> Companies which have <b>NOT</b> listed their Equity Shares on a recognized Stock Exchange in India BUT whose Equity Shares are listed on FOREIGN Stock Exchanges.</li> </ol>



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 non-convertible debentures of ` 10 lakh were listed. Which of the following options is applicable in the given situation: **(RTP Nov 23)**

- 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.

<b>Unlisted Company</b>	It means a company other than a listed company.
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### On the basis of Control

<b>Holding Company</b> [Sec. 2(46)]	(i) Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies. <b>(ii) For the purposes of this clause, the expression 'company' includes any Body corporate.</b>
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<b>Subsidiary Company</b> [Sec. 2(87)]	Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied: (a) That other controls the <b>composition of its board of directors</b> ; (b) That other exercises or controls <b>more than one-half</b> of the <b>total voting power</b> <ul style="list-style-type: none"> <li>• either at its own or</li> <li>• together with one or more of its subsidiary companies; or</li> <li>• through its Subsidiaries</li> </ul> (c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary ( <b>chain action</b> ). <b>Note –</b> (i) For the purpose of clause (a) above, the <b>composition of the board of directors</b> of a company means that the holding company has power, at its discretion, to <b>appoint or remove all or majority of the directors</b> of the subsidiary company without the consent of the other persons. (ii) <b>Company shall not have more than two layers of subsidiaries.</b> <ul style="list-style-type: none"> <li>(a) However, this provision is not applicable to Banking Company, Registered NBFC, <b>Government Company</b> and Insurance Company.</li> <li>(b) However , this rule shall not effect a company from <b>company acquiring outside India</b> with subsidiaries beyond 2 layers as per rules of that country (<b>Foreign Chain</b>)</li> <li>(c) For purpose of counting layer, one layer which consist of wholly owned subsidiary or subsidiaries will not be taken into account (<b>100% Subsidiary</b>)</li> </ul> (iii) <b>For the purpose of this clause, the term 'company' includes any Body corporate.</b> (iv) Indian company can become holding as well as subsidiary of foreign company
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The paid-up share capital of Saras 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. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? (RTP MAY 2018) (RTP MAY 2019)

**Associate Company**  
[Sec. 2(6)]

1. "**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
2. **And includes a joint venture company.**

**Explanation** — For the purpose of this clause,—

- a) the expression "**significant influence**" means control of **at least 20% of total voting power**, or control of or participation in business decisions under an agreement;
- b) The expression "**joint venture**" means a joint arrangement whereby the parties that **have joint control** of the arrangement have rights to **the net assets** of the arrangement.

1. 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 2019)
  - 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.

2. Aman Pvt. Ltd. was incorporated in 2009 with 10 members having equal amount of equity shares. Subsequently, eight shareholders sold their holding to another company Chaman Ltd. In view of provisions of Companies Act, 2013, which of the following statement is correct?
  - a. Since the identity of company is distinct from its members, the status of Aman Pvt. Ltd. will not change with the change in the shareholders.
  - b. Since Chaman Ltd. holds more than 50% of voting power of Aman Pvt. Ltd., Aman Pvt. Ltd. will be deemed to be a public company.**
  - c. Aman Ltd. will have to amalgamate with Chaman Ltd. since it holds more than 50% of its capital.
  - d. None of the above
3. 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.?
  - a. A Ltd. and C Ltd. have separate legal entities and there is no relationship between them.
  - 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. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 51% stake in C Ltd.
4. H Ltd., its Managing Director and its Company

Secretary hold 33.33% equity shares each in S Ltd. Which of the following statement is correct?

- a. S Ltd. will be treated as subsidiary of H Ltd.
  - b. S Ltd. will be joint venture of H Ltd., its Managing Director and its Company Secretary.
  - c. Both (a) and (b)
  - d. None of the above**
5. A Limited held equity shares in B Limited. Later on, A Limited became subsidiary company of B Limited. Decide under the Companies Act, 2013, what will be the requirement as to shares held by A Limited in B Limited.
    - a. A Limited, which is now a subsidiary of B Limited will have to surrender thquequity shares of B Limited.
    - b. A Limited will continue to hold the equity shares of B Limited but it cannot exercise voting rights in respect of these shares.**
    - c. A Limited will continue to hold the equity shares of B Limited and can exercise voting rights in respect of these shares.
    - d. None of the above
  6. In order to be an 'Associate company', in relation to another company, the other company has to:
    - a. Acquire at least 20% of the voting power
    - b. Control the business decision making under an agreement
    - c. Enter into a joint arrangement to have joint control of net assets of the arrangement
    - d. Any of the above**

**Formation of Companies with Charitable Objects, etc. [Sec. 8]**

<p><b>Requirements for formation of a non-profit company</b> [Sec. 8(1)]</p>	<p>A company may be formed u/s 8 if</p> <p><b>(a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;</b></p> <p><b>(b) the company intends to apply its profits in promoting its objects; and</b></p> <p><b>(c) the company intends to prohibit the payment of dividend to its members.</b></p>
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<b>Issue of license by CG and registration of company by the Registrar</b>	<p>1. Where CG is satisfied that an association of persons proposed to be registered under this Act as a limited company satisfying all the conditions given u/s 8, CG may:</p> <ul style="list-style-type: none"> <li>(i) by issue of a licence in the prescribed manner;</li> <li>(ii) allow, that the company may be registered as a limited company, <b>but without using the word(s) 'Limited' or 'Private Limited'.</b></li> </ul>
<b>Privileges of limited company</b>	No use of word 'Pvt' or 'Ltd'
<b>Revocation of license</b>	<ul style="list-style-type: none"> <li>(i) The <b>CG (R.D)</b> may revoke the licence issued to the company if the company: <ul style="list-style-type: none"> <li>(a) contravenes any of the provisions of Sec. 8; or</li> <li>(b) contravenes any condition subject to which the licence was issued; or</li> <li>(c) the affairs of the company are carried on fraudulently or not as within the object of the company.</li> </ul> </li> <li>(ii) Before passing any such order, CG shall give a reasonable opportunity of being heard to the company.</li> <li>(iii) Where the licence granted u/s 8 had been revoked, the company shall apply to the Registrar in <b>Form No. INC. 20</b> along with the fee to convert its status and change of name accordingly.</li> </ul>
<b>Other Imp points</b>	<ul style="list-style-type: none"> <li>(1) <b>A firm may become a member of a company registered u/s 8</b></li> <li>(2) A non-profit company may alter the provisions of its MOA or AOA <b>with the prior approval of the CG.</b></li> <li>(3) <b>CG may order a section 8 Company to:</b> <ul style="list-style-type: none"> <li>(a) <b>wound up; or</b></li> <li>(b) <b>amalgamated with any other company registered u/s 8 and having similar objects;</b></li> </ul> <b>only if CG has revoked the licence or is satisfied that such order is necessary in public interest and the company has been given a reasonable opportunity of being heard.</b> </li> <li>(4) Can convert into any other co – G.M – S.R ,take permission from R.D , file copy of S.R with ROC</li> </ul>

**A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act. Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. 5 M (Nov 23)**

**Alpha Ltd., 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. [May 2018 2M]**

1. 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 31<sup>st</sup> March, 2019, its turnover was less than ` 2.00 crores and its paid up share capital was less than ` fifty lacs. Advise. **( ICAI ) (module)**
  - 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'.
2. Mr. Anurag and Mr. Sumit, both are teacher of Mathematics and want to open a coaching academy for poor children. They seek to raise money for their operational expenses by way of sponsorship from some like-minded friends and reinvest any surplus left for this noble cause only. In your opinion, what kind of entity should be incorporated for this purpose?
  - a. A One Person Company
  - b. A Private Limited Company
  - c. **A Section 8 Company**
  - d. A Limited Liability Partnership

Other Types Of Companies	
<b>Government Company [Section 2(45)]</b>	<p>Government Company means any company:</p> <ul style="list-style-type: none"> <li>(i) in which not less than 51% of the paid up share capital is held –                             <ul style="list-style-type: none"> <li>(a) by the Central Government; or</li> <li>(b) by any State Government(s); or</li> <li>(c) jointly by the Central Government and any State Government(s).</li> </ul> </li> <li>(ii) which is a subsidiary of a Government company.</li> </ul> <p>Note - For the purposes of Sec. 2(45), the term "paid-up share capital" shall be construed as "<b>total voting power</b>", where shares with differential voting rights have been issued.</p>
<b>Foreign Company [Section 2(42)]</b>	Discuss later in specific chapter
<b>Dormant Company [Sec. 455]</b>	<p>Where a company is formed and registered under this Act for:-</p> <ul style="list-style-type: none"> <li>• a <b>future project</b> and has no Significant Accounting Transaction or,</li> <li>• to <b>hold an asset or intellectual property</b> and has Significant Accounting Transaction , or</li> <li>• an <b>INACTIVE</b> company,</li> </ul> <p>then such a company may make an application (MSC-1) to the Registrar for obtaining the status of <b>DORMANT company</b>.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>"Inactive Company"</b> means a company which:-</p> <ul style="list-style-type: none"> <li>• has <b>not been carrying on any business</b> or operation during the last 2 financial years or</li> <li>• has <b>not made any Significant Accounting Transaction</b> during the last 2 financial years or</li> <li>• has <b>not filed Financial Statements and Annual Returns</b> during the last 2 financial years.</li> </ul> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>"Significant Accounting Transaction</b> means any transaction <b>other than – (RAAM)</b></p> <ul style="list-style-type: none"> <li>(i) payment of fees by a company to the <b>Registrar</b>;</li> <li>(ii) payments made by it to fulfil the requirements of this <b>Act</b> or any other law;</li> <li>(iii) <b>allotment of shares</b> to fulfil the requirements of this Act (Sec 3); and</li> </ul> </div>

	(iv) Payments for <b>maintenance</b> of its office and records.
<b>Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.(MAY 2016)</b>	
<b>Meaning of 'Nidhi' w.r.t to Sec. 406</b>	'Nidhi' means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such Rules as are prescribed by CG for regulation of such class of companies.
<b>Public Financial Institution 2(72)</b>	<ul style="list-style-type: none"> <li>(i) The <b>Life Insurance Corporation of India</b>, established under the Life Insurance Corporation Act, 1956;</li> <li>(ii) The <b>Infrastructure Development Finance Company Limited</b>,</li> <li>(iii) Specified company referred to in the <b>Unit Trust of India</b> (Transfer of Undertaking and Repeal) Act, 2002;</li> <li>(iv) Institutions notified by the CG u/s 4A(2) of the <b>Companies Act, 1956</b> so repealed u/s 465 of this Act;</li> <li>(v) Such other institution as may be <b>notified by the CG</b> in consultation with the RBI: Provided that no institution shall be so notified unless: <ul style="list-style-type: none"> <li>(a) it has been established or constituted by or <b>under any Central or State Act</b> or other than this act or previous company law, or</li> <li>(b) not less than <b>51% of the paid up share capital is held or controlled by the CG or by any SG or Governments or partly by the CG and partly by one or more SG.</b></li> </ul> </li> </ul>

<b>IFSC Company</b>	
<b>Specified IFSC Public Company</b>	It means an public company which is licensed to operate by <b>the RBI or SEBI or IRDA</b> from the <b>international Financial Services Centre</b> located in an approved multi-services Special Economic Zone.
<b>Specified IFSC Private Company</b>	It means a private company which is licensed to operate by the RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services Special Economic Zone.

<b>Some Important Definitions</b>	
<b>Relative</b> [Sec. 2(77)]	<p>'Relative', with reference to any person, means any one who is related to another, if-</p> <ul style="list-style-type: none"> <li>(i) they are members of a Hindu Undivided Family;</li> <li>(ii) they are husband and wife; or</li> <li>(iii) one person is related to the other in such manner as may be prescribed.</li> </ul> <p>As per Rule 4 of the Companies (Specification of definitions details) Rules, 2014, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-</p>

	<ol style="list-style-type: none"> <li>1. Father (including step-father)</li> <li>2. Mother (including step-mother)</li> <li>3. Son (including step-son)</li> <li>4. Son's wife</li> <li>5. Daughter</li> <li>6. Daughter's husband</li> <li>7. Brother (including step-brother)</li> <li>8. Sister (including step-sister)</li> </ol>
<b>Key Managerial Personnel</b> [Sec. 2(51)]	<p>'Key managerial personnel', in relation to a company, means:</p> <ol style="list-style-type: none"> <li>(i) the Chief Executive Officer or the managing director or the manager;</li> <li>(ii) the company secretary;</li> <li>(iii) the whole-time director;</li> <li>(iv) the Chief Financial Officer ;</li> <li>(v) such other officer, not <b>more than one level below the directors</b> who is in <b>whole-time employment, designated as key managerial personnel by the Board</b>; and</li> <li>(vi) such other officer as may be prescribed.</li> </ol>
<b>Net Worth</b> [Section 2(57)]	<p>"Net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, <b>securities premium account and debit or credit balance of profit and loss</b> 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.</p>
<b>Officer who is in default</b> [Section 2(60)]	<p>"Officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default <b>shall be liable</b> to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—</p> <ol style="list-style-type: none"> <li>(i) whole-time director;</li> <li>(ii) key managerial personnel;</li> <li>(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;</li> <li>(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;</li> <li>(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;</li> <li>(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;</li> </ol>



	<p>(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.</p> <p><b>Extra Points:</b></p> <p>When all directors liable as officers in default. – all the directors of the company will be officers in default within the meaning of section 5 [new section 2(60) of this act] only when there is no managing director, whole-time director, manager, secretary, a person charged by the board with the responsibility of complying with the provisions of the provisions of the act and the director/directors specified by the board under clause (g) of section 5 (new section 2(60)(iii)).</p> <p>Liability of directors post retirement / resignation :- even after the retirement / resignation of the director, he/she would come under the definition of an officer in default.</p>
<p><b>Related Party [Section 2(76)]</b></p>	<p>"Related party", with reference to a company, means-</p> <ul style="list-style-type: none"> <li>(i) a director or his relative;</li> <li>(ii) a key managerial personnel or his relative;</li> <li>(iii) a firm, in which a director, manager or his relative is a partner;</li> <li>(iv) a private company in which a director or manager or his relative is a member or director;</li> <li>(v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;</li> <li>(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;</li> <li>(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;</li> <li>(viii) any company body corporate which is— <ul style="list-style-type: none"> <li>a. a holding, subsidiary or an associate company of such company; or</li> <li>b. a subsidiary of a holding company to which it is also a subsidiary;</li> </ul> </li> </ul> <p><b>[This Clause shall not apply with respect to Section 188 on the Private Companies and Specified IFSC Public Companies]</b></p> <ul style="list-style-type: none"> <li>c. an investing company or the venturer of the company;</li> </ul> <p><i>Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.</i></p> <p>such other person as may be prescribed.</p>

1. With reference to a company, the following shall be treated as a 'Related party':
  - a. Director or KMP or his relative
  - b. Director or KMP of its holding company or his relative
  - c. Both (a) and (b)**
  - d. None of the above
2. Under the provisions of Companies Act, 2013, a person, with reference to another person, shall be considered as 'relative' if:

- a. He is a member of a Hindu Undivided Family
- b. He is spouse (husband or wife) of that another person
- c. He is related in the manner prescribed in Rule 4
- d. **All of the above**

CA WALLAH

## Chapter II

# INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

### Four Stage of Company Formation

1. Promotion Stage
2. Incorporation Stage
3. Raising of Capital Stage
4. Commencement of Business Stage

### Promotion Stage and Promoters

<b>Meaning of 'Promoter'</b>	"Promoter' means a person who generates the idea of incorporating a company and who takes all the necessary steps to incorporate it.
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<b>Definition of 'Promoter'</b> [Sec. 2(69)]	<p>Promoter means a person: <b>(Mnemonic - PACT)</b></p> <p><b>P</b> → a) who has been <b>named</b> as such in a <b>Prospectus</b>; or</p> <p><b>A</b> → b) is identified by the Company in the <b>Annual Return</b>;</p> <p><b>C</b> → c) who has <b>control</b> over the affairs of the company directly or indirectly,</p> <p><b>Act</b> → d) in accordance with whose advice, directions or instructions; the BOD of a company is accustomed to <b>Act</b>.</p> <p><b>Note- However, a person acting merely in a professional capacity shall not be regarded as promoter under point (d).</b></p> <p>Promoter is not necessary to be initiated with initial formation but one who subsequently arrange to float capital can also be regarded as promoter</p>
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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 2022)

<b>Position of Promoters</b>	<p>(i) A promoter is <b>neither an agent nor a trustee</b> of the company, since the company has not yet come into existence.</p> <p>(ii) A promoter <b>stands in a fiduciary capacity</b> towards the company.</p>
<b>Duties of Promoters</b>	<p>(i) must not make any <b>secret profit</b> at the expense of the company he promotes. If he has made any secret profit, the fact must be disclosed to an independent BOD.</p> <p>(ii) A promoter must make <b>full and fair disclosure of his interest</b> in every transaction with the company in which he is, <b>directly or indirectly interested</b>.</p>
<b>Remedies available to the company against the promoters</b>	<p>Where a promoter <b>makes a secret profit</b>, and the fact becomes known to the company, the company will have the following remedies:</p> <p>(a) The company may <b>rescind the contract</b>, even if the company had adopted the contract and communicated the fact to the other party to the contract. However rescission must be made within a reasonable time.</p> <p>(b) The company may <b>recover the secret profit</b> made by the promoters.</p> <p>(c) The company may <b>sue promoters for breach of trust</b>.</p>
<b>Right to receive remuneration or reimbursement</b>	<p>(a) The promoters shall have <b>no right to –</b></p> <p style="padding-left: 40px;">(i) receive any remuneration from the company; or</p> <p style="padding-left: 40px;">(ii) recover the expenses properly incurred by them for incorporation of the company,</p> <p><b>unless</b> the company, after incorporation, has contracted the same.</p> <p>(b) Even where the <b>articles provide</b> that the company shall pay remuneration to the promoters or reimburse expenses incurred by them, such a provision is <b>not binding on the company</b>.</p>

1 The definition of Promoter includes all of the following except:

- a. A person named as 'Promoted' in a Prospectus or Annual Return of the company.
- b. A person who has control over the affairs of the company as a shareholder or Director.
- c. **A person who is engaged in formation of company in a professional capacity.**
- d. A person on whose advice the Board of Company is accustomed to act.

2 The status of a Promoter in relation to the company is:

- a. An agent of the company.
- b. A trustee for the company.
- c. **A person in fiduciary capacity in relation to company.**
- d. None of the above

3 The duties of a promoter include:

- a. Not to make any secret profit out of the promotion of the company.
- b. To disclose his interest in any transaction entered by him, to the company.
- c. Not to make an unfair or unreasonable use of his position.
- d. **All of the above**

- 4 Which of the following statement is correct in relation to compensation to a Promoter?
- A promoter has no right to get compensation or remuneration from company.**
  - A promoter can be paid remuneration or profit with full and fair disclosure to the company.
  - A promoter can be paid for the expenses incurred by him on incorporation of the company.
  - A promoter can be issued shares in lieu of his remuneration and expenses.
- 5 A and B bought a real estate property for 10 Lakh and transferred it to a company for 12 Lakh. They then formed a new company and transferred the property for 15 Lakh and

disclosed the profit of 3 Lakh but did not reveal the first profit of 2 Lakh. Which of the following statement is correct with regard to the duty of promoters?

- The first profit of 2 Lakh not disclosed by promoters is a secret profit and A and B would be bound to pay it to the company.**
- The promoters are not bound to disclose each and every transaction made by them prior to incorporation of company.
- A and B have made disclosure of the profit of 3 Lakh made by them and therefore no further action is required.
- All of the above

<b>Pre-Incorporation or Preliminary Contracts</b>	
<b>Meaning</b>	<ul style="list-style-type: none"> <li>means a contract entered into by the promoters on behalf of a proposed company, before incorporation of a company.</li> <li>These contracts are usually made by the promoters to acquire some property or right for the proposed company.</li> </ul>
<b>Requirements of adoption of a pre-incorporation contract</b>	<p>As per Sec. 15 and 19 of the Specific Relief Act, 1963 a company as well as the other party to the contract is bound by a pre-incorporation contract, if the following conditions are satisfied:</p> <ol style="list-style-type: none"> <li>The promoters entered into a contract before incorporation of a company.</li> <li>The contract is for the purpose of the company.</li> <li>Such contract falls within any of the clauses contained in the 'object clause'.</li> <li>The company has accepted such contract after incorporation of the company.</li> <li>The company has communicated such acceptance to the other party to the contract.</li> </ol>
<b>Position where a company adopts a pre-incorporation contract</b>	<ol style="list-style-type: none"> <li>The contract can be enforced by the company.</li> <li>The contract becomes binding on the company.</li> <li>The promoters shall not be personally liable on such a contract.</li> </ol>
<b>Position where a company does not adopt a pre-incorporation contract</b>	<ol style="list-style-type: none"> <li>The contract <b>shall not bind the company.</b> <ul style="list-style-type: none"> <li>Even if the contract stipulates that the company, after incorporation, shall be bound by it</li> <li>Even if the company takes the benefit of pre-incorporation contract</li> </ul> </li> <li><b>The promoters shall be personally liable</b> on such contract [Kelner v Baxter]</li> </ol>

- 1 Any contract or agreement which is made prior to incorporation of company can be enforced only if:
  - a. If the contract is warranted by the terms of its incorporation.
  - b. The contract is accepted by the company.
  - c. The company has communicated the acceptance of contract to the third party.
  - d. **All of the above**

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## B] Incorporation Stage:

Memorandum of Association MOA [Sec.4]	
<b>Definition of MOA</b> [Sec. 2(56)]	Memorandum means the <b>memorandum of association</b> of a company as <b>originally framed</b> or as <b>altered from time to time</b> in pursuance of any previous companies law or of this Act.
<b>Objective of MOA</b>	<p>(i) It enables shareholders, creditors and all <b>those who deal with company to know</b></p> <ul style="list-style-type: none"> <li>• <b>what its powers</b> are</li> <li>• what activities it can engage in.</li> <li>• <b>scope of its operations</b></li> </ul> <p>(ii) The shareholders must know the <b>purposes for which his money can be used by the company</b> and what risks he is taking in making the investment.</p>
<b>MOA is compulsory</b>	<p>1. No company can be registered without a memorandum.</p> <p>2. It is the <b>most fundamental document</b> of the company specifying the most important information relating to a company. <b>Hence, it is also called as the charter of the company.</b></p>
<b>Contents of MOA</b> [Sec. 4]	<p><b>I. Name Clause</b></p> <p>1. It contains name of the company</p> <p>2. The name of the company with the last word <b>“Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.</b></p> <p>3. This clause is not applicable on the companies formed under section 8 of the Act.</p> <p>4. A Government Company may be formed as a private company or a public company. However. the name of a Government Company shall end with the word 'limited', whether it is a public company or a private company, <b>if it is a limited company and it has not committed any default in filing with the Registrar, its financial statements u / s 137 or annual return u/s 92)</b></p>
	<p><b>II. Situation Clause</b></p> <p>The ‘situation clause’ of memorandum shall mention the <b>name of the State</b> in which the registered office of the company is proposed to be situated.</p> <p>Note – <b>Co shall have regd office within 30 days of incorporation</b></p>
	<p><b>III. Objects Clause</b></p> <p>The objects clause of memorandum shall state the <b>objects for which the company is proposed</b> to be incorporated and any matter considered necessary in furtherance of the main objects.</p> <p>It comprises of :-</p> <ul style="list-style-type: none"> <li>• Main Objects – The types of Business which the</li> </ul>

		<p>company can carry.</p> <ul style="list-style-type: none"> <li>Incidental /Ancillary Objects – The types of Transactions which the company can conduct for achieving its main objects.</li> </ul>
	<b>IV. Liability Clause</b>	The liability clause of memorandum shall state as to whether the <b>liability of members of the company is limited or unlimited.</b>
	<b>V. Capital Clause</b>	The 'capital clause of memorandum shall state: <ul style="list-style-type: none"> <li>the authorized share capital/Nominal capital of the company</li> <li>the division of share capital into number and face value of shares.</li> </ul>
	<b>VI. Subscription Clause /Association Clause</b>	<ul style="list-style-type: none"> <li>Details of subscribers</li> <li>The number of shares each subscriber to the memorandum intends to take(not less than 1 shares)</li> </ul>
	<b>VII. Nomination Clause (in case of an OPC)</b>	In the case of OPC, the memorandum shall state the name of a person, who, in the event of death or incapacity of the subscriber, shall become the member of the company.
<b>Format of Memorandum</b>	The memorandum shall be in respective forms specified in <b>Tables A, B, C, D and E</b> in <b>Schedule I</b> as may be applicable to the company.	
	Table A	Memorandum of a company limited by shares
	Table B	Memorandum of a company limited by guarantee and having no share capital
	Table C	Memorandum of a company limited by guarantee and having a share capital
	Table D	Memorandum of an unlimited company having no share capital
	Table E	Memorandum of an unlimited company having a share capital
<b>Other important points</b>	MOA should be: <ol style="list-style-type: none"> <li>Printed</li> <li>Divided into para</li> <li>Consecutively numbered</li> <li>Signed by required subscriber.</li> </ol>	



<b>Articles of Association - AOA [Sec. 5]</b>		
<b>Definition of articles</b>	Articles means the articles of association of a company as originally framed or as altered from time to time or applied in lieu of any previous company law or of this Act.	
<b>Meaning</b> [Sec. 5(1)]	Articles are the regulations framed by a company <b>for its own governance.</b>	
<b>Inclusion of matters</b>	The articles of a company shall contain the <b>REGULATIONS</b> for <b>internal management</b> of the company.	
<b>Content of AOA</b>	The article contains rules regarding shares, debentures, prospectus, meetings, BOD, general powers of company.	
<b>Format of AOA</b> [Sec. 5(6)]	The articles shall be in respective forms specified in Tables F, G, H, I and J in <b>Schedule I</b> as may be applicable to the company	
	Table F	Articles of a company limited by shares
	Table G	Articles of a company limited by guarantee and having a share capital
	Table H	Articles of a company limited by guarantee and having no share capital
	Table I	Articles of an unlimited company having a share capital
	Table J	Articles of an unlimited company having no share capital
<b>Entrenchment</b> [Sec. 5 and Rule 10]	<ol style="list-style-type: none"> <li>Usually an AOA may be altered by passing special resolution but entrenchment makes it <b>more difficult to change</b> it. So entrenchment means making something more protective.</li> <li>The AOA may contain the provisions for entrenchment, i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are <b>more restrictive than those as are applicable in case of a SR.</b></li> <li>The provisions for entrenchment may be made <ul style="list-style-type: none"> <li>➤ at the time of <b>formation</b> of the company; or</li> <li>➤ by an <b>amendment of articles</b>,</li> </ul> <ol style="list-style-type: none"> <li>(a) In case of a <b>private company</b>, with the consent of <b>all the members</b>;</li> <li>(b) In case of a <b>public company</b>, by passing <b>Special Resolution</b>.</li> </ol> </li> <li>Where the articles contains the provisions for entrenchment, the company shall <b>give notice</b> of such provisions to the <b>Registrar</b>: <ol style="list-style-type: none"> <li>(i) In Form No. INC-2 &amp; SPICe+ INC-32, as the case may be, at the time of incorporation of the company;</li> <li>(ii) In Form No. MGT-14, within 30 days from the date of entrenchment of the articles in case of existing companies.</li> </ol> </li> </ol>	
<b>1. 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</b>		

the relevant provisions of the said Act dealing with entrenchment provisions.(3 Marks)(Nov 2020) (MTP Oct. 22)

2. 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 2020)
3. 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. (6 Marks)(MTP M 21)

**Conclusion** - 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.

<p><b>Applicability of model articles</b> [Sec. 5(7), (8)]</p>	<p>(a) A company may adopt all or any of the provisions contained in the model articles applicable to it.</p> <p>(b) Where the registered articles of a company do not exclude or modify the provisions contained in the model articles applicable to it, then, such provisions of the model articles shall apply to such company, as if they were contained in the duly registered articles.</p>
<p><b>Applicability to existing companies</b> [Sec. 5(9)]</p>	<p>Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.</p>

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| <ol style="list-style-type: none"> <li>1. 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, (April 22)(1 Mark)                     <ol style="list-style-type: none"> <li>a. By passing a special resolution</li> </ol> </li> </ol> | <ol style="list-style-type: none"> <li>b. <b>With the consent of all the members</b></li> <li>c. By passing a special resolution and approval of the Central Government</li> <li>d. With the consent of all the members and approval of the Central Government</li> </ol> |
|--|---|

**Act to Override Memorandum, Articles, etc. (Sec.6)**

<p><b>Act to have overriding effect</b> [Sec. 6(1)]</p>	<p>The provisions of this Act, shall have overriding effect over anything, contrary contained in:</p> <p>(a) MOA of a company; or</p>
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	<p>(b) AoA of a company; or</p> <p>(c) any agreement executed by a company; or</p> <p>(d) any resolution passed by the company in GM/ BM.</p> <p>However, if any other section of the Act say that article is superior then we will treat it accordingly.</p>
<b>Inconsistent provisions to be void</b>	If any provision contained in the MOA, AOA, agreement or resolution is inconsistent the provisions contained in Act, then such provision shall be void to the extent of such inconsistency.

### Effect of Memorandum and Articles (Sec. 10)

<b>Provision of Sec. 10</b>	MOA and AOA shall bind the company and members as <b>if each one have individually signed it</b>
<b>Member bound to company</b>	The members are bound to company <b>as in a contract</b> and the company can exercise a <b>right of lien on shares of member for any debt</b> due to company.
<b>Company bound to members</b>	A company is also liable to members as to <b>whatever is contained in its MOA and AOA</b> and so far as it <b>affects any rights of member</b> . Therefore, a member can sue company for any act ultra vires, right to notice of meeting, right to poll, right to dividend declared etc.
<b>Members bound to other members</b>	The Articles bind the members inter se as far as rights and duties arising out of the Articles. <b>However, a member can enforce his rights against another member only through company and not directly.</b>
<b>Binding with 3<sup>rd</sup> parties</b>	The Memorandum and Articles <b>do not bind</b> either the company or the members to <b>any third party.</b>

1. In Eley v Positive Life Insurance Co., the articles provided that Eley should act as a solicitor for life to the company and should not be removed from office except for misconduct. Eley acted as a solicitor to the company and also became a member of the company. The company however discontinued his he had no cause of action because the articles did not constitute any contract between the company and himself as solicitor. His action was dismissed.
2. The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly. (RTP May 2015) (RTP May 2016) (MAY 2013) (MTP MAY 2017)

#### Hint:-

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of B will stand and A will be terminated.

### Alteration of MOA or AOA to be noted in Every copy[Sec. 15]

Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

### Copies of MOA, AOA, etc. to be given to Members [Sec.17]

<b>Provision</b> [Sec. 17(1)]	Every company on request of a member, shall send copies of the following documents <b>within 7 days</b> of the request on the payment of fees: a) memorandum; b) articles ; c) every agreement and every resolution referred in section 117
<b>Punishments</b> [Sec. 17(2)]	Company and officer in default shall be liable penalty of Rs 1000 per day during which such default continues or Rs 1 lakh, whichever is less.

### Doctrine of Ultra Vires Act

<b>Meaning of the doctrine</b>	Ultra means "beyond' or 'in excess of' and vires means 'powers'. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company.
<b>Ultra vires the 'MOA'</b>	<ul style="list-style-type: none"> <li>(i) An act or transaction shall be ultra vires if <ul style="list-style-type: none"> <li>(a) <b>it is not permitted or authorised by the Companies Act, 2013;</b></li> <li>(b) <b>it falls outside the object clause</b> of memorandum; and</li> <li>(c) its attainment is not incidental to the attainment of main objects.</li> </ul> </li> <li>(ii) An act which is ultra vires the company is <b>void</b> and is of no legal effect.</li> <li>(iii) Even <b>ratification of an ultra vires</b> contract by the whole body of shareholders <b>does not make an ultra vires contract valid</b> or enforceable.</li> <li>(iv) Any member may obtain an injunction order from the Court, i.e. an order of the Court restraining the company from proceeding with the ultra vires contract.</li> <li>(v) If <b>funds</b> of the company are <b>misapplied or wasted</b> by entering into ultra vires transactions, the directors shall be personally liable to the company for breach of trust.</li> </ul>
<b>Ultra vires the 'AOA'</b>	<ul style="list-style-type: none"> <li>(i) Any act not authorised by or is against the articles.</li> <li>(ii) Such ultra vires act is <b>voidable at the option of shareholders.</b></li> <li>(iii) Ultra vires act against AOA <b>can be ratified by members by altering AOA.</b></li> </ul>
<b>Ultra vires the 'Director'</b>	"SAME LIKE ABOVE"
<b>Ashbury Railway Carriage and Iron Company Ltd. v/s Richie</b>	<p><b>Extract of object clause:</b> The object clause of an industrial company contained the following objects besides some other objects:</p> <ul style="list-style-type: none"> <li>(a) To make, sell or lend on hire, railway carriages and wagons.</li> <li>(b) To carry on the business of mechanical engineers and general contractors.</li> </ul>

	<p>(c) To purchase, lease, work and sell mine, minerals, land and buildings.</p> <p><b>Contract made by company:</b> The company entered into a contract with Richie, for the financing of a construction of a railway line in Belgium.</p> <p><b>Decision of the Court:</b> The Court held that the word "general contractors" had to be given a restricted meaning.</p> <ul style="list-style-type: none"> <li>(a) Only such contracts could be covered in the term 'general contractors' as are in some way related or connected with mechanical engineering</li> <li>(b) Therefore, the company could not finance the construction of a railway line by alleging that such a business falls under the business of general contractors.</li> </ul>
<p><b>The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to Karan. Give reasons in support of your answer. (RTP Nov 2016)</b></p>	

<b>Doctrine of Constructive Notice</b>		
<b>Applicability</b>	This doctrine operates in <b>favor of the company</b> , i.e. it creates a presumption in favor of the company. <b>It operates against the persons dealing with the company.</b>	
<b>Effect of the doctrine</b>	<ul style="list-style-type: none"> <li>(i) Once registered the memorandum and articles become public documents (Sec. 399). <b>Therefore, every person dealing with the company is presumed to have read the memorandum and articles.</b> Further, it is presumed that he has understood the provisions of memorandum and articles correctly, i.e. in the right sense</li> <li>(ii) The doctrine <b>prevents</b> any person dealing with the company from <b>alleging that he did not know the provisions contained in the articles or memorandum.</b></li> <li>(iii) If a person enters into a contract with the company in contravention of the provisions of the memorandum and articles, <b>he cannot enforce such a contract.</b></li> <li>(iv) Any person entering into a contract with company which is in contravention of provisions of MOA or AOA cannot present a defense later on, that he did not know the provisions in these documents.</li> </ul>	
<b>Reference Case</b>	<b>Kotla Venkata Swamy vs C. Ram Murti</b>	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 20%;"><b>Facts</b></td> <td>Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary &amp; WTD, However on a mortgage deed, only secretary and WTD signed</td> </tr> </table>	<b>Facts</b>
<b>Facts</b>	Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed	

	<b>Law</b>	Doctrine of Constructive Notice.
	<b>Conclusion</b>	No contract will not be enforceable on the company.

<b>Doctrine of Indoor Management/Turquand rule</b>		
<b>Applicability</b>	The doctrine of indoor management operates in <b>favor of the outsiders</b> , i.e. this doctrine creates a presumption in favor of the outsiders.	
<b>Effect of the doctrine</b>	<ul style="list-style-type: none"> <li>(i) As per this doctrine, <b>outsiders dealing with the company are not required to enquire into the internal management</b> of the company.</li> <li>(ii) Outsiders dealing with the company are entitled to <b>assume</b> that as far as <b>internal proceedings</b> of the company are concerned, everything has been <b>done regularly</b>.</li> <li>(iii) <b>If not, company is in fault and cannot deny liability on said ground</b></li> <li>(iv) Thus, the doctrine <b>protects an innocent outsider</b> from any irregularity present in the working of the company</li> </ul>	
<b>Reference case</b>	Royal British Bank vs Turquand	
	Facts	AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract
	Law	Doctrine of Indoor Management
	Conclusion	Contract will be liable on company
<b>Exceptions to Indoor Management</b>	<b>Knowledge of irregularity</b>	Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management.  <b>Reference Case: Howard vs Patent Ivory Manufacturing Company</b>
	<b>Negligence</b>	Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of this 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  <b>Reference Case: Anand Biharilal vs Dinshaw &amp; Company</b>
	<b>Forgery</b>	Traditionally, outsider does not get the benefit of Turquand Rule in case of forgery because forgery means "no acceptance" and hence no agreement.

		<b>Reference Case: Ruben vs Great Fingall consolidated company.</b>
	<b>No knowledge of articles</b>	If the authority to enter into a contract on behalf of the company could be delegated to an officer or employee of the company as per the articles, but such authority has not been actually delegated to him, an outsider who deals with such an officer cannot assume that the required authority has been delegated to him, if the outsider has not read the articles.  <b>Reference Case: Rama Corporation vs Proved Tin &amp; General Investment Company Ltd.</b>
	<b>Illegal transactions</b>	<b>The benefit of doctrine of indoor management is not available in case of any ultra vires or illegal transaction.</b>

- 1. 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.(6 Marks) (MTP Nov. 23)**
- 2. The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.(MTP MAY 2020) (NOV 2016)**  
**Conclusion -** 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.
- 3. The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company.” Explain the above statement. Also, state the exceptions to the above rule(MAY 2015) (NOV 2018) (MTP Sep 22)**

<b>Howard vs Patent Ivory Manufacturing company</b>	
<b>Facts</b>	(i) The directors of a company could borrow upto £1,000 without the sanction of members in GM. (ii) The consent of the shareholders was required to borrow in excess of £1,000. (iii) The directors themselves lent £3,500 to the company.
<b>Case law</b>	Howard vs Patent Ivory Manufacturing company
<b>Conclusion</b>	It was held that the directors had the notice of the internal irregularity and therefore company was liable to them only for £1,000.

<b>Anand Bihari Lal vs Dinshaw &amp; Company</b>	
<b>Facts</b>	An accountant of the company entered into a contract on behalf of the company with a party to sell the property of the company.
<b>Case law</b>	Anand Bihari Lal vs Dinshaw & Company
<b>Conclusion</b>	(i) It was held that the third party could not assume that the accountant was authorised by the company to sell the property of the company. (ii) Therefore, the third party could not enforce such a contract against the company even though the third party had acted bonafide.

<b>Ruben vs Great Fingall Consolidated Company</b>	
<b>Facts</b>	(i) A share certificate was issued under the common seal of the company. (ii) The secretary of the company had signed on the share certificate. (iii) However, the signatures of two directors were also required on it, which were forged by the secretary. (iv) The holder of the share certificate contended that he was not aware of the fact of forgery, it was not possible for him to determine whether the signatures were genuine or forged and therefore, the certificate issued to him should be held as valid.
<b>Case law</b>	Ruben vs Great Fingall Consolidated Company
<b>Conclusion</b>	The Court held that in case of forgery, there is not a defect in consent, but absence of consent, and therefore the certificate issued by way of forgery is void. Thus, the certificate was held to be invalid.

<b>Doctrine of Constructive Notice</b>	<b>Doctrine of Indoor Management</b>
A. This doctrine is AGAINST outsiders.	A. This doctrine is in FAVOUR of outsiders.
B. MoA-AoA are public documents and can be easily verified by outsiders.	B. Internal Management of the company is not public information and cannot be verified by outsiders.
C. An outsider entering into an unusual transaction must read MoA-AoA to check that the transaction is within the powers of the Company.	C. An outsider who has read MoA-AoA and ascertained that transaction is with powers of the company cannot be expected to check whether the company has actually followed the procedure/regulations.
D. <b>Exception:</b> Doctrine of Indoor Management.	D. <b>Exceptions:</b> There are 5 Exceptions.



1. The provisions for entrenchment can be contained in Articles:
  - a. On formation of a company.
  - b. By an amendment in the Articles agreed to by all of the members of the company, in the case of a private company; and by a Special Resolution, in the case of a Public Company.
  - c. Either (a) or (b)**
  - d. None of the above
2. In case of conflict in the provisions contained in the Memorandum or Articles of Association of a company and the provisions of the Companies Act: -
  - a. The provisions of Companies Act shall prevail notwithstanding anything to the contrary contained in the Memorandum or Articles of the company.**
  - b. The provisions contained in the Memorandum or Articles of company shall prevail notwithstanding anything to the contrary contained in the Companies Act.
  - c. The provision which is more beneficial to the company shall prevail.
  - d. The provision which is approved by Central Government shall prevail.
3. The Memorandum and Articles shall, when registered, bind to the same extent as if they, respectively, had been signed by each of them and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.
  - a. The company, the members and all other persons
  - b. The company, the promoters and the directors
  - c. The company and the members**
  - d. The company and the directors
4. A company shall, on being so requested by a member, send to him within of the request and subject to the payment of such fees as may be prescribed, a copy of the Memorandum and Articles of the company.
  - a. 7 days**
  - b. 15 days
  - c. 30 days
  - d. 45 days
5. A company shall verify its registered office to the Registrar within of its Incorporation by filing Form No. \_\_\_\_\_
  - a. 7 days, INC-20
  - b. 15 days, INC-21
  - c. 30 days, INC-22**
  - d. 60 days, INC-23

Alteration of Name Clause	
<p><b>Voluntary Alteration</b> [Sec. 13]</p>	<ul style="list-style-type: none"> <li>(i) A company may change its name by <b>passing SR</b></li> <li>(ii) The change in name shall have effect only after the <b>approval of ROC</b> by applying in Form <b>INC-24</b>.</li> <li>(iii) However, no such approval is required, where the change in the name is only the addition/deletion of the word ' Private", on the conversion of any one class of companies to another class in accordance. with the provisions of the Act.</li> <li>(iv) The change of name shall not be allowed if the company has not filed annual returns or FS with the Registrar or has failed to pay or repay matured deposits or debentures or interest thereon.</li> <li>(v) The company shall file a copy of the SR and order of approval with the ROC in <b>Form No. MGT-14</b> within 30 days of passing resolution.</li> <li>(vi) Apply for new name</li> <li>(vii) The Registrar shall : <ul style="list-style-type: none"> <li>(a) enter the new name of the company in the register of companies; and</li> <li>(b) issue a fresh certificate of incorporation in Form No. 1NC-25</li> </ul> </li> </ul>
<p><b>Where name is identical or similar to name of a company already registered (sec 16)</b></p>	<ul style="list-style-type: none"> <li>(i) Where a company is registered by a name, which in the opinion of <b>C.G(R.D)</b>, is identical with, or too nearly resembles, the name of a company previously registered, then it may direct the company to rectify its name.</li> <li>(ii) When such a direction is given, the company shall, <b>within 3 months</b>, rectify its name by passing an <b>ordinary resolution</b>.</li> </ul>
<p><b>Where name is identical or similar to name of a registered trade mark</b> [Sec. 16(1)(b)]</p>	<ul style="list-style-type: none"> <li>(i) The proprietor of a registered trade mark may make an application to RD that the name of a company is identical with, or too nearly resembles, the registered trade mark of which he is the proprietor.</li> <li>(ii) Such an application may be made by the proprietor of the registered trade mark <b>within 3 years of registration</b> of the company by such name; or such new name.</li> <li>(iii) On receipt of such an application, <b>if RD is of the opinion</b> that the name of a company is identical with, or too nearly resembles, the registered trade mark, the proprietor of which is the applicant, then it may direct the company to rectify its name.</li> <li>(iv) When such a direction is given, the company shall, <b>within 3 months</b>, rectify its name by passing an ordinary resolution.</li> <li>(v) If a company is in default in complying with any direction given by CG:- <ul style="list-style-type: none"> <li>A. the CG shall allot a new name to the company in such manner as may be prescribed and</li> <li>B. the Registrar shall enter the new name in the register of companies in place of the old name and</li> <li>C. the Registrar shall issue a fresh certificate of incorporation with the new name, which the company shall use thereafter.</li> </ul> </li> </ul>

	Provided that nothing in this sub-section shall prevent a company from <b>subsequently changing its name</b> in accordance with the provisions of section 13.
<b>Filing with Registrar</b> [Sec. 16(2)]	(i) The company shall file with the Registrar, a copy of OR notice of rectification of name and a copy of order of RD, <b>within 15 days of passing an OR</b> for rectification of name.  (ii) The Registrar shall make necessary changes in the MOA and in the certificate of incorporation.
<b>Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? (April 22)(6 Marks) (RTP Mar 23)</b>	

### Registered Office of Company [Sec. 12]

<b>Registered office</b> [Sec. 12(1)]	It is mandatory for every company to have its registered office <b>within 30 days of its incorporation</b> and at all times thereafter.
<b>Verification of Registered office</b> [Sec. 12(2) & Rule 25]	The company shall file the verification of the registered office with the Registrar in Form No INC. 22 along with the fee within 30 days of its incorporation (60 days for IFSC Public & IFSC Private Company).  The following documents shall be attached to the verification form: <ul style="list-style-type: none"> <li>(a) Registered document of the title of the premises of the registered office in the name of the company; or</li> <li>(b) Notarised copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not <b>older than 1 month</b>;</li> <li>(c) Authorisation from the owner or authorised occupant of the premises along with proof of ownership or occupancy authorisation, to use the premises by the company as its registered office; and</li> <li>(d) Proof of evidence of any utility service like telephone, gas, electricity, etc.</li> </ul>

	depicting the address of the premises in the name of the owner or occupant, as the case may be, which is <b>not older than 2 months</b> .
<b>Labeling of Company</b> [Sec. 12(3)]	Every company shall: (a) paint or affix its name, and the address of its registered office, and keep the same on the outside of every office or place in which its business is carried on in legible letters, and also in the characters of that language/s, in general use in that locality. (b) have its name engraved in legible characters on its seal, if any; (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed.
<b>Name change by the company</b>	Where a company has changed its name/s during the last 2 years, it shall paint or affix or print, along with its name, the former name or names so changed during the last 2 years.

1. Swara Musical Instruments Private Limited was incorporated on 10<sup>th</sup> October, 2018 by converting existing partnership firm into company. Sohini and Mohini became the promoters of the company. Sohini's premises which was rented out to the partnership firm was to be used as the registered office. Mention the documents which need to be filed with the Registrar of Companies (ROC) for verification of registered office.

**a. A notarised copy of rent agreement along**

**with rent receipt which is not older than one month.**

- b. A copy of the public notice published in a local newspaper that the premises is rented out to the company along with certified copy of rent agreement.
- c. A notarised copy of rent agreement along with rent receipt which is not older than two months.
- d. A notarised copy of rent agreement only.

### Shifting of Registered Office (RO) [Sec. 12]

<b>Change of RO within same city or town</b>	A company can change its registered office from one place to another within the local limits of the same town, village or city in local following manner: (i) Hold a <b>Board Meeting</b> and pass a <b>Board Resolution</b> . (ii) File Copy of <b>B.R with ROC</b> and notice of the change with ROC in Form <b>INC.22</b> within <b>30 days</b> of the change (60 days for IFSC Public and IFSC Private Company). However, such change does not involve alteration of MOA.
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<p><b>Change of RO to different city (within the state)</b> [Sec. 12(5)]</p>	<p>A company can change its registered office from one city to another city but within same state, in following manner:</p> <ul style="list-style-type: none"> <li>(i) Take BM and pass B.R to conduct GM.</li> <li>(ii) Take GM and <b>pass SR</b>.</li> <li>(iii) File a <b>copy of SR with ROC within 30 days</b> of passing the resolution in Form <b>MGT-14</b>.</li> <li>(iv) File notice of the change of registered office with the ROC in <b>Form INC.22 within 30 days</b> of the change (60 days for IFSC Public and IFSC Private Company)</li> </ul> <p>However, such change does not involve alteration of MOA.</p>
<p><b>Change of RO from one ROC to another (within the state)</b> [Sec. 12(5), (6), (7) and Rule 28]</p>	<p>A company can change its registered office. from jurisdiction of ROC to another ROC but within same state in following manner:</p> <ul style="list-style-type: none"> <li>(i) Hold GM and <b>pass SR</b></li> <li>(ii) File copy of SR with the Registrar in Form No MGT-14 within 30 days of passing SR.</li> <li>(iii) <b>Apply to RD</b> in Form INC 23 for confirmation of change of place of Registered Office</li> <li>(iv) <b>RD shall communicate</b> the confirmation of change to the company <b>within 30 days</b> of application.</li> <li>(v) The <b>company shall file the confirmation</b> with the Registrar <b>within 60 days</b> of confirmation. in <b>Form No.INC-28</b></li> <li>(vi) <b>Sift to new place and file inc-22 with ROC</b></li> <li>(vii) ROC shall issue new COI</li> </ul>
<p><b>Change of RO to different state</b> [Sec. 13(4), (5), (6) and Rule 30]</p>	<p>A company may change the place of its registered office from one State to another State in following manner.</p> <ul style="list-style-type: none"> <li>(i) Take GM and <b>pass SR and Alter MOA</b></li> <li>(ii) <b>Obtain approval from RD</b>, on an application in Form No INC. 23 along with fee.</li> <li>(iii) RD shall dispose of the application <b>within 60 days</b> and before passing any order, it shall satisfy itself that: <ul style="list-style-type: none"> <li>a. the creditors, debenture-holders and other persons concerned with the company have consented to such alterations; or</li> <li>b. the company has made sufficient provision or provided adequate security for the discharge of all its debts and obligations.</li> </ul> </li> <li>(iv) The company <b>shall file</b> a copy of SR in MGT-14 and Altered MOA &amp; Copy of <b>approval of RD</b> with the ROC, in Form No. INC 28 <b>within 30 days</b> of receipt of order.</li> <li>(v) File e. Form No. INC.22 with ROC within 30 days from shifting to new ROC.</li> </ul>
<p><b>Physical verification of RO</b> [Sec. 12(9)]</p>	<ul style="list-style-type: none"> <li>(i) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the Registered office of the company.</li> </ul>

	(ii) If any default is made in complying with section 12(1), Registrar may initiate action for the removal of the name of the company from the register of companies without any prejudice to section 12(8).
<p><b>XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Nashik (within the State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain. (MTP MAY 2019) (Hint – Mumbai to Nashik same state – Diff ROC)</b></p> <p><b>Hint:- Refer Sec 12 – shifting to different city , same state , different RoC</b></p>	

### Alteration of Object Clauses of Memorandum (Sec. 13)

<p><b>Alteration of Object Clause</b> [Sec. 13(8), (9), (10)]</p>	<p>(i) A company may alter its object clause by <b>passing SR</b>.</p> <p>(ii) If a company has raised money from the public by issue of a prospectus, and any part of it <b>remains unutilized</b> with the company, then the company shall alter its objects for which it raised the money through prospectus if following conditions are satisfied:</p> <ol style="list-style-type: none"> <li>the company has <b>published</b> the prescribed details and justification for such alteration in 2 -newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated;</li> <li>the prescribed details and justification for such change have been <b>placed on the website</b> of the company, if any, and</li> <li>the <b>dissenting shareholders have been given an exit opportunity</b> by the promoters and shareholders having control in accordance with the regulations to be specified by SEBT</li> </ol> <p>(iii) The company shall file a copy of SR with the Registrar within 30 days.</p> <p>(iv) The Registrar shall register the alteration and issue a certificate of registration within 30 days of receipt of the SR.</p> <p>(v) The alteration shall not be effective until it has been duly registered by the Registrar.</p>
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**Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause. (MAY 2016)**

1. Namita Ceramic Goods Limited having 152 members was incorporated with the main objects of manufacture of ceramic goods, glazed, unglazed floor and wall tiles, etc. and to carry on trading in such products. After three years of successful operation, it wants to diversify its business by entering into the field

of manufacturing electronic goods for which it is required to alter its objects clause. Advise the company in relation to alteration of Memorandum.

a. The company can alter its Memorandum of Association by passing an ordinary

resolution and obtaining the confirmation of the Regional Director (RD).

- b. **The company can alter its Memorandum of Association by passing a special resolution at the shareholders’ meeting.**
- c. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders’ meeting and obtaining

the confirmation of the Regional Director (RD).

- d. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders’ meeting and simultaneously publishing the contents of special resolution in two newspapers (one in English and the other one in vernacular language) circulating in that are

<p><b>Alteration of Liability Clause</b> [Sec.13(11)]</p>	<ul style="list-style-type: none"> <li>(i) A company may alter its liability clause by <b>passing a SR.</b></li> <li>(ii) Any alteration of the MOA, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate to the divisible profits of the company otherwise than as a member, shall be void.</li> <li>(iii) The company shall file a copy of SR and altered MOA with the Registrar in form No. MGT-14, within 30 days.</li> </ul>
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Alteration of Capital Clause (sec 61)	
<p><b>Ways</b></p>	<ul style="list-style-type: none"> <li>(i) <b>Increase its authorised share capital</b></li> <li>(ii) <b>Consolidate and divide</b> all or any of its share capital into shares of a larger amount than its existing shares.</li> <li>(iii) <b>Convert all or any of its fully paid-up shares into stock, and reconvert</b> that stock into fully paid-up shares of any denomination;</li> <li>(iv) <b>Subdivide its shares</b>, or any of them, into shares of smaller amount than is fixed by the Memorandum</li> <li>(v) <b>Cancel shares</b> 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.</li> </ul>
<p><b>Procedure</b></p>	<ul style="list-style-type: none"> <li>▪ The alteration of share capital by a company limited by shares under Section 61 can be done by passing an <b>Ordinary Resolution</b> in the General Meeting of the company.</li> <li>▪ Where a company alters its share capital in any manner specified in Section 61(1), the company shall file a notice in <b>Form No. SH-7 with the Registrar within a period of 30 days</b> of such alteration or increase or redemption, as the case may be, along with an altered Memorandum. <i>[Rule 15 of Companies (Share Capital and Debentures) Rules, 2014]</i></li> </ul>

<b>Alteration of Articles [Sec.14]</b>	
<b>Resolution Required</b> [Sec. 14(1)]	<p>1 <b>SR</b> is required for every alteration of articles, including alteration of articles for purpose of conversion of:</p> <p>(a) a private company into a public company; or            (b) a public company into a private company.</p> <p><b>However, such alteration shall be subject to the provisions of this Act and conditions contained in its memorandum.</b></p> <p>2 <b>File alteration with ROC within 15 days in inc - 27</b></p>
<p><b>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 2018)</b></p> <p><b>Hint:-Refer Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles.</b></p>	
<b>Conversion of a private company into a public company</b> [1 <sup>st</sup> Proviso to Sec. 14(1)]	<p>(a) A private company may get converted into a public company, by altering its articles (by passing a <b>special resolution</b>) in such a manner that its articles no longer include the restrictions and limitations required to be included in the articles of a private company as per Sec. 2(68).</p> <p>(b) Increase the number of members to 7, if not already.</p> <p>(c) Increase the number of directors to 3, if not already.</p> <p>(d) The conversion from private company into a public company shall take effect from the date of alteration of articles.</p> <p>(e) The application for such conversion shall be filed <b>with ROC in Form No. INC. 27</b> with fee.</p>
<b>Conversion of a public company to a private company</b> [2 <sup>nd</sup> Proviso to Sec.14(1) ]	<p>(a) <b>Alter MOA</b> — Change of Name (insert the word Private in the name). <b>Pass SR.</b> No need to file INC-24 for CG approval for adding the word 'Private' in the name. (Section 13)</p> <p>(b) <b>Alter AOA</b> — Adding the 3 restrictive clauses u/s 2(68) from its Articles. <b>Pass SR.</b> (Section 14)</p> <p>(c) Conversion of a public company into a private company shall not be valid unless it is approved by an <b>C.G(R.D)</b> on an application made in Form No. INC-27 within <b>60 days</b> from the date of passing of S.R</p> <p>(d) A copy of order of the Tribunal approving the alteration shall be filed with the Registrar in Form No. <b>INC - 27</b> with fee along with the printed copy of altered articles within 15 days from the date of receipt of the order from the Tribunal.</p>
<b>Filing with Registrar</b> [Sec. 14(2))]	<p>Where any alteration is made in the articles a copy of the altered articles shall be filed with the Registrar within 15 days, and the Registrar shall register the same.</p>
<b>Effect of alteration</b> [Sec. 14(3)]	<p>Any alteration of articles which is registered by the Registrar, shall be as valid as if it were originally contained in the articles.</p>



1. In view of the fact that a private company enjoys a number of privileges, Orange Pharma Limited having 20 members is contemplating to convert itself into the private company. For this purpose the company needs to alter its articles by inserting three restrictive clauses as specified in Section 2 (68) and the change in name is to be authorized by members by passing --.
- a. **A special resolution and after obtaining**

- approval of the Central Government.**
- b. A special resolution and after obtaining approval of the National Company Law Tribunal (NCLT).
- c. A special resolution and after obtaining approval of the Registrar of Companies (ROC).
- d. A special resolution and after obtaining approval of the State Government.

<b>Formation of a Company [Sec. 3]</b>		
<b>Lawful Purpose</b>	(i) A company may be formed for any <b>lawful purpose</b> . [Sec 3(1)] (ii) The objects of the company must not be <b>illegal, immoral or opposed to public policy</b> .	
<b>Subscription to memorandum [Sec. 3(1)]</b>	(i) The persons who sign on the memorandum are termed as subscribers.	
	(ii) Minimum number of subscribers :	
	(a) where the company to be formed is to be a <b>Public Company,</b>	By <b>7 or more persons</b>
	(b) where the company to be formed is to be a <b>Private Company,</b>	By <b>2 or more persons</b>
	(c) where the company to be formed is to be a <b>One Person Company (OPC)</b> that is to say a private company,	By <b>1 person</b>
<b>Specified IFSC Public Company or Private Company</b>	A Specified IFSC Public Company or a Specified IFSC Private Company shall be formed <b>only as a company limited by shares.</b>	

<b>Members severally Liable in Certain Cases (Sec 3A)</b>	
<b>Shortfall from Minimum Requirement of Members for a Company Formation</b>	<p>A. If at any time the number of members of a company is <b>reduced below 2/7</b>, {in the case of a private company, <b>below 2</b>, and in the case of a public company, <b>below 7</b>}, <b>AND</b></p> <p>B. the company <b>carries on business</b> for <b>more than 6 months</b> while the number of members is so reduced,</p> <p><b>EVERY person who is a member</b> of the company during the time that it so carries on business</p> <ul style="list-style-type: none"> <li>• <b>AFTER</b> those 6 months <b>and</b></li> <li>• <b>is cognizant of the fact</b> that it is carrying on business with less than 2/7 members,</li> </ul>

	shall be <b>SEVERALLY LIABLE</b> (personally liable) for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
<p><b>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 2019)</b></p>	

<b>Incorporation of Company [Sec. 7]</b>	
<b>Step 1 - Reservation of Name</b>	<p>(i) The promoters of company shall make an application through the web service available at MCA website and reserve its name through '<b>SPICe +'</b> form – <b>Part A, (INC-32)</b>.</p> <p>(ii) The company shall have option to <b>propose 2 names</b>, with the prescribed fees.</p> <p><b>(iii)</b> The reserve name shall remain <b>valid for 20 days</b>.</p> <p><b>(iv)</b> <b>Co can extend reservation time for beyond 20 days - next 20 days – 1000 fees , next 20 days – 2000 fees (max 60 days reservation only allowed )</b></p> <p><b>(v)</b> <b>Old companies</b> can change name through <b>Reserve Unique Name (RUN) scheme</b> which when available will be reserved <b>for 60 days</b>.</p>

1. A and B 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 on 3rd March, 2020. 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?
- Latest by 30th March, 2020
  - Latest by 24th March, 2020**
  - Latest by 2nd May, 2020
  - Latest by 1st June, 2020

<b>Step 2 – filling od application with ROC</b>	File the following information <b>within next 20 days in Part-B of the SPICe+. (INC-32)</b>	
	Attached with following documents	
	1.	INC-33
2.	INC-34	<b>e-Articles of association (e-AOA)</b>

	3.	INC-35 (AGILE-PRO-S)	<b>AGILE-PRO-S</b> (Application for GSTIN, ESI plus EPF, P.- Tax Registration & Opening of Bank a/c and Shops and Establishment Registration)
	4.	INC-8	<b>Declaration that requirements of act complied</b> <b>By – Advocate /C.A/Cost accountant /C.S who is engaged in formation of Co,</b>
	5.	INC-9	Declaration shall be submitted by each of the <b>subscribers</b> to the memorandum and each of the <b>first directors</b> named in the articles.  That <ul style="list-style-type: none"> <li>• <b>All info is correct and true</b></li> <li>• <b>Not convicted in last 5 years for any offence in connection with promotion or mgt or fraud or breach of duty under this actor previous co law</b></li> </ul>
	6.	DIR-12 and DIR-2	Particulars of <b>first director</b> of the company and his interest in other firms or bodies corporate along with his <b>consent</b> to act as director of the company shall be filed.
	7.	Registration Fees	Pay Registration Fees electronically.
	8.	INC-22	<b>Filing of Registered Office Address</b> A company may furnish verification of its registered office :- 1. In Form INC-32 (SPICe+) at the time of incorporation or 2. In Form INC-22 <b>within 30 days</b> of incorporation.
<b>Issue of COI by Central Registrar (CRC)</b>			
The Certificate of Incorporation shall be issued by the Registrar in <b>Form No.INC-11</b> and the Certificate of Incorporation shall mention :- a) PAN of the company where if it is issued by the Income-tax Department. b) CIN of the company allotted by Registrar.			
<b>State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies. (MAY 2016)</b>			
<b>Preservation of documents</b> [Sec. 7(4)]	The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, <b>till its dissolution</b> under this Act.		

<p><b>Consequences where a company is incorporated by furnishing false information</b> [Sec. 7(6)]</p>	<p>If it is <b>proved</b> that a company was incorporated by <b>furnishing false</b> or <b>incorrect information</b>, or by <b>suppressing any material fact</b> or by any <b>fraudulent action</b>, then, the following persons shall be held <b>liable u/s 447</b>:</p> <ul style="list-style-type: none"> <li>(a) the promoters;</li> <li>(b) every person named in the articles as a first director; and</li> <li>(c) every person who made a declaration that the requirements of the Act and the Rules were complied with.</li> </ul>
<p><b>Order of the Tribunal</b> [Sec. 7(7)]</p>	<ul style="list-style-type: none"> <li>(i) Where a <b>company has been got incorporated by any fraudulent action, the Tribunal may</b>, on being satisfied that the situation so warrants: <ul style="list-style-type: none"> <li>(a) pass such orders, as it may think fit, for the regulation of the management of the company; or</li> <li>(b) direct that the <b>liability</b> of the members shall be <b>unlimited</b>; or</li> <li>(c) direct <b>removal of the name</b> of the company from the register of companies; or</li> <li>(d) pass an order for the <b>winding up of the company</b>; or</li> <li>(e) pass <b>such other orders as it may deem fit</b>.</li> </ul> </li> <li>(ii) Before passing any order: <ul style="list-style-type: none"> <li>(a) the company shall be given a reasonable opportunity of being heard; and</li> <li>(b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.</li> </ul> </li> </ul>
<p><b>Formation of Sec 8 Co – additional documents</b></p>	<ol style="list-style-type: none"> <li>1. The company shall comply with following additional conditions: (licencing) <ul style="list-style-type: none"> <li>(i) File MOA in Form No. <b>INC-13</b>.</li> <li>(ii) Declaration by professionals in Form <b>INC-14</b> that the MOA and AOA have been drawn up in conformity with the provisions of section 8.</li> <li>(iii) Declaration by each of the persons making the application in Form No. <b>INC. 15</b>.</li> <li>(iv) <b>An estimate of the future annual income and expenditure of the company for next 3 years.</b></li> </ul> </li> <li>2. A limited company with objects specified u/s 8 and follows the restrictions and prohibitions u/s 8, and is desirous of being registered u/s 8 without the addition to its name of words 'Limited' or 'Private Limited' shall: <ul style="list-style-type: none"> <li>(i) <b>make an application in Form No INC. 12 along with fee to the Registrar;</b></li> <li>(ii) within a week from making application to the Registrar, publish a notice and copy of it shall be sent to Registrar in From No. INC 26.</li> </ul> <p>The licence of such existing company shall be in Form No INC. 16 or Form No. INC 17.</p> <p><b>Note:</b> The other documents required by the company to file with the Registrar are same as that of a new company would file (INC. 13, INC.14, INC.15).</p> </li> </ol>

**Effect of Registration [Sec. 9]**

1. The date mentioned in the certificate of incorporation issued by the Registrar, shall be the date of incorporation of the company.
2. Effect of incorporation/registration :
  - (i) **Subscribers** to the Memorandum **become members** of the company.
  - (ii) **Company becomes a body corporate** having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

**Commencement of Business, etc. [Sec. 10A]**

<b>Applicability</b>	Sec 10A shall apply only if the company is <b>having a share capital</b> ;
<b>Conditions for commencement of business or exercising borrowing powers</b>	<p>The Company shall <b>commence any business or exercise any borrowing powers</b> only after satisfying the following conditions:</p> <ol style="list-style-type: none"> <li>a) a <b>declaration in Form INC-20A</b> certified by CA, CS, CMA in practice is filed by a director within <b>180 days</b> of the date of incorporation of the company, 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</li> <li>b) the company has filed <b>with the Registrar a verification</b> (Address Proof) of its registered office in :-           <ul style="list-style-type: none"> <li>• SPICe+ (INC-32) at the time of incorporation or,</li> <li>• INC-22 within 30 days of incorporation.</li> </ul> </li> </ol>
<b>Power of Registrar to remove the name of the company</b>	<p>if:</p> <ol style="list-style-type: none"> <li>(a) the declaration is not filed with the Registrar within 180 days of the date of incorporation of the company; and</li> <li>(b) the Registrar has reasonable cause to believe that the company is not carrying on any business or operations.</li> </ol>

**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.(5 Marks) (MTP M 21)**

1. A company incorporated after 2nd November, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless:
  - a. It files a declaration with the Registrar within a period of 180 days of the date of incorporation 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.
  - b. It files with the Registrar a verification of its registered office within 30 days of its incorporation.
  - c. **Both (a) and (b)**
  - d. None of the above

<b>Conversion of Companies Already Registered [Sec.18]</b>	
<b>Alteration of MOA and AOA</b> [Sec. 18(1)]	A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.
<b>Filing with the Registrar</b> [Sec. 18(2)]	(i) Wherever such conversion of companies is required to be done, the company shall file an application to the Registrar. (ii) The Registrar on satisfying himself that the provisions applicable for registration of companies have been complied with, shall close the former registration of the company.
<b>Issue of Certificates of incorporation</b> [Sec. 18(2)]	After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.
<b>No effect on the debts, liabilities etc incurred before conversion</b> [Sec. 18(3)]	The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by the company or on behalf of it, before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

<b>Subsidiary Company not to hold shares in its holding company [Sec. 19]</b>	
<b>Prohibition</b> [Sec. 19(1)]	(i) A <b>subsidiary company shall not hold any shares</b> in its <b>holding company</b> either itself or through its nominee. (ii) <b>A holding company shall not allot</b> or transfer its shares to any of its subsidiary companies and if so done, it shall be void.
<b>Exceptions</b> [Proviso to Sec. 19(1)]	Sec. 19 is <b>not applicable</b> to a case: (a) where the subsidiary company holds such shares as the <b>legal representative</b> of a deceased member of the holding company; or (b) where the subsidiary company holds such shares <b>as a trustee</b> ; or (c) where the subsidiary company is a <b>shareholder even before it became a subsidiary company</b> of the holding company: However, the subsidiary company to whom section 19 does not apply, shall have a right to vote at a meeting of the holding company only in case (a) or (b) mentioned above.
<b>Interpretation of this section in other situation</b> [Sec. 19(2)]	The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

1. As at 31<sup>st</sup> March, 2018, the paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 : (MAY 2019)
- (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.?

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.
2. 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 10<sup>th</sup> 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 decide(Nov 2020)
- (i) the validity of holding of shares by S Ltd. in H Ltd.
  - (ii) allotment of Bonus shares by H Ltd. to S Ltd.

**Conclusion** - 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 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
3. 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.(6 Marks) (MTP Sep. 22)

Hint - 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.

4. ABC Limited issued equity shares worth 1,00,000 (10,000 shares of 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013 —
- (i) Whether ABC Limited is a subsidiary of MNP Limited ?
  - (ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023 ? (Nov 23) 5 Marks

1. Win Limited bought 15% shares of Om Limited in the year 2018. In the year 2020 it formed a trust for its employees and donated its 15% shares of Om Limited along with ` 10,00,000 to the trust and became its trustee. In February 2023, Om Limited acquired 55% stake in Win Limited through an in-house deal. Can a subsidiary company hold shares in its holding company justifiably in this situation? (RTP Nov 23)

- a. Win Limited cannot represent itself as a trustee after it becomes a subsidiary of Om Limited.

- b. Win Limited can represent itself as a trustee only after it was a holding company of Om Limited.
- c. Win Limited cannot hold shares as a trustee even though it is a subsidiary company.
- d. **Win Limited can do so as it is holding shares in Om Limited prior to becoming a subsidiary of it**



<b>Service of Documents [Sec. 20]</b>		
<b>Serving of documents</b>	<b>To company or officer of company at registered office of company [Sec 20(1)]</b>	<b>To Registrar or any member at his office or address [Sec. 20(2)]</b>
	By: (i) registered post; or (ii) Speed post; or (iii) courier service; or (iv) leaving at its registered office; or (v) electronic or other mode as may be prescribed.	By: (i) Post; or (ii) registered post; or (iii) speed post; or (iv) courier; or (v) delivering at his office or address; or (vi) electronic or other mode as may be prescribed.
	However, 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.	However, a member may request for delivery of any document through a particular mode on payment of such fees as determined in the AGM.
<b>Meaning of Courier</b>	Courier means a person or agency which delivers the document and provides proof of its delivery.	
<b>Time of delivery</b> [Rule 35]	In case of delivery by post, such service shall be deemed to have been effected: (i) in the case of a notice of a meeting, at the <b>expiration of 48 hours</b> after the letter containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.	
<b>Nidhi Companies</b>	(i) <b>Document may be served only</b> on members: (a) who hold shares of <b>more than Rs 1, 000 in face value</b> ; or (b) <b>more than 1% of the total paid-up Capital</b> of the Nidhi's whichever is less. (ii) For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office is situated; and publication of the same on notice board of the Nidhi.	
<b>Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company. (3 Marks) (MTP M 21) (MTP Sep 22 )</b>		

### Authentication of Documents, Proceedings and Contracts [Sec. 21]

A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by–

- (i) any key managerial personnel, or
- (ii) an officer or employee of the company duly authorized by the Board in this behalf.

**Note:** In case of specified IFSC Public company and IFSC Private Company the word 'an officer' may be read as 'An officer' or any other person.

### Execution of bills of Exchange, etc. [Sec. 22]

<p><b>Negotiable Instruments when binding?</b> [Sec. 22(1)]</p>	<p>A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn, or endorsed on behalf of a company if such Instrument is made, accepted, drawn, or endorsed on behalf of the company by any person acting under its authority; express or implied.</p>
<p><b>Authorisation to execute deeds</b> [Sec. 22(2)]</p>	<p>A company may authorise any person as its attorney to execute deeds on its behalf in any place either in India or outside India. Such authorization may be made by:</p> <ul style="list-style-type: none"> <li>(i) writing under the common seal of the company, if any;</li> <li>(ii) if company does not have a common seal, by:             <ul style="list-style-type: none"> <li>(a) 2 directors; or</li> <li>(b) a director and the Company Secretary, wherever the company has appointed a Company Secretary.</li> </ul> </li> </ul>
<p><b>Binding effects of deeds</b></p>	<p>A deed signed by such an attorney on behalf of the company and under his seal shall be binding on the company.</p>

## Chapter III

# PROSPECTUS AND ALLOTMENT OF SECURITIES

Chapter III of The Companies Act, 2013

Prospectus and Allotment of Securities

(Section 23 to 42)

The Companies (Prospectus and Allotment of Securities) Rules, 2014

Section	Title
23	Public offer and private placement
24	Regulation Of Issue
25	Document containing offer of securities for sale to be deemed prospectus
26	Matters to be stated in prospectus
27	Variation in terms of contract or objects in prospectus
28	Offer of sale of shares by certain members of company
29	Public offer of securities to be in dematerialised form
30	Advertisement in Prospectus
31	Shelf prospectus
32	Red herring prospectus
33	Abridged Prospectus
34	Criminal liability for mis-statements in prospectus
35	Civil liability for mis-statements in prospectus
36	Punishment for fraudulently inducing persons to invest money
37	Action by affected persons
38	Personation
39	Allotment of securities by company
40	Securities to be dealt with in stock exchanges
41	GDR
42	Offer or invitation for subscription of securities on private placement.

Public Offer and Private Placement [Sec.23]		
Type of Issue	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights issue / Bonus Issue	Yes	Yes

Points	Public Issue	Private Placement
<b>Type of Offer and Invitee</b>	It is a <b>General Offer</b> to <b>everyone</b> to subscribe for the securities of the company.	It is a <b>Specific Offer</b> to <b>Selected Investors</b> to subscribe for the securities of the company.
<b>Type of Company</b>	Only <b>Listed Public Company</b> can make a Public Issue.	<b>All types of companies</b> can issue their securities on Private Placement basis.
<b>Example</b>	1. <b>Initial Public Offer (IPO)</b> or 2. <b>Further Public Offer (FPO)</b> , or 3. <b>Offer For Sale (OFS)</b>	Private Placement (Sec 42) Preferential Issue (Sec 62) Also known as Private Equity.
<b>Offer Letter</b>	Prospectus	Private Placement Offer-cum-Application Letter.

- 1 A public company may issue securities:
  - a. By way of public offer
  - b. By private placement
  - c. By making a Rights issue or Bonus issue
  - d. All of the above**
- 2 A private company may issue securities:
  - a. By way of public offer
  - b. By private placement**
  - c. By offer of sale of securities to public
  - d. All of the above
- 3 An issue of prospectus is required for:
  - a. Initial Public Offer
  - b. Further Public Offer of securities to the public
  - c. An offer for sale of securities to the public by an existing shareholder
  - d. All of the above**
- 4 A Private Company cannot issue securities: (1 Mark) (MTP Sep. 22)
  - 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**

## Power of Securities Exchange Board on India (SEBI) to Regulate Issue and Transfer of Securities, etc in Listed Companies [Sec.24]

Basics related to Prospectus	
<b>Meaning of Prospectus</b> <b>[Sec. 2(70)]</b>	Any document <b>described or issued</b> as a prospectus and includes: <ol style="list-style-type: none"> <li>a <b>red herring prospectus</b> (sec 32); or</li> <li>a <b>shelf prospectus</b> (sec 31); or</li> <li><b>any notice, circular, advertisement or other document inviting offers from the public</b> for the subscription or purchase of any securities of a body corporate.</li> </ol>
<b>Mode of issuing prospectus</b>	<ul style="list-style-type: none"> <li>A prospectus shall be issued in <b>writing</b>.</li> <li>Film or television advertisements do not constitute a prospectus.</li> <li>No audio video</li> </ul>
<b>When is prospectus required</b>	<ol style="list-style-type: none"> <li>When <b>public offer</b> is made (IPO or FPO or OFS).</li> <li>When offer is made to more than 200 persons in a FY, it shall be <b>deemed to be a public offer</b>.</li> </ol> In counting 200 persons, following shall be <b>excluded</b> : <ol style="list-style-type: none"> <li>Qualified Institutional Buyers</li> <li>Employees who are offered securities under a scheme of <b>Employees Stock Option (ESOP)</b> as per section 62(1)(b).</li> </ol>
<b>When issue of prospectus is not required</b>	In following cases, issue of prospectus is not required: <p><b>Mnemonic: RRIP</b></p> <p><b>R</b> → <b>Rights Issue</b>: where the public offering is made to existing members or debenture-holders whether an applicant has a right of renunciation or not [Sec - 26(2)(a)].</p> <p><b>R</b> → <b>Repeat Issue within same terms or FPO</b>: In listed company, where public offering made for issue of shares or debentures which are uniform in all respects with previously issued and for the time being listed on a recognised stock exchange [Sec 26(2)(b)].</p>

	<p><b>I→ Invitation to underwriter:</b> Invitation to a person to enter into a bonafide underwriting arrangement [Sec 33(1)(a)]</p> <p><b>P→ Private Placement:</b> Where shares are issued through private relations and there is no offer or Invitation to public [Sec 33(1)(b)]</p>	
<p><b>Matters to be stated in prospectus</b> [Sec. 26(1)]</p>	<p>(i) The prospectus shall contain such information and reports on financial information <b>as may be specified by SEBI</b> in consultation with CG.</p> <p>(ii) Every prospectus issued by a public company shall make a <b>declaration</b> about the compliance of the provisions of :-</p> <ol style="list-style-type: none"> <li>1. Companies Act 2013,</li> <li>2. Securities Contracts (Regulation) Act, 1956 and</li> <li>3. SEBI Act, 1992 and</li> <li>4. SEBI rules and regulations made thereunder.</li> </ol> <p>(iii) shall be <b>dated and signed</b></p> <p>(iv) Gen Information , Financial Information and terms and conditions of the issue</p> <p>(v) Every prospectus shall contain the following disclosures on the cover page [Sec. 26(6)] :</p> <ol style="list-style-type: none"> <li>(a) A <b>statement that a copy of the prospectus has been filed with the Registrar.</b></li> <li>(b) A list of all <b>such documents</b> as are required to be attached with the prospectus.</li> </ol>	
<p><b>The Board of Directors of Ramesh Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the 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 NOV 2020) (NOV 2019) (RTP May 2022)</b></p>		
<p><b>Process to issue prospectus</b></p>	<p><b>Dating and signing of prospectus</b> [Sec. 26(1)]</p>	<p>(i) Every prospectus issued by or on behalf of a public company shall be dated and signed.</p> <p>(ii) The date indicated in the prospectus shall be deemed to be the date of its publication.</p>
	<p><b>Filing with Registrar</b> [Sec. 26(4)]</p>	<p>A prospectus may be issued by a company only if the following 2 conditions are satisfied:</p> <ol style="list-style-type: none"> <li>(a) <b>A copy of the prospectus has been filed with the Registrar</b>, on or before the date of publication of the prospectus.</li> <li>(b) Such copy of the prospectus <b>is signed by</b> every person who is named in the prospectus as a <b>director or proposed director</b> of the company or by his duly authorised attorney.</li> </ol>
	<p><b>Time Limits</b> [Sec. 26(8)]</p>	<p>A prospectus shall be filed with the Registrar <b>within 90 days</b> after the date on which a copy of the prospectus is delivered to the Registrar.</p>
	<p><b>Expert's Statement</b> [Sec.26(5)]</p>	<p>A <b>statement made by an expert</b> may be included in the prospectus, only if all the following conditions are satisfied:</p> <ol style="list-style-type: none"> <li>(a) The expert is a person who is not, and has not been, engaged or interested in the formation or <b>promotion or management</b> of the company.</li> <li>(b) The expert has given his <b>written consent</b> to the issue of the prospectus.</li> </ol>

		(c) The expert <b>has not withdrawn his consent</b> before the date of filing of a copy of the prospectus with the Registrar. (d) A statement is included in the prospectus that the expert has given his written consent and has not withdrawn such consent.
	<b>Definition of Expert</b> [Sec. 2(38)]	'Expert' includes an <b>engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate</b> in pursuance of any law for the time being in force.
	<b>Punishment</b> [Sec. 26(9)]	If a prospectus is issued in contravention of the provisions of this section;  Company : Minimum fine : Rs. 50,000  Maximum fine : Rs. 3 lakh.  Person-in-default : Minimum fine : RS. 50,000  Maximum fine : Rs 3 lakh

- An unlisted company makes an offer to allot shares **to** certain persons in a financial year. It has not yet received any payment in respect of the shares offered. The offer should be made to maximum number of persons so that it does not constitute a public offer.
  - 50
  - 100
  - 150
  - 200**
- A private company cannot issue securities by the **way** of:
  - Initial Public offer**
  - Rights issue
  - Bonus issue
  - Private placement
- A document would be called as a prospectus if it satisfies the following conditions:
  - It is an invitation for subscription of securities of a company.
  - It is an invitation made to the public.
  - Both (a) and (b)**
  - Either (a) or (b)
- An issue of prospectus is not required in the following case(s):
  - In case of Rights Issue.
  - In case of further public issue by listed company of securities which are uniform in all respects with previously issued.
- Any prospectus issued by a company needs to be:
  - Dated and signed by all the directors of the company.
  - Dated and signed by all the present and proposed directors of the company.**
  - Dated and signed by any two directors of the company.
  - Dated and signed by all the members of the company.
- Any prospectus shall be valid if it is issued within \_\_\_\_\_ days of filing a copy thereof with the Registrar.
  - 60
  - 90**
  - 180
  - None of the above
- Which of the following persons is disqualified from acting as an 'Expert' with reference to issue of prospectus?
  - An Engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant.

- b. Any other person who has the power or authority to issue a certificate in pursuance of any law.
- c. **A person who is engaged in the formation of the Company.**
- d. All of the above
- 8 The statement of an 'expert' can be included in a prospectus provided:
- a. The Expert has given his written consent to the issue of the prospectus.
- b. The Expert has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing.
- c. A statement to that effect is included in the prospectus.
- d. **All of the above**

### Variation in terms of Contract or Objects in Prospectus [Sec. 27]

#### Conditions for variation in terms of contract or object

[Sec. 27(1)]

A company shall vary the terms of contract or object for which the prospectus was issued only if following conditions are satisfied:

- (i) **SR** is passed in GM; and
- (ii) the prescribed details of the notice of GM (indicating clearly the justification for such variation) are **published in 2 newspapers** (one in English language and one in vernacular language) circulating in the city in which the registered office of the company is situated. in **Form PAS-1**.
- (iii) The dissenting shareholders (the shareholders who did not agree to the variation at the time of passing SR) shall be given an exit offer by the promoters or controlling shareholders.

**Lotus valley Ltd. issued a prospectus with the object of setting up of a chain of hotels. However, later it decided to set-up a Pharmaceutical Manufacturing unit. Keeping in view of the provisions of the Companies Act, 2013, state whether Lotus valley Ltd. can do so and if it can be done, also state the procedure to be followed for variation in the objects in the prospectus. (RTP May 2016)**

**Hint** - Thus, Lotus valley Ltd. can change the object mentioned in the prospectus from setting up a chain of hotels to setting up of a pharmaceutical manufacturing unit by following the above mentioned procedure.

- 1 A company can vary the terms of any contract referred to in the prospectus or objects for which the prospectus was issued, provided:
  - a. An approval of variation is given by members by way of Special Resolution.
  - b. The prescribed details of notice are published in newspapers.
  - c. An exit option is provided to the dissenting shareholders.
  - d. **All of the above**
- 2 The advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be issued in:
  - a. **Form PAS-1**
  - b. Form PAS-2
  - c. Form PAS-3
  - d. Form PAS-4



<b>Offer of Sale of Shares by Certain Members of Company [Sec. 28]</b>	
<b>Meaning</b> [Sec.28(1)]	<ul style="list-style-type: none"> <li>• Where certain members of a company</li> <li>• propose whole or part of their holding of shares</li> <li>• to the public,</li> <li>• in consultation with the BOD and through company</li> </ul>
<b>Document for offer for sale deemed to be prospectus</b> [Sec. 28(2)]	<p>(i) Any document by which the offer for sale to the public is made shall be <b>deemed to be a prospectus</b> issued by the company.</p> <p>(ii) <b>All laws and Rules</b> with respect to –</p> <p>(a) the contents of the prospectus; and</p> <p>(b) liability in case of mis-statement in prospectus <b>shall apply as if such document were a prospectus</b> issued by the company.</p>
<b>Members to authorize the company to act on their behalf</b> [Sec. 28(3)]	<p>The members, whose shares are proposed to be offered to the public, shall:</p> <p>(a) collectively authorise the company to take all actions in respect of offer for sale on their behalf; and</p> <p>(b) reimburse the company all expenses incurred by the company.</p>
<b>Exceptions to certain matters</b> [Rule 8(1)]	<p>Sec. 28 is <b>not applicable</b> for the following:</p> <p>(a) the provisions relating to <b>minimum subscription</b>;</p> <p>(b) the provisions for <b>minimum application value</b>;</p> <p>(c) the provisions requiring any <b>statement</b> to be made <b>by the BOD</b> in respect of the <b>utilization of money</b>; and</p> <p>(d) any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.</p>
<b>Company</b>	Shall collect money and remit it to person making OFS after deducting expenses

1. 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 want to offload 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—(MTP MAY 2019)
  - a. Any person who has agreed to fulfil all the formalities related to such offer of sale
  - 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.
  
2. In case of 'offer of sale of shares by certain members of the company', which of the following options is applicable:
  - a. **The provisions relating to minimum subscription are not applicable**
  - b. Entire minimum subscription amount is required to be received within three days of the opening date
  - c. 25% of the minimum subscription amount is required to be received on the opening date and the remaining 75% within three days thereafter
  - d. 50% of the minimum subscription is required to be received by the second day of the opening date and the remaining 50% within next three days after the second day

Public offer of Securities to be in Dematerialised Form [Sec. 29]	
<b>Demat Securities</b>	Notwithstanding anything contained in any other provisions of this Act,— a) every company making <b>public offer</b> [Listed Company]; and b) <b>Unlisted Public Company</b> companies as may be prescribed,  shall issue the securities <b>only in dematerialised</b> form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
<b>Optional for Private Companies</b>	Any company, other than a company mentioned above, may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
<b>Other imp Points</b>	1. Following Unlisted Public Co. are exempted from Demat: a) Nidhi Company. b) Government Company. c) 100% Subsidiary 2. Every unlisted public company making any offer for <b>issue</b> or <b>buyback</b> or <b>bonus shares</b> or <b>rights offer</b> shall ensure that before making such offer, <i>entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised</i> in accordance with provisions of the Depositories Act 1996 and regulations made there under.

1. Neptune Metal Tools Limited was incorporated on 2<sup>nd</sup> December, 2018 with twenty-five subscribers and authorised capital of ₹ 50,00,000 (5,00,000 equity shares of ₹ 10 each). As the directors of the company are in a dilemma whether to issue physical share certificates to the subscribers or keep the shares in dematerialized form, they need to be advised correctly in this respect.
  - a. Being an unlisted company, Neptune may either issue physical share certificates to the subscribers or alternatively, issue them in dematerialized form.
  - b. **Neptune needs to issue shares to the subscribers only in dematerialized form.**
  - c. A company having more than 100 shareholders needs to issue shares in

- d. dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.
- d. A company having authorised capital of ₹ fifty lakhs and above needs to issue shares in dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.
2. Which of the following company or companies shall issue and transfer the securities only in dematerialised form?
  - a. **Any company making a public offer and any unlisted public company.**
  - b. Any company making private placement of securities.
  - c. Both (a) and (b)
  - d. None of the above

## Advertisement of Prospectus (Sec 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 :-

1. the objects,
2. the liability of members and
3. the amount of share capital of the company, and
4. the names of the signatories to the memorandum and
5. the number of shares subscribed for by them, and
6. its capital structure.

## Types of Prospectus

Shelf Prospectus [Sec. 31]	
<b>Definition</b> [Explanation to Sec. 31]	"Shelf Prospectus" means :- <ul style="list-style-type: none"> <li>• a prospectus in respect of which the securities are issued for subscription</li> <li>• in one or more issues over a certain period [1 year]</li> <li>• without the issue of a further prospectus.</li> </ul>
<b>Applicability</b> [Sec. 31(1)]	<b>as SEBI may provide</b> by regulations in this behalf; (E.g: PFIs/ Banks/ NBFCs / Listed Co. Complying Certain criteria)
<b>Filing of shelf prospectus</b> [Sec. 31(1)]	Any class of company to whom shelf prospectus is applicable, may file a shelf prospectus with the Registrar <b>at the stage of the 1st offer of securities</b> specified in the shelf prospectus.
<b>Validity of Shelf Prospectus</b> [Sec. 31(1)]	The shelf prospectus shall remain valid for period <b>not exceeding 1 year from the date of opening of the first offer</b> of securities under the shelf prospectus.
<b>Filing of Information Memorandum</b> [Sec. 31(2) and Rule 10]	<ol style="list-style-type: none"> <li>(i) <b>Prior to the issue of a subsequent offer</b> of securities under the shelf prospectus, the company shall be required to file an information memorandum with the Registrar.</li> <li>(ii) The information memorandum shall be prepared in <b>Form PAS - 2</b> and filed with ROC along with fee, <b>within 1 month prior</b> to issue of subsequent offer.</li> <li>(iii) The information memorandum shall contain material facts relating to:               <ol style="list-style-type: none"> <li>(a) <b>new changes created;</b></li> <li>(b) <b>changes in the financial position</b> of the company as have occurred between the previous offer and the succeeding offer of securities; and</li> <li>(c) <b>such other changes</b> as may be prescribed.</li> </ol> </li> <li>(iv) If a company receives advance payments of subscription before making of such change, company shall intimate the changes to such applicants and if they desire to withdraw their application, the company shall refund all the subscription monies within 15 days.</li> </ol>

<b>Deemed Prospectus w.r.t. Sec. 31</b> [Sec. 31(3)]	<b>Where an information memorandum is filed, every time an offer of securities is made, the information memorandum together with the shelf prospectus shall be deemed to be a prospectus.</b>
<ol style="list-style-type: none"> <li><b>Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the 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 2018)</b></li> <li><b>What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act,2013.(NOV 2018) (NOV 2016)</b></li> </ol>	

- 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 NOV 2019)
  - Deemed Prospectus.
  - Shelf Prospectus.**
  - Red Herring Prospectus.
  - Abridged prospectus.
- 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. (MTP MAY 2020)
- 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;
  - 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;
  - 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;**
  - 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.
- A shelf prospectus filed with the ROC shall remain valid for a period of:
  - one year from the date of registration
  - one year from the date of closing of first issue
  - one year from the date of opening of first issue**
  - Ninety days from the date on which a copy was delivered to ROC
- After filing of shelf prospectus, a company shall file with the Registrar, an Information Memorandum containing all material changes occurring between first issue and subsequent issue, in:
  - Form PAS-1
  - Form PAS-2**
  - Form PAS-3
  - Form PAS-4

Red Herring Prospectus [Sec. 32]	
<b>Definition</b> [Explanation to Sec. 32]	<ul style="list-style-type: none"> <li>• The term 'red herring prospectus' means a prospectus <b>which does not include</b></li> <li>• complete particulars of the</li> <li>• <b>quantum or price</b> of the securities included therein.</li> </ul>
<b>Applicability</b>	Following are facilitated by the concept of red herring prospectus: <ol style="list-style-type: none"> <li>(a) Book building process;</li> <li>(b) Price discovery method;</li> <li>(c) Price band method.</li> </ol>
<b>Procedure for issuing securities under red herring prospectus</b>	<ol style="list-style-type: none"> <li>(a) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. [Sec 32(1)]</li> <li>(b) A company proposing to issue a red herring prospectus shall file it with the Registrar <b>at least 3 days prior</b> to the opening of the offer. [Sec 32(2)]</li> <li>(c) A red bearing prospectus shall carry the same obligations as are applicable to a prospectus. [sec 32(3)]</li> <li>(d) Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus [Sec 32(3)].</li> <li>(e) Upon <b>the closing of the offer of securities</b>, the Final prospectus shall be filed with the Registrar and SEBI [sec 32(4)].            The prospectus shall state:           <ol style="list-style-type: none"> <li>(i) the total capital raised, whether by way of debt or share capital;</li> <li>(ii) the closing price of the securities; and</li> <li>(iii) any other details as were not included in the red herring prospectus.</li> </ol> </li> </ol>

- 1 A 'Red Herring Prospectus' means a prospectus which does not include complete particulars of:
  - a. The number of shares and price of the shares
  - b. The total size of the public issue
  - c. **Either (a) or (b)**
  - d. Both (a) and (b)
- 2 Which of the following statements is/are correct in respect of a red herring prospectus:
  - a. The red herring prospectus shall carry the same obligations as are applicable to a normal prospectus.
  - b. The company shall file the red herring prospectus with the Registrar at least 3 days prior to the opening of the public issue.
  - c. The company shall file a complete prospectus with all required details on closing of the offer made under red herring prospectus.
  - d. **All of the above**
- 3 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 (1 Mark) (MTP Oct. 23)**

### Issue of Application form for Securities [Abridged Prospectus] (sec 33)

<b>Abridged Prospectus</b> <b>[Section 2(1)]</b>	<p>"Abridged Prospectus" means :-</p> <ul style="list-style-type: none"> <li>• a <b>memorandum</b></li> <li>• containing <b>such salient features</b> of a prospectus as may be specified</li> <li>• by the <b>SEBI</b> by making <b>regulations</b> in this behalf.</li> </ul>
<b>Application Form and Abridged Prospectus</b>	<p>No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an <b>Abridged Prospectus</b>.</p> <p>In the following cases abridged prospectus need not be given—</p> <ol style="list-style-type: none"> <li>a) In connection with a bona fide invitation to a person to <b>enter</b> into an underwriting agreement with respect to such securities; or</li> <li>b) In relation to securities which were not offered to the public.</li> </ol>
<b>On request</b>	<p><b>A</b> copy of the detailed prospectus shall be furnished on a request being made by any person before the closing of the subscription list and the offer.</p>
<b>Penalty</b>	<p>If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of Rs 50,000 for <b>EACH</b> default i.e., Rs 50,000 for every Application form that is issued without Abridged Prospectus.</p>

### Deemed Prospectus [Sec. 25]

<b>Meaning</b> <b>[Sec. 25(1)]</b>	<ul style="list-style-type: none"> <li>• Where a company <b>allots or agrees</b> to allot any securities of the company</li> <li>• <b>with a view</b> to all or any of these securities</li> <li>• <b>being offered for sale to public,</b></li> <li>• any document by which such offer is made shall, for all purposes, be <b>deemed to be a prospectus</b> issued by the company.</li> </ul>
<b>Conditions</b>	<p>Unless contrary is proved, it shall be presumed that allotment or agreement to allot the securities as made with a view to the securities being offered for sale to the public if it is shown:</p> <ol style="list-style-type: none"> <li>(a) that the offer for sale to the public was made <b>within 6 months of allotment</b> or agreement to allot; or</li> <li>(b) that the <b>whole consideration had not been received</b> by the company <b>when the offer for sale to the public</b> was made.</li> </ol>

	<pre> graph TD     A[Has the allottee sold shares to Public within 6 months after allotment] -- Yes --&gt; B[Has the allottee paid full consideration to company before offer for sale to Public]     A -- No --&gt; C[Deemed prospectus]     B -- Yes --&gt; D[Not a Deemed prospectus]     B -- No --&gt; C     </pre>
<p><b>Signing of deemed prospectus</b> [Sec.25(4) ]</p>	<p>The document by which the offer is made, must be signed:</p> <ul style="list-style-type: none"> <li>(i) In case of company : <b>by 2 directors</b> of the company;</li> <li>(ii) In case of firm: by <b>at least one-half of the partners</b> in the firm.</li> </ul>
<p><b>Effects of deemed prospectus</b> [Sec. 25(1)]</p>	<ul style="list-style-type: none"> <li>(a) All enactment and Rules of law shall apply as if the securities had been offered to the public for subscription w.r.t:             <ul style="list-style-type: none"> <li>(i) in contents of prospectus;</li> <li>(ii) liability in respect of mis-statement in prospectus</li> </ul> </li> <li>(b) The persons by whom the offer for sale to the public is made:             <ul style="list-style-type: none"> <li>(i) were named in the prospectus as the directors of the company.</li> <li>(ii) shall be liable for any mis-statement contained in the document by which the offer for sale to the public is made.</li> </ul> </li> <li>(c) The persons accepting the offer for sale were the subscribers for those securities.</li> </ul>

1. A issue house (share broker) has issued an advertisement in two leading newspapers for selling a big number of shares allotted to it by a company under a private placement. In which of the following conditions the advertisement will not be deemed as prospectus:
  - a. Advertisement was given within six months from the date of allotment
  - b. Advertisement was given after six months from the date of allotment and the issue house paid the entire consideration to the company**
  - c. The issue house did not pay entire consideration to the company till the date of allotment
  - d. advertisement was given within three month from the date of allotment

2. ABC Ltd. allotted a big lot of its equity shares to XYZ LLP, a broker house. XYZ LLP issues an advertisement in leading newspapers for selling the shares of ABC Ltd. out of the lot allotted to it by the company. In which of the following case, the advertisement issued by XYZ LLP will not be regarded as a Deemed Prospectus under Section 25 of the Companies Act, 2013.
  - a. The advertisement was issued after 6 months of allotment of shares to XYZ LLP and it has paid the entire consideration for shares to ABC Ltd.**
  - b. The advertisement was issued within 6 months of allotment of shares to XYZ LLP but it has paid the entire consideration for shares to ABC Ltd.
  - c. The advertisement was issued after 6

months of allotment of shares to XYZ LLP but it has not paid the entire consideration for shares to ABC Ltd.

d. All of the above

3. ABC Ltd. allotted a big lot of its equity shares to XYZ LLP, a broker house. XYZ LLP issues a document for selling the shares of ABC Ltd. to general public and the same is deemed to be

prospectus under Section 25 of the Companies Act, 2013. Who shall be the signatories to such a deemed prospectus?

- All the directors of ABC Ltd.
- Any two directors of ABC Ltd.
- Not less than on-half of the partners of XYZ LLP**
- Any two partners of XYZ LLP

### Golden Rules of Framing the Prospectus

- It should show whole picture of the company.
- It must disclose all material facts;
- no facts must be suppressed. (Rex Vs Kysant)
- It should not be misleading /untrue.

### Remedies for mis-statement in Prospectus [Sec. 34-37 and 447]

<b>Right of Applicant</b>	<ol style="list-style-type: none"> <li>A person who has applied for shares in the company, and who has been allotted shares has certain remedies <b>against the company and the persons issuing the prospectus.</b></li> <li>However, right to claim damage from company or directors etc is available only if the person has purchased shares on the strength of a statement of prospectus.</li> <li><b>If a person buys shares from another shareholder or from open market, he cannot claim damages. (Peek vs Gurney)</b></li> </ol>
<b>Remedies to person against company</b>	<ol style="list-style-type: none"> <li>If there is mis-statement in prospectus and the company is in default, <b>the contract shall become voidable at the option of shareholders.</b></li> <li>Shareholders can <b>rescind the contract and can claim damages.</b></li> <li>No criminal liability confers on the company, however law of damages under Indian Contract Act shall apply.</li> </ol>
<b>Remedies to person against Directors , Promoters , expert , KMP</b>	<ol style="list-style-type: none"> <li><b>Criminal liability</b> for mis-statements in Prospectus: See 34)</li> <li><b>Civil Liability</b> for mis-statements in Prospectus. (Sec 35)</li> <li>Punishment for <b>fraudently inducing persons</b> to invest money (Ser 36)</li> <li>Action by affected persons (Sec 37)</li> <li>Punishment for fraud (sec 447)</li> </ol>
<b>Criminal Liability (sec 34)</b>	<p>If a prospectus includes any statement;</p> <ol style="list-style-type: none"> <li>which is misleading; or</li> <li>omission of any matter in the prospectus is misleading;</li> </ol> <p>then, every person who has authorised the issue of such prospectus shall be liable u/s 447.</p>
<b>Protection against criminal liability</b>	<p>However, this section shall not apply to a person:</p> <ol style="list-style-type: none"> <li>If he proves that such statement or omission was immaterial; or</li> <li>He had reasonable grounds to believe and he believed upto the time of issue of the prospectus that the statement was true or the inclusion or omission was necessary.</li> </ol>



<b>Civil Liability</b> <b>[Sec. 35]</b>	Every person liable for mis-statement shall be liable for - (a) payment of compensation to every person who has sustained any loss or damage; (b) punishment for fraudulently inducing any person to invest money u/s 36.	
<b>Exception</b> <b>[Sec. 35(2)]</b>	<b>Withdrawal of consent</b> <b>[Sec.35(2)(a)]</b>	No person shall be liable u/s 35, if he proves that, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent.
	<b>Issued without consent</b> <b>[Sec. 35(2)(b)]</b>	that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he <b>immediately gave a reasonable public notice</b> that it was issued without his knowledge or consent.
	<b>Based on expert report</b> <b>[Sec. 35(2)(c)]</b>	A person who makes any statement on the basis of report of an expert shall not be liable u/s 35, if it is proved that - (a) the statement made by such person was a correct and fair representation of the statement made by the expert; (b) the person had reasonable ground to believe and continued to believe the issue of the prospectus, that the expert was competent to make it; (c) the expert had given his consent; and (d) the expert had not withdrawn his consent before filing of a copy of the prospectus with the Registrar.
<b>Punishment for Fraudulently Inducing Persons to Invest Money</b> <b>[Sec. 36]</b>	If a person, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, so as to induce another person to enter into any agreement: (a) for acquiring, disposing of, subscribing for, or underwriting securities; or (b) the purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or for obtaining credit facilities from any bank or financial institution.  Such person shall be liable for <b>action u/s 447</b> .	
<b>Action by affected Person</b> <b>(sec 37)</b>	Any person or group of persons or association of persons may file a suit or any <b>Class action</b> may be taken u/s 34 or 35 or 36, if such person is affected by any misleading statement of the inclusion or omission of any matter in may the prospectus.	
<b>Other imp Points</b>	<ol style="list-style-type: none"> <li>1. Suppression of material fact, however remote will make the prospectus misleading. (Rex vs. Kylsant)</li> <li>2. Company will not be liable if shares are purchased through secondary market (Stock Exchange) {Peek v. Gurney}</li> <li>3. Remedy is available to original allottee only. {Peek v. Gurney}</li> <li>4. Remedy is available to such allottee to whom personal loss has been caused. {Derry v. Peek}</li> </ol>	

1. What is the extent of liability of an expert, in relation to publication of prospectus, for any mis-statement in the report given by him?(MTP MAY 2017)
2. 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. (RTP Nov 2014) (MTP NOV 2019) (MTP M 21)
3. A company issued a prospectus. All the statements contained therein were literally true. It also stated that the 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 allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide. (RTP May 2015) (RTP MAY 2018)
4. P Ltd. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained a false statement. Mr. X purchased some partly paid shares of the company in good faith from the Stock Exchange. Subsequently, the company was wound up and the name of Mr. X was included in the list of contributories. Decide : (MAY 2016)
  - (i) Whether Mr. X is liable to pay the unpaid amount?
  - (ii) Can Mr. X sue the directors of the company to recover damages?

5. 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 MAY 2018)

6. Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.(RTP MAY 2020)

1. Mr. P applies for shares of a company on the basis of a prospectus which contains misstatement. The shares are allotted to him, who afterwards transfers them to Mr. Q, who suffers heavy loss due to decline in share price. Which of the following statement is/ are-correct?

- a. Mr. P can file a suit for recession of allotment of shares on the grounds of misstatement in prospectus.
- b. Mr. Q can file a suit for recession of allotment of shares on the grounds of misstatement in prospectus.
- c. Both Mr. P and Mr. Q jointly can file a suit

for recession of allotment of shares on the grounds of misstatement in prospectus.

**d. None of the above**

2. A company issued a prospectus. All the statements contained therein were literally true. It also stated that the 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 allottee of shares wants to avoid the shares allotment on the ground that the prospectus was false in material particulars. Which of the following statement is/are correct?

- a. **The nondisclosure of the fact that dividends were paid out of capital profits is a concealment of material fact and therefore there is a misstatement in the prospectus. The allottee can avoid the shares allotment.**
- b. There is no wrong statement made in the prospectus as to payment of dividend by the company and therefore there is no

misrepresentation and the allottee cannot avoid the contract.

- c. Mere silence to facts is not a fraud. Therefore, the allottee cannot avoid the contract.

d. None of the above

3. The prospectus issued by a company contained a misstatement. Under Section 35 of the Companies Act, 2013, the Director of the company can defend himself on the following ground(s):

a. Having consented to become a Director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent.

b. 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.

**c. Either (a) or (b)**

d. None of the above

Punishment for Fraud [Sec. 447]			
Punishment u/s 447 of frauds of at least Rs. 10 lakh or 1% of the turnover of the company, whichever is lower		Fraud involves public interest	Any other case
	Min. Imprisonment	3 years	6 months
	Max. Imprisonment	10 years	
	Min. Fine	Amount involved in the fraud	
	Max. Fine	3 times the amount involved in the fraud	
	Punishment u/s 447 for frauds of lesser amount	(a) imprisonment upto 5 years; or (b) fine upto Rs, 50 lakh; or (c) both.	

### Punishment for Personation for Acquisition, etc. of Securities [Investor is committing the Fraud] (sec 38)

<b>Punishment for Personation</b>	Any person who— a) Makes or abets making of an <b>application in a fictitious name</b> to a company for acquiring, or subscribing for, its securities; or b) Makes or abets making of <b>multiple applications in different combinations of his name or surname</b> for acquiring or subscribing to a company for its securities; or c) Otherwise <b>induces a company to allot</b> , or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.
<b>Disclosure in prospectus</b>	The above provisions shall be <b>prominently reproduced in every prospectus</b> issued by a company and in every form of application for securities.
<b>Disgorgement of gain by the Court and added to IEPF</b>	a) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person. b) The amount received through disgorgement or disposal of securities shall be credited to the <b>Investor Education and Protection Fund (IEPF)</b> .

### Allotment of Securities by a Company [Sec. 39]

<b>Meaning of Allotment</b>	“Allotment” means the appropriation out of previously un-appropriated capital of a company, of a certain number of shares to a person. It is on allotment that the shares come into existence.
<b>Minimum subscription</b> [Sec. 39(1)]	<b>Allotment</b> of any securities shall be made only if following <b>conditions</b> are satisfied: (i) The <b>amount stated in the prospectus</b> as the <b>minimum subscription is subscribed</b> . (ii) The <b>sum payable on application</b> in respect of minimum subscription is <b>received by the company</b> by cheque or other instrument.
<b>Amount of Application money</b> [Sec. 39(2)]	The application money on every security shall not be less than at least: (i) <b>5% of the nominal amount</b> of the security; or (ii) such other percentage or amount, as may <b>be specified by SEBI</b> by making regulations in this behalf.
<b>Consequences if minimum amount is not subscribed</b> [Sec. 39(3) and Rule 11]	(i) If the amount stated in the prospectus as the minimum subscription is not subscribed or the sum payable on such application is <b>not received within 30 days of issue of prospectus</b> , then, such money shall be <b>repaid within a period of 15 days from the closure of the issue</b> .

	(ii) If such money is not repaid within such period, the directors of the company who are officers in default shall jointly and <b>severally be liable to repay</b> that money along with interest at <b>the rate of 15% p.a.</b> (iii) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.
<b>Return of Allotment</b> [Sec.39(4) and Rule 12]	<b>Time Limits</b> [Rule 12(1)] Whenever a company having a share capital makes any allotment of its securities, the company shall file a return of allotment with Registrar in Form <b>PAS-3 within 30 days</b> from allotment, along with the prescribed fees.
	<b>Details of PAS-3</b> [Rule 12(2)] (i) A list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees. (ii) The list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.
<p>1. How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:</p> <p>a. Minimum Amount stated in the Prospectus; and</p> <p>b. Application Money payable on shares. (6 Marks)(MTP M 21)</p> <p>2. Alfa Ltd. after receiving 80% of the minimum subscription as stated in the prospectus, has allotted 100 equity shares in favour of Mr. X. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalization of the allotment, for the purchase of certain assets. Mr. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. Discuss in the light of the provisions of the Companies Act, 2013.(MTP NOV 2017)</p> <p>3. Kite Limited 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 Kite Limited has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Kite Limited received an amount of ` 20,00,000 on share application. Kite Limited, 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.(6 Marks) (MTP Sep. 23)</p>	

1. Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of ` fifty 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. (RTP NOV 2019)

- 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.

### Securities to be dealt with in Stock Exchange [Sec. 40]

<b>Permission of Stock Exchange</b> [Sec. 40(1)]	Every company shall, <b>before making public offer, make an application to one or more recognised stock exchange</b> and obtain permission for the securities to be dealt with in such stock exchange.
<b>Disclosure in Prospectus</b> [Sec. 40(2)]	The prospectus shall state the name or names of the stock exchange in which the securities shall be dealt with.
<b>Maintaining of Separate bank account</b> [Sec. 40(3)]	All monies received on application from the public for subscription to the securities shall be kept in a <b>separate bank account in a scheduled bank</b> and shall be utilised only for: <ol style="list-style-type: none"> <li>(a) when the securities have been permitted to be dealt with in the stock exchange(s) specified in the prospectus; or</li> <li>(b) for the repayment of monies within the time specified by the SEBI , received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.</li> </ol>
<b>Punishment</b> [Sec. 40(5)]	Any default in complying with this section; <p>Company: Minimum fine : Rs. 5 lakh.</p> <p style="text-align: center;">Maximum fine : Rs. 50 lakh</p> <p>Officer-in-default : Minimum fine : Rs. 50,000</p> <p style="text-align: center;">Maximum fine : Rs. 3 lakh.</p>

### Underwriting Commission [Sec. 40(6) & Rule 13]

<b>Meaning of Underwriter and commission</b>	'Underwriting' is a contract entered into between the company and certain parties (called underwriters) whereby the underwriters guarantee to purchase or get investors to purchase the whole or an agreed portion of the securities that are not applied for by the public for subscription. In consideration of this guarantee the
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	company pays a commission to the underwriters as a percentage of the value of the shares offered to the public.	
<b>Authorization</b>	The payment of underwriting commission shall be <b>authorised by the articles of the company.</b>	
<b>Source</b>	The commission may be <b>paid out of proceeds of the issue or out of the profits of company or both.</b>	
<b>Rate of commission</b>	<b>Types of securities issued</b>	<b>Rate of commission</b>
	Shares (whether equity or preference)	Lower of- (i) 5% of issue price of shares; or (ii) rate authorised by the articles
	Debentures	Lower of- (i) 2.5% of issue price of debentures; or (ii) rate authorised by the articles
<b>Disclosure in prospectus</b>	The prospectus of the company shall disclose the following particulars:  (i) The names of the underwriters. (ii) The rate and amount of the commission payable to the underwriters. (iii) The number of securities underwritten by the underwriters, whether absolutely or conditionally.	
<b>Other compliances</b>	(i) <b>No underwriting commission shall be paid on securities which are not offered to the public for subscription.</b>  (ii) <b>A copy of the underwriting agreement shall be delivered to the Registrar at the time of filing of a copy of the prospectus with the Registrar.</b>	
<p>1. 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.(MAY 2018)</p> <p>2. 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 2018) (MTP NOV 2017)</p>		



3. **Modem Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares. Examine the validity of the above decision under the provision of the Companies Act, 2013.(MAY 2019) (MTP MAY 2019)**

**Hint:-**In the instant case, Modern Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares. Hence, the company can only pay a maximum of 4% underwriting commission on shares.

4. **The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ Rs 100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31st July, 2022. Instead, during this interim period, the Company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the Company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company. 5 Marks (Nov 23)**

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| <p>1. When a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar: <i>(MTP NOV 2020)</i></p> <ol style="list-style-type: none"> <li>a. Three days before the delivery of the prospectus for registration</li> <li><b>b. At the time of delivery of the prospectus for registration</b></li> <li>c. Three days after the delivery of the prospectus for registration</li> <li>d. Five days after the delivery of the prospectus for registration</li> </ol> | <p>2. Which of the following statements is not true?</p> <ol style="list-style-type: none"> <li>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.</li> <li>b. underwriting commission should not be more than the rate specified by the Article of Association.</li> <li><b>c. in case of debentures, the rate of underwriting commission shall not</b></li> </ol> |
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- exceed five percent of the issue price of the debentures.**
- d. amount of commission may be paid out of profits of the company.
3. On which offer of securities, commission is permitted to be paid to any underwriter by the company:
- When securities are offered on rights basis
  - When securities are offered in the form of bonus issue
  - When securities are offered on private placement basis
  - When securities are offered to the public for subscription**
4. 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.
  - The application money in respect of minimum subscription has been received by the company.
  - Both (a) or (b)**
  - Either (a) or (b)
5. The minimum amount payable on application on every security in a public issue shall not be less than of the nominal amount of the security.
- 2%
  - 5%**
  - 7%
  - 10%
6. If the minimum subscription amount is not received within from the date of issue of the prospectus, the application amount received by company under Section 39(1) shall have to be refunded.
- 7 days
  - 30 days**
  - 45 days
  - 90 days
7. If the minimum subscription amount is not received within the prescribed period, the application amount received under Section 39(1) shall be returned within from the closure of the issue.
- 7 Days
  - 15 Days**
  - 30 Days
  - 60 Days
8. In case of non-receipt of Minimum subscription, and the delay in making refund of application money received, the interest applicable under Section 39(3) is:
- 15% per annum from the date of closure of the issue.
  - 15% per annum from the date of receipt of application money.
  - 15% per annum from the expiry of 15 days from closure of the issue.**
  - 15% per annum from the expiry of 15 days from date of prospectus.
9. Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in , within after the date of allotment.
- Form PAS-1, 15 Days
  - Form PAS-3, 30 Days**
  - Form PAS-3, 15 Days
  - Form PAS-1, 30 Days
10. The application monies received from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and before making allotment, cannot be utilised for:
- Adjustment against allotment of securities
  - Refund of application money

- c. **Application for the objects listed in the prospectus**
- d. All of the above
11. With regard to the provisions of Companies Act, 2013 which of the following statement is/are not correct?
- The payment of underwriting commission shall be authorised in the Company's Articles of Association.
  - The commission may be paid only out of proceeds of the issue or the profit of the company or both.
  - The rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the issue price or rate authorised in Company's Articles.
  - The rate of commission paid or agreed to**

**be paid shall not exceed, in case of shares, 2.5% of the issue price or rate authorised in Company's Articles.**

12. 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: **(2 Marks) (MTP Sep. 23)**
- 5%
  - 2%**
  - 2.5%
  - 2.25%

### Irregular Allotment

Any allotment of securities is deemed to be irregular if issued in violation of provisions of Sec. 23, 26, 39 or 40.

Reasons for irregular allotment	Consequences
1. Public offer of securities by a company without issuing a prospectus (Contravention of Sec. 23).	(a) No punishment is prescribed u/s 23. (b) The company and every officer of the company who is in default shall be punishable with fine of Rs. 10,000, and where the contravention is continuing one, with a further fine upto Rs. 1,000 for every day during which the contravention continues subject to maximum of Rs. 2 lakh for Company & Rs. 50,000 for officer. [Sec. 450]
2. The prospectus issued by the company is misleading or does not contain the matters required to be included therein (Contravention of Sec. 26).	(a) Company: Minimum fine: Rs. 50,000; Maximum fine: Rs. 3,00,000 (b) Every person who is knowingly a party to the issue of such prospectus: Minimum fine: Rs. 50,000 ; Maximum fine: Rs. 3,00,000
3. The prospectus is issued to the public without first delivering to the Registrar a copy of the prospectus (Contravention of Sec. 26).	
4. In case of a public offer of securities, minimum subscription is not received, but allotment of securities is made by the company (Contravention of Sec. 39).	Company and every officer who is in default shall be liable to a penalty, for each default, of Rs. 1,000 for

5. Application money payable on securities is less than 5% of the nominal value of the security or such other percentage or amount, as may be specified by SEBI (Contravention of Sec. 39).	each day during which such default continues or Rs. 1 lakh, whichever is less.
6. Return of allotment is not filed with the Registrar after making allotment of securities (Contravention of Sec. 39).	
7. Public offer of securities is made by the company without first obtaining the permission for listing of securities from any stock exchange (Contravention of Sec. 40).	(a) Company: Minimum fine: Rs. 5, 00, 000; Maximum fine: Rs. 50, 00, 000. (b) Every officer of the company who is in default: Minimum fine: Rs. 50, 000 ; Maximum fine: Rs. 3,00,000
8. Moneys received on application are not kept in a separate bank account in a scheduled bank (Contravention of Sec. 40).	
<p><b>1. Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.(MAY 2019)</b></p> <p><b>2. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013The 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 NOV 2018)</b></p> <p><b>Hint:-</b> 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.</p>	

### Global Depository Receipt [GDR] (sec 41)

Topic	Detailed Explanations
<b>Global Depository Receipt [Section 2(44)]</b>	"Global Depository Receipt [GDR]" means :- <ul style="list-style-type: none"> <li>any instrument in the form of a depository receipt, by whatever name called,</li> <li>created by a foreign depository outside India and</li> <li>authorised by a company making an issue of such depository receipts.</li> </ul>
<b>Eligibility to issue GDR</b>	A company may issue depository receipts provided it is eligible to do so under provisions of the Foreign Exchange Management Rules and Regulations.
<b>Conditions for issue of GDR</b>	<ol style="list-style-type: none"> <li>The Board of Directors of the company intending to issue depository receipts shall pass a <b>Board Resolution</b> authorising the company to do so.</li> <li>The company shall take prior approval of its shareholders by a <b>Special Resolution</b> to be passed at a general meeting.</li> <li>The depository receipts shall be issued by an <b>overseas depository bank</b> appointed by the company and the underlying shares shall be kept in the custody of a <b>domestic custodian bank</b>.</li> <li>The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the <b>Reserve Bank of India</b> are complied</li> </ol>

	<p>with before and after the issue of depository receipts.</p> <p>5. The company shall appoint a merchant banker or a practising CA/CS/CMA to oversee all the compliances relating to issue of depository receipts and their <b>COMPLIANCE REPORT</b> shall be placed at the Board Meeting to be held immediately after closure of all formalities of the issue of depository receipts.</p>
<b>Manner for Issue of Depository Receipts</b>	<p>1. The depository receipts can be issued by way of public offering or private placement.</p> <p>2. The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.</p>
<b>Voting Rights</b>	<p>1. A holder of GDR may become a member of the company and shall be entitled to vote as such only <b>on conversion of the depository receipts into underlying shares</b> after following the procedure provided in the Scheme and the provisions of this Act.</p> <p>2. Until the conversion of depository receipts, the <b>overseas depository shall be entitled to vote on behalf of the holders of GDR</b> in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.</p>

### Private Placement (Sec. 42)

<b>Definition</b>	<p>"Private Placement" means :-</p> <ul style="list-style-type: none"> <li>• any offer or invitation to subscribe or issue of securities <b>to a select group of persons,</b></li> <li>• who have been <b>identified by the Board</b> (herein referred to as "identified persons") by a company (other than by way of public offer),</li> <li>• through <b>Private Placement Offer-Cum-Application [PAS-4]</b>, which satisfies the conditions specified in this section.</li> </ul>
<b>Maximum number of persons</b>	<p>(i) <b>Maximum 200 in a F.Y.</b> [individual limit for <b>each kind of security</b> (equity share, preference share or debenture.)] <b>excluding:</b></p> <p>(a) <b>Qualified Institutional Buyers;</b> and</p> <p>(b) <b>Employees</b> of the company who have been offered securities under a scheme of <b>employee stock option</b> u/s 62(1)(b).</p> <p>(ii) The provisions with respect to the maximum number of persons to whom private placement can be made (i.e. 200), shall not apply to :</p> <p>(a) non-banking financial companies which are registered with RBI; and</p> <p>(b) housing finance companies which are registered with the National Housing Bank</p> <p>However, such companies shall comply with these provisions, in case RBI or the National Housing Bank have not specified similar regulations.</p>

1. A private placement shall be made only to a select group of persons identified by the Board, whose number shall not exceed **(Nov 23 )**
- a. 30 or such higher number, subject to conditions, as may be prescribed, in a financial year.
  - b. 40 or such higher number, subject to conditions, as may be prescribed, in a financial year.
  - c. **50 or such higher number, subject to conditions, as may be prescribed, in a financial year.**
  - d. 60 or such higher number, subject to conditions, as may be prescribed, in a financial year.

<b>Application by identified persons</b>	(a) Every identified person willing to subscribe to the private placement issue shall apply in the private placement offer-cum-application issued to such person. (b) Such person shall pay to the company the subscription money either by cheque or demand draft or other banking channel, but <b>not by cash.</b>
<b>Resolution</b>	<b>Special Resolution</b>
<b>Procedure</b>	(a) The private placement offer-cum-application shall be – (i) in Form PAS-4; (ii) serially numbered; and (iii) sent, either in writing or in electronic mode. (b) The company shall maintain a complete record of private offers in Form PAS-5. (c) The private placement offer-cum-application shall be sent to every identified person, <b>within 30 days</b> of recording the name of such person. (d) <b>A return of allotment of securities u/s 42 shall be filed with the Registrar within 15 days of allotment</b> in Form PAS-3 and with the fee as prescribed along with a complete list of all the allottees
<b>No fresh offer unless</b>	(a) the allotments have been completed; or (b) such offer or invitation has been withdrawn or abandoned.
<b>Use of monies</b>	A company shall not utilise the monies raised through private placement <b>unless –</b> (a) the securities have been allotted; and (b) the return of allotment is filed with the Registrar.
<b>Time Limit</b>	(a) A company making private placement shall <b>allot the securities within 60 days of receiving the application money</b> for the securities. (b) If the company is not able to allot the securities within the said period of 60 days, it shall, <b>within next 15 days, repay</b> the application money to the applicants. (c) If the company fails to repay the application money within the said period of 15 days, it shall be liable to <b>pay interest @12% per annum from the expiry of 60<sup>th</sup> day.</b>
<b>Utilisation of money</b>	Monies received on application 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.
<b>Restrictions</b>	(a) No public advertisement

	(b) The company shall not utilise any media, marketing or distribution channels or agents to inform the public at large about issue of securities by way of private placement.
<b>Default in filing return of allotment</b>	The company, its promoters and directors shall be liable to a penalty of Rs 1,000 for each default, subject to a maximum of & 25 lakh.
<b>Punishment for contravening the private placement provision</b>	(i) The company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the privates placement or Rs. 2 crore, whichever is lower; and (ii) The company shall refund all monies with interest at 12% p.a. within a period of 30 days of the order imposing the penalty.

**1. Discuss the provisions relating to private placement of shares under the Companies Act, 2013.(NOV 2018)**

**2. 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?**

**(6 Marks) (MTP Oct. 22)**

**3. Ram Limited 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.**

**(ii) 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.**

- (iii) **The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.**
- (iv) **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.(5 Marks) (MTP Sep. 23)**

1. 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. (2 Marks) (MTP NOV 2019)
- 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.
  - 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.**
  - Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to twenty five percent of offering.
  - Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to fifty percent of offering.
2. Which of the following statement is contrary to the provisions of the Companies Act, 2013?
- A private company can make a private placement of its securities.
  - 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.
3. Shripad Religious Publishers Limited has received application money of ` 20,00,000 (2,00,000 equity shares of ` 10 each) on 10<sup>th</sup> October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.
- 9<sup>th</sup> November, 2019
  - 24<sup>h</sup> November, 2019
  - 9<sup>th</sup> December, 2019.**
  - 8<sup>th</sup> January, 2020
4. Innovative Tech Sol Limited intends to invite subscription to ` 1.10 crores equity shares of ` 10 each on private placement basis. The persons identified as potential subscribers are within the statutory limit and also include the two other categories to which such statutory limit is not applicable. One such category is employees of the company who are offered equity shares under Employees' Stock Option Scheme. By choosing the correct option, name the other excluded category.
- Quality Institutional Buyers
  - Qualified Institutional Buyers.**
  - Qualificational Institutional Buyers.
  - Qualified Investing Institutional Buyers.
5. ABC Ltd. issued an offer to 145 identified members for subscribing shares of company by private placement including 10 qualified institutional buyers. In the same financial year, it wants to make another private placement offer for subscribing the debentures of the company. The maximum number of persons it can make the second offer is:
- 55
  - 65
  - 200**
  - 210
6. PQR Ltd. issued private placement offer letters to 200 Identified Persons in March 2020 for subscription to shares of the company, and the allotment is pending for the same. The company wants to make another private placement offer to another set of 200 persons in April, 2020 for allotment of debentures of the company. Decide which of the following answer is correct in the given situation?
- The company can make fresh offer since the limit of 200 applies with respect to each financial year and applied separately for different types of securities.**
  - The company can make fresh offer since the limit of 200 applies with respect to each financial year.
  - The company can make fresh offer since the limit of 200 is applied separately for different types of securities.
  - None of the above
7. A company making private placement shall issue private placement offer and application in:
- Form PAS-3
  - Form PAS-4**
  - Form PAS-5
  - Form PAS-6
8. The company shall maintain a complete record of all private placement offers made by it in:
- Form PAS-3
  - Form PAS-4
  - Form PAS-5**
  - Form PAS-6
9. A company making offer for private placement of securities shall make the allotment within
- 15 days of date of private placement offer
  - 30 days from receipt of application money
  - 45 days from date of private placement

offer

**d. 60 Days from receipt of application money**

10. If the company fails to make the allotment of securities offered through private placement, the application amount received shall be returned within

a. 10 Days from expiry of 60 days of receipt of application money

**b. 15 Days from expiry of 60 days of receipt of application money**

c. 30 Days from date of receipt of application money

d. 60 Days from date of private placement offer

11. If the company fails to repay the application money received in private placement offer, it shall be liable to repay that money with interest @

a. 12% per annum from the date of private placement offer.

b. 15% per annum from the date of receipt of application money.

**c. 12% per annum from the 60th Day of receipt of application money.**

d. 15% per annum from the 60th Day of receipt of application money.

12. Which of the following statement is/are correct with regard to private placement of securities?

a. The private placement offer shall not be made unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations.

b. The private placement offer can be made without the approval of shareholders by special resolution, in case of offer for NCDs if the amount to be raised does not exceed the limits specified in Section 180(1)(c) and such issue is approved by the Board of Directors of the company.

c. The private placement offer shall be made only after the relevant Resolution has been filed with the Registrar.

**d. All of the above**

## Chapter IV

# SHARE CAPITAL AND DEBENTURES

Chapter IV of the Companies Act, 2013

Share Capital and Debentures

(Section 43 to 72)

The Companies (Share Capital and Debentures) Rules, 2014

Section	Title
43	Kinds of share capital
44	Nature of shares or debentures
45	Numbering of shares
46	Certificate of shares
47	Voting rights
48	Variation of shareholders' rights
49	Calls on shares of same class to be made on uniform basis
50	Company to accept unpaid share capital, although not called up
51	Payment of dividend in proportion to amount paid-up
52	Application of premiums received on issue of shares
53	Prohibition on issue of shares at discount
54	Issue of sweat equity shares
55	Issue and redemption of preference shares
56	Transfer and transmission of securities
57	Punishment for personation of shareholder
58	Refusal of registration and appeal against refusal
59	Rectification of register of members
60	Publication of authorised, subscribed and paid-up capital
61	Power of limited company to alter its share capital
62	Further issue of share capital
63	Issue of bonus shares
64	Notice to be given to Registrar for alteration of share capital
65	Unlimited company to provide for reserve share capital on conversion into limited company
66	Reduction of share capital
67	Restrictions on purchase by company or giving of loans by it for purchase of its shares

68	Power of company to purchase its own securities
69	Transfer of certain sums to capital redemption reserve account
70	Prohibition for buy-back in certain circumstances
71	Debentures
72	Power to nominate

CA WALLAH

**Part A : Share Capital**

**INTRODUCTION**

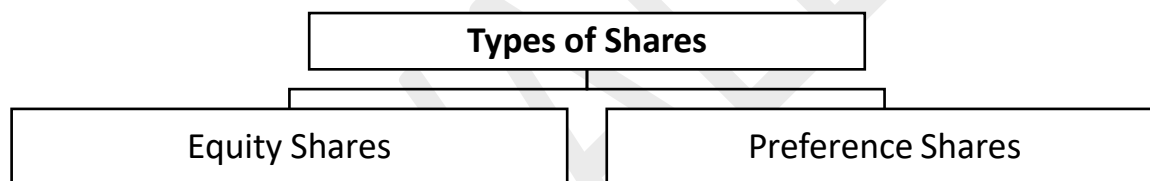
- Share means a share in the share capital of a company and includes stock.
- The shares or debentures are movable property (sec 44)
- Every share in a company having a share capital shall be distinguished by its **DISTINCTIVE NUMBER.(sec 45) (only physical shares)**

**KINDS OF SHARE CAPITAL (Sec. 43)**

Share capital shall be of 2 kinds, namely:

- (a) Equity share capital with
  - a. Voting rights (**Normal equity shares**); or
  - b. Differential rights as to dividend, voting
- (b) Preference share capital.

**TYPES OF SHARES**



Basis	Equity Shares	Preference Shares
1. Meaning / Definition	The shares other than preference shares are called equity shares	The shares which carry a preferential right as to payment of dividend and repayment of capital are called as preference shares
<b>Note - MOA-AOA of a Private Company may specify that the Preference shareholders shall not have any preference either for payment of Dividend or Repayment in winding up.(MCQ)</b>		
2. Issue	Authorised in AOA → Pass B.R.	<ul style="list-style-type: none"> <li>• SR</li> <li>• No Subsisting default in redemption of Earlier PS.</li> <li>• Max Redemption Period                             <ul style="list-style-type: none"> <li>• 20 Years</li> <li>• 30 Years for infrastructure cos. (Redeem 10% p.a. from 21" year onwards)</li> </ul> </li> </ul>

3. Types	<ul style="list-style-type: none"> <li>a) Equity Shares (Normal)</li> <li>b) Equity shares with differential rights</li> </ul>	<ul style="list-style-type: none"> <li>(a) Cumulative Pref. Shares.</li> <li>(b) Non-cumulative Pref. shares</li> <li>(c) Participating Pref. Shares</li> <li>(d) Non-participating Pref. shares</li> <li>(e) Redeemable Pref. shares</li> <li>(f) Irredeemable Pref. shares</li> <li>(g) Convertible Pref. shares</li> <li>(h) Non-convertible Pref. shares</li> </ul>
4. Rights	<ul style="list-style-type: none"> <li>• Have right to vote in every general meeting</li> <li>• Equity shareholders are entitled to bonus and right shares</li> </ul>	<ul style="list-style-type: none"> <li>• Votes on matters only related to them</li> <li>• Fixed Dividend</li> <li>• No rights on reserves of company</li> <li>• No right of <b>Interim Dividend or Bonus Shares or Right Shares.</b></li> </ul>

1. The Articles of Association of a private limited company state that the company may issue preference shares which will have preference of dividend only but no preference as to the repayment of capital, in the case of winding up. Is it possible for the company to issue such preference shares?
  - a. No; as per section 43 preference shares should have both preferences.
  - b. No; this will become equity share as per section 43.
  - c. Yes; because as per section 43 preference shares should have any one preference.
  - d. Yes; because Articles of Association of the company allow issue of such preference shares and the issuing company is a private limited company.**
  
2. 'Rajesh Infrastructure Limited wants to issue preference shares for a period exceeding 20 years for financing its proposed infrastructure project. On the basis of which statement, company can do so?
  - a. Yes; company can issue irredeemable preference shares by passing special resolution
  - b. Yes; company can issue preference shares for a period of more than 20 years with the prior approval of Central Government
  - c. Yes; company can issue irredeemable preference shares for infrastructure project
  - d. Yes; company can issue preference shares for infrastructure project for a period up to 30 years.**
  
3. Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30<sup>th</sup> September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights?
  - a. Upon expiry of five years from the date on which the default was made good
  - b. Upon expiry of three years from the end of the financial Year in which the default was made good
  - c. Upon expiry of five years from the end of the financial Year in which the default was made good**
  - d. Upon expiry of seven years from the end of the financial Year in which the default was made good
  
4. A company can issue preference shares provided the issue is authorised by:
  - a. A Special Resolution passed in the general meeting of the company.**
  - b. An Ordinary Resolution passed in the general meeting of the company.
  - c. A resolution of the Board passed in the

- meeting of Board of Directors of the company.
- d. A Special Resolution passed by way of postal ballot.
5. CTI Ltd. is a multi-product manufacturing company located in Haridwar. It wants to issue redeemable preference shares. What can be the maximum period within which the preference shares shall have to be redeemed?
- 10 years from the date of issue of preference shares.
  - 20 years from the date of commencement of Companies Act, 2013.
  - 20 years from the date of issue of preference shares.**
  - 20 years from the date of redemption of any previous outstanding preference shares.
6. NRB Ltd. is a company which is engaged in the business of making Roads, National and State highways. It wants to issue preference shares to finance its infrastructure projects. What can be the maximum period within which the preference shares shall have to be redeemed?
- 20 years from date of issue of preference shares.
  - 30 years from date of issue of preference shares with the prior approval of Tribunal.
  - 30 years from date of issue of preference shares with the prior approval of Central Government.
  - 30 years from date of issue of preference shares, subject to the redemption of a minimum 10% of such preference shares per year from the 21st year onwards or earlier.**

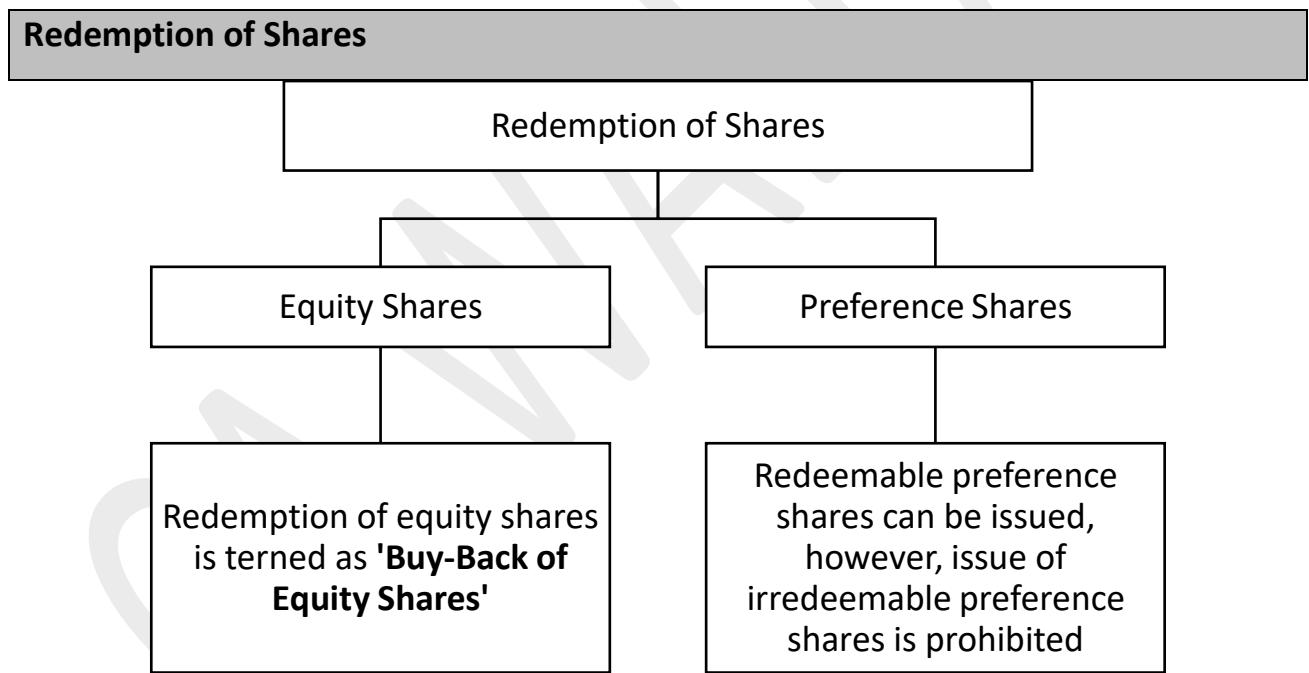
<b>Equity Shares with Differential Rights: (Rule 4)</b>	
<b>Meaning :</b>	Rights of equity shares in respect of dividend, voting power or other as per Rule.
<b>Authorisation:</b>	<p>(a) The issue of shares with differential rights must be <b>authorised by the articles</b></p> <p>(b) Must be authorised by <b>passing 'OR' in general meeting</b>. However, where equity shares of a company are <b>listed on a recognized stock exchange, the issue of such shares shall be approved by shareholders through postal ballot</b></p>
<b>Restrictions</b>	<p>(i) The voting power w.r.t such shares <b>shall not exceed 74% of the total voting power</b> including voting power in respect of equity shares with differential rights issued at any point of time.</p> <p>(ii) The company has <b>not defaulted in filing financial statements and annual returns for 3 immediately preceding financial years</b>.</p> <p>(iii) The company has <b>no subsisting default</b> w.r.t.           <ol style="list-style-type: none"> <li>Payment of declared <b>dividend</b>; or</li> <li>Repayment of matured <b>deposits or interest</b> on deposits; or</li> <li>Redemption of <b>debentures or interest</b> on it; or</li> <li>Redemption of <b>preference shares</b>.</li> </ol> </p> <p>(iv) The company has not defaulted in –           <ol style="list-style-type: none"> <li>Payment of <b>dividend on preference shares</b>; or</li> <li>Repayment of <b>term loan</b> from Public Financial Institution or State Level Financial Institution or Scheduled Bank; or</li> <li>Dues w.r.t <b>statutory payment relating to its employees</b>; or</li> <li>Crediting the amount in IEPF to C.G.</li> </ol> </p>

	<p><b>However, a company may issue shares with differential rights upon expiry of 5 years from the end of F.Y. in which such default was made good.</b></p> <p>(v) The company has not been penalized by Court or Tribunal during <b>last 3 years</b> of any offence under –</p> <ol style="list-style-type: none"> <li>Reserve Bank of India Act, 1934; or</li> <li>Securities and Exchange Board of India Act, 1992; or</li> <li>Securities Contracts (Regulation) Act, 1956; or</li> <li>Foreign Exchange Management Act, 1999; or</li> <li>Other special Act, under which such company is being regulated by sectoral regulators</li> </ol>
<b>Other important Points</b>	<p><b>(a) No conversion :</b> The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.</p> <p><b>(b) Disclosure in Board's report:</b> The BOD shall disclose in its Board's Report for the F.Y. in which the issue of equity shares with differential rights was completed and the prescribed details thereof.</p> <p><b>(c) Disclosure in Explanatory Statement:</b> The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot as per section 110 shall contain the prescribed particulars.</p> <p><b>(d) Disclosure in Register of Members (RCM):</b> The ROM maintained u/s 88 shall contain all the relevant particulars of the shares with differential rights issued along with the details of the shareholders.</p> <p><b>(e) Nature of rights :</b> The holders of such shares shall enjoy all other rights such as bonus share, right shares etc.</p>
<p><b>Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.(MAY 2018)</b></p>	

- 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: *(RTP MAY 2019)*
  - The articles of association of the company shall authorize issue of shares with differential rights;
  - The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
  - The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;**
  - The company shall have consistent track record of distributable profits for the last three years;
- The Authorised 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 authorisation to issue differential equity shares. Apart from authorisation by the Articles, from the following strike out the condition, which is not mandatory to comply with— *(MTP MAY 2019)*
  - Such issue of shares must be authorised by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be
  - 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.
  - 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
3. Part of the capital for which application have been received from the public and shares allotted to them: *(MTP NOV 2019)*
- a. Nominal capital
  - b. Issued capital
  - c. **Subscribed capital**
  - d. Called up capital
4. Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30th September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights?
- a. Upon expiry of five years from the date on which the default was made good
  - b. Upon expiry of three years from the end of the financial Year in which the default was made good
  - c. **Upon expiry of five years from the end of the financial Year in which the default was made good**
  - d. Upon expiry of seven years from the end of the financial Year in which the default was made good



<b>Buy-Back of Securities</b>			
<b>Sec. 67</b>	<b>Sec. 68</b>	<b>Sec. 69</b>	<b>Sec. 70</b>
Purchase by a company of its own shares	Buy-back of Equity shares	Transfer to Capital Redemption Reserve Account	Prohibition of buy-back in certain circumstances

### Prohibition of Purchase of own shares (Sec. 67)

- (i) **No**, company shall **buy** its own shares **UNLESS** the consequent reduction of share capital is effected under the provisions of this Act. **(Sec 68 on Buy-Back).**
- (ii) **No public company** can **give financial assistance** to purchase
  - (a) **Its** shares or
  - (b) **Of its holding company**

#### Exceptions :

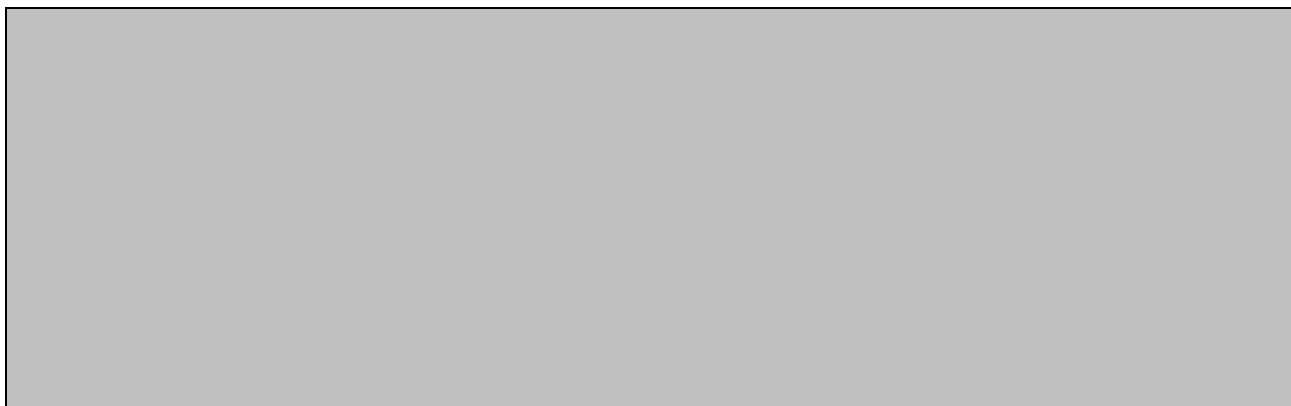
- (i) Lending of money by a **Banking Company** in the **ordinary course of business.**
- (ii) Purchase of **fully paid up shares** in company or its holding company by **trustees** for **employee benefit by way of passing Special Resolution.**
- (iii) Giving of loans by company to its **employees** (other than directors / KMP) for an amount **not exceeding their 6 months** of salary / wages.

Note - Sec. 67 is **not applicable to a private company** satisfying **the following conditions:**

- (a) **No other body corporate has invested** any money in such company.
- (b) The **borrowing** of such private company from banks or financial institutions or anybody corporate is **less than twice its paid up share capital or 50 crore**; whichever is less.
- (c) Such company is **not in default** in repayment of such borrowings subsisting at the time of making transaction under Sec. 67.

1. **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 2018) (MTP MAY 2017) (5 Marks) (MTP M 21)

2. **K Limited**, a subsidiary of **Old Limited**, decides to give a loan of ` 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ` 30,000 per month, to buy 500 partly paid-up equity Shares of ` 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. (RTP MAY 2020) (MTP Sep. 23) (MTP NOV 2018) (MTP NOV 2020)



Buy-back of equity shares (Sec. 68)	
<b>Reasons for buy-back:</b>	1. To Prevent Hostile takeovers. 2. To concentrate promoter's shareholding. 3. To boost EPS & MP of Shares.
<b>Buy-back from whom?</b>	The buy-back may be – <ul style="list-style-type: none"> <li>i) From the existing shareholders on proportionate basis;</li> <li>ii) From the open market;</li> <li>iii) By purchasing the shares issued to employees under the scheme of stock option or sweat equity.</li> </ul>
<b>Sources of buy-back:</b>	A company may buy-back its own shares or other specified securities out of : <ul style="list-style-type: none"> <li>a) Free Reserves ; or</li> <li>b) Securities Premium Account ; or</li> <li>c) Proceeds of fresh issue of shares or other specified securities (<b>but not of same kind of shares issued earlier</b>)</li> </ul> <p>Note - Where a company purchases its own shares out of free reserves or securities premium account, <b>a sum equal to the NOMINAL VALUE of the shares so purchased shall be transferred to the Capital Redemption Reserve and it can be used to issue bonus shares (sec 69)</b></p>
<b>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.(MAY 2019)</b>	
<b>Authorisation for 'Buy-Back':</b>	Authorisation in the articles is required <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; text-align: center;">                         ↓                          If buy-back is upto 10% of paid up equity capital and free reserves                          ↓                          Pass B.R                     </div> <div style="border: 1px solid black; padding: 5px; text-align: center;">                         ↓                          If more than 10%                          ↓                          Pass S.R                     </div> </div>

<b>Limits / Restrictions / Conditions for Buy-back</b>	<b>Maximum Amount</b> that can be spent on BB	= <b>25%</b> of [PUESC + FR + SP]
	<b>Maximum Number</b> of ES that can be bought back	= <b>25%</b> of <b>Total No. of ES</b>
	Maximum <b>Debt/Equity</b> Ratio after BB	= <b>2</b>
<p>A. <b>Fully paid shares</b> : All securities for buy-back must be fully paid up.</p> <p>B. <b>Compliances</b> Listed companies – Shall comply with the regulations made by SEBI . Unlisted companies – Shall comply with the rules prescribed by C.G.</p> <p>C. <b>Letter of Offer:</b> After passing of S.R and before buy-back of shares; the company shall file a <b>letter of offer</b> in <b>Form No. SH. 8</b> with the ROC</p>		

1. 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? **(2 Marks) (MTP Sep. 23)**

- ` 2,00,000
- ` 5,00,000**
- ` 6,25,000
- ` 8,00,000

<b>Time limits – Buy-back</b>	<p>A. <b>Period for which offer shall remain open:</b> 15 days and maximum 30 days from the date of dispatch of letter of offer. <b>However, after passing of absolute resolution, offer may remain open for less than 15 days.</b></p> <p>B. <b>Completion of buy-back</b> <b>within 1 year</b> of passing the resolution for buy-back.</p> <p>C. <b>Prohibition on further buy-back and issue</b></p> <ol style="list-style-type: none"> <li><b>Gap between 2 buybacks atleast 1 year</b></li> <li>The company shall not make further issue of same kind of shares <b>within next 6 months</b> except by way of <ol style="list-style-type: none"> <li>Bonus shares; or</li> <li>Issue of shares to discharge the existing obligations such as conversion of preference shares or debentures or warrants</li> </ol> </li> </ol> <p>D. <b>Declaration of Solvency</b></p> <ul style="list-style-type: none"> <li>The company shall file with ROC a declaration of solvency stating that it will not be rendered insolvent within next 1 year. In <b>Form No. SH.9</b></li> </ul> <p>E. <b>Extinction of shares</b> : The company shall extinguish and physically destroy the shares bought back <b>within 7 days</b> of completion of buy-back.</p> <ol style="list-style-type: none"> <li>.</li> </ol> <p>F. <b>Security bought back register</b> :</p>
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	<p>(i) The company shall maintain a register of shares bought back in Form No. SH.10 at the registered office of the company under the custody of C.S or other person authorised by the Board.</p> <p>(ii) The entries must be authenticated by Company Secretary or any other person as per Board's authorization.</p> <p><b>G. Return of buy-back</b></p> <p>(i) After completion of buy-back, the company shall, <b>within 30 days, file a return in Form No. SH- 11</b> along with the fee.</p> <p>(ii) The return shall be filed with:</p> <ul style="list-style-type: none"> <li>○ In listed companies – ROC and SEBI</li> <li>○ In unlisted companies – ROC</li> </ul>
<p><b>1. ADJ Limited decides to buy-back its own shares. Advise the company's Board of Directors about the sources out of which the company can buy-back its own shares. What conditions are attached to the buy-back scheme of the company in accordance with the provisions of the Companies Act, 2013? Explain. (RTP May 2016)</b></p> <p><b>2. Xgen Limited has a paid-up equity capital and free reserves to the extent of ` 50,00,000. The company is planning to buy-back shares to the extent of ` 4,50,000. The company approaches you for advice with regard to the following</b></p> <ol style="list-style-type: none"> <li>a. Is special resolution required to be passed?</li> <li>b. What is the time limit for completion of buy-back?</li> <li>c. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?(MAY 2018)</li> </ol> <p><b>3. XYZ Company Ltd, at general meeting of members of the company pass an ordinary resolution to buy-back 30% of its equity share capital. The Articles of the company empower the company for buy-back of equity shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of companies own shares be executed. Examine:</b></p> <ol style="list-style-type: none"> <li>(i) Whether company's proposal is in order?</li> <li>(ii) Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its equity share capital? (NOV 2016) (NOV 2019)</li> </ol>	

4. "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. (5 Marks) (MTP Oct. 23)

Hint –

### Prohibition of Buy-back (Sec. 70)

Prohibition for buy-back whether directly/indirectly if-

- (i) Default made by the company in the repayment of deposits or its interest; redemption of debentures or preference shares; payment of dividend; repayment of term loan or its interest from bank or financial institution.  
However, buy-back is not prohibited after 3 years of period when such default was made good.
- (ii) Not complied with the provision of
  - (a) Sec. 92- Annual Return
  - (b) Sec. 123 – Dividend
  - (c) Sec. 127- payment of dividend
  - (d) Sec. 129- Financial statement
- (iii) Even the company cannot buy-back its own shares through any subsidiary including its own subsidiary ; or through any group of investment companies

1. A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again buy back another 10% equity shares in September 2020. Whether the company can resort to second buy-back?
  - a. It can do so subject to the fulfilment of other conditions because maximum buy-back in a financial year is up to 25%
  - b. It cannot do so because there must be a time gap of 12 months between two buy-backs**
  - c. It can buy back shares within one year but the company need to pass an ordinary resolution by its board of directors
  - d. It can buy back shares within one year but the company will have to pass a special resolution
2. XYZ Ltd. wants to provide financial assistance to the CFO of the company to purchase the shares of ABC Ltd., which is the holding company of XYZ Ltd. Which of the following conditions are required to be complied with by XYZ Ltd.?
  - a. The loan can be given only for an amount not exceeding the salary for a period of 6 months.
  - b. The shares to be purchased must be fully paid-up.
  - c. The shares must be held by employee by way of beneficial ownership.
  - d. None of the above. The company cannot provide financial assistance to any KMP.**
3. A company may purchase its own shares or other specified securities ('buy-back') out of:
  - a. Free reserves
  - b. Securities premium account
  - c. Proceeds of new issue of any shares or other specified securities
  - d. Either of above**
4. The paid-up equity capital of a company is 50 Lakh. The amount standing to the credit of General Reserve Account is 10 Lakh. The company also has a term loan outstanding of 1 Crore to State Financial Board. The company wants to do a buy-back of its equity shares to the maximum permissible limit. What is the amount allowed and whose authorisation would be required?
  - a. 6 Lakh if authorised by a resolution passed in the meeting of Board of Directors.
  - b. 15 Lakh authorised by a Special Resolution passed at a general meeting of the company.
  - c. 10 Lakh authorised by a Special Resolution passed at a general meeting of the company.**
  - d. 12 Lakh authorised by a Special Resolution passed at a general meeting of the company.
5. A company bought back 10% of its equity shares in February, 2020 with the approval of a Resolution passed by its Board. By the end of June, 2020 it wants to make another buy-back of 10% of equity shares. Which of the following statement is correct in this regard?
  - a. The company can go ahead with buy-back since the maximum permissible limit is 25% of equity capital in 1 year.
  - b. The company can go ahead provided it passes a Special Resolution at a general meeting.
  - c. The company can go ahead provided it passes a Special Resolution at a general meeting and obtains confirmation of the Tribunal by making an application to it.
  - d. The company cannot make another offer of buy-back within a period 1 year reckoned from the date of the closure of the preceding offer of buy-back.**
6. Where a company completes a buy-back of its shares, it shall not make a further issue of the same kind of shares including allotment of new shares by way of Rights Issue under Section 62(1)(a) within a period:
  - a. 6 months**
  - b. 9 months
  - c. 1 year
  - d. 18 months
7. The instrument of transfer of securities shall be

executed in Form No.:

- a. SH-2
  - b. SH-4**
  - c. SH-10
  - d. SH-15
8. Every company shall, unless prohibited by any provision of law or any order of court, Tribunal or other authority, deliver the certificates of all securities transferred or transmitted:
- a. Within a period of 1 month from the date of receipt of Instrument of transfer or**

**Intimation of transmission.**

- b. Within a period of 2 months from the date of receipt of Instrument of transfer or Intimation of transmission.
- c. Within a period of 3 months from the date of receipt of Instrument of transfer or Intimation of transmission.
- d. Within a period of 6 months from the date of receipt of Instrument of transfer or Intimation of transmission.

### Redemption of Preference shares – Section 55

**a) Sources of Redemption:**

1. Out of the **Free Reserves** or
2. Out of the **Fresh Issue Proceeds** of shares made for the purposes of such redemption.

**b) Fully paid up :** Preference shares to be redeemed have to be **fully paid up.**

c) **Transfer to CRR:-** Where such shares are proposed to be redeemed out of the Free Reserves, a sum equal to the nominal amount of the Preference shares to be redeemed shall be transferred to Capital Redemption Reserve.

d) The notice of redemption of preference shares is to be given to ROC – within 30 days of redemption in Form No. SH-7

**Note - The** Premium on Redemption of Preference Shares shall be provided for out of the free reserves of the company or out of the company's securities premium account, before such shares are redeemed.



### Renewal of Preference shares – Section 55 (3)

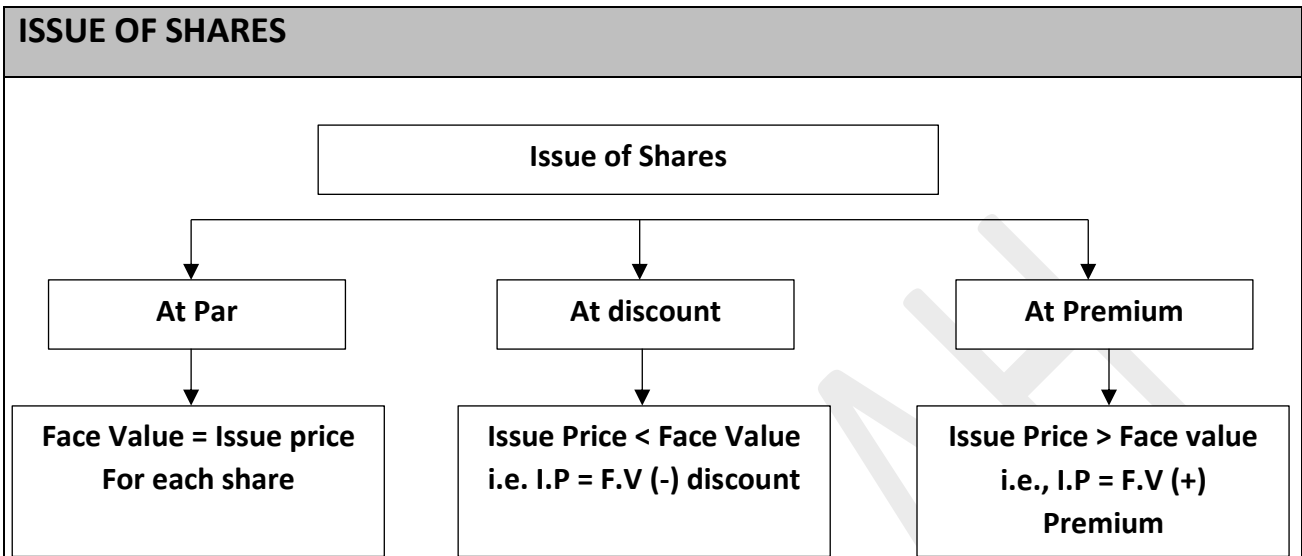
Where a company is unable to redeem or pay dividend on preference shares (Further redeemable preference shares) Section 55(3)

- (i) Where a company is not in position to redeem any preference shares or pay dividend due on such shares due to terms of issue; the company may issue 'further redeemable preference shares' equal to amount due, including dividend thereon. Such shares that cannot be redeemed are referred as 'Unredeemed preference shares'.
- (ii) Conditions for further issue of redeemable preference shares:
  - (a) Consent of the holders of 3-4<sup>th</sup> in value of such preference shares; and
  - (b) Approval of the Tribunal on petition made on this behalf
  - (c) The Tribunal while giving approval shall also order the redemption of preference shares held by such persons who have not consented to issue further redeemable preference shares.
- (iii) On the issue of such shares, the unredeemed preference shares shall be deemed to have been redeemed.
- (iv) The issue of further redeemable preference shares or reduction of preference shares shall not be deemed to be an increase or reduction, in shares capital of the company.

1. Which of the following statement is correct regarding redemption of preference shares?
  - a. **Preference shares may be redeemed out of profits of the company which would otherwise be available for dividend.**
  - b. Preference shares may be redeemed out of the proceeds of an earlier issue of shares.
  - c. Preference shares may be redeemed whether they are partly-paid or fully paid.
  - d. All of the above
2. The premium payable on redemption of preference shares may be provided out of:
  - a. The profits of the company
  - b. Securities Premium Account
  - c. **Both (a) and (b)**
  - d. None of the above
3. A company shall file the notice of redemption of Preference Shares with the Registrar in Form No. within a period of of such redemption.
  - a. SH-5, 30 days
  - b. SH-7, 15 days
  - c. SH-5, 15 days
  - d. **SH-7, 30 days**
4. 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, it may issue further redeemable preference shares equal to the amount due, including the dividend thereon:
  - a. With the approval by Special Resolution passed in a meeting of such preference shareholders.
  - b. With the approval by Special Resolution passed in a general meeting of equity shareholders.
  - c. **With the consent of the holders of 75% in value of such preference shares and approval of Tribunal.**
  - d. With the consent of the holders of 75% in value of such preference shares and approval of Central Government.
5. Where preference shares are proposed to be redeemed out of the profits of the company, a sum equal to the nominal amount of the shares to be redeemed shall be transferred out of such profits, to a reserve, to be called as 'Capital Redemption Reserve Account'. This Capital Redemption Reserve Account may be applied by the Company:
  - a. **In paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.**
  - b. In writing off the expenses of, or the commission paid or discount allowed on,

- any issue of shares or debentures of the company.
- c. For the purchase of its own shares or other

- securities under Section 68.
- d. All of the above



Issue of shares at discount – (Sec. 53)	
<b>Prohibition</b>	a) A company shall <b>not</b> issue shares at discount. b) Any share issued by a company at a discount shall <b>be void</b> .
<b>Exceptions</b>	a) Issue of <b>sweat equity shares</b> under section 54. b) Issue of shares at a discount to its <b>creditors when debt is converted into shares</b> in accordance with any statutory resolution plan or debt restructuring scheme as per the guidelines or direction or regulations specified by RBI under the Reserve Bank of India Act, 1934 or the Banking (Regulations) Act, 1949.
<b>Consequences of contravention of section 53</b>	Liability of company and every officer in default: a) Refund of all monies received with interest @ 12% p.a. from the date of issue of shares. b) Fine : amount raised through the issue of shares at a discount; or Rs 5,00,000/- whichever is less.

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ` 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ` 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ` 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course. Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares? (Nov 2020) (5 Marks) (MTP Oct. 22)

**Hint** - In terms of the above provisions, issue of shares by ABC Limited at a discount of ` 1 per share is not

valid.

**Issue of shares at Premium : (Sec. 52)**

<b>Meaning</b>	Issue of shares at amount <b>more than face value</b> .
<b>Authorization</b>	No authorization required in the article to issue shares at premium.
<b>Resolution required</b>	<b>Board Resolution</b>
<b>Other special points</b>	<ul style="list-style-type: none"> <li>(i) No restriction on amount of premium</li> <li>(ii) Amount of premium should be transferred to ‘<b>Securities premium account</b>’.</li> <li>(iii) The ‘Securities Premium Account’ can be used only for: Mnemonic : <b>CP k disc mein jake buy karo BP</b> <ul style="list-style-type: none"> <li>(a) Writing off <b>commission paid</b>, expenses,</li> <li>(b) Providing for <b>premium payable on redemption of any preference shares or debentures</b> of the company.</li> <li>(c) Writing of <b>discount allowed</b> on any issue of shares or debentures.</li> <li>(d) For <b>buy-back of shares</b> u/s 68</li> <li>(e) Issue of <b>Bonus shares</b> to members of company</li> <li>(f) Writing off <b>Preliminary expense</b></li> </ul> </li> </ul>

- 1 Walnut Limited has an authorized share capital of 1,00,000 equity shares of ` 100 per share and an amount of ` 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 2019)
- 2 State the purposes for which the securities premium account can be utilized? (5 Marks) (MTP Sep. 23)

**Note** - In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed u/s 133, the securities premium account can be used for:

- (i) Issuing bonus shares
- (ii) Writing off commission paid, expense, or discount allowed on, issue of equity shares.
- (iii) For buy-back of shares u/s 68.

**Issue of sweat equity shares – (Sec.54) Read with Rule 8**

<b>Meaning / definition of sweat equity shares [Sec. 2 (88)]</b>	<p>Sweat equity shares means</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Such <b>equity shares</b> issued by a company</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">To its <b>directors or employees at discount or for consideration other than cash</b></p> <p style="text-align: center;">↓</p>
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	For providing know-how	Making available rights in nature of intellectual right	Value addition	
<b>Authorization</b>	Authorization is AOA is required			
<b>Resolution required</b>	<p>(i) Issue of sweat equity shares must be authorised by passing <b>Special Resolution</b></p> <p>(ii) The resolution passed must specify the following particulars</p> <ol style="list-style-type: none"> <li>Number of shares</li> <li>Current market price</li> <li>Consideration, if any</li> <li>Class of directors or employees to whom sweat equity shares are to be issued.</li> </ol>			
<b>Other Special Points</b>	<b>Nature of shares</b>	It must <b>belong to class of shares already issued.</b>		
	<b>Compliance of Rules</b>	Listed companies – shall comply with regulations made by <b>SEBI</b> Unlisted companies – shall comply with rules prescribed by <b>C.G.</b>		
	<b>Conditions for issue of sweat equity shares</b>	Sweat equity shares can be issued only to <b>employee or directors.</b> The expression employee means: <ol style="list-style-type: none"> <li>A <b>permanent employee</b> of the company who has been working <b>in India or outside India</b>, or</li> <li>A <b>director</b> of the company, <b>whether whole time director or not</b>; or</li> <li>An employee or a director as defined above of a subsidiary, in India or outside India, or of a holding company of the company.</li> </ol>		
	<b>Meaning of value addition</b>	It means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know how or making available rights in nature of intellectual property rights, by such person to whom sweat equity is being issued.		
	<b>Validity of special resolution:</b>	The special resolution shall remain valid for a period <b>not more than 12 months</b> for allotment from the date of passing of the SR		
	<b>Overall limit on sweat equity shares:</b>	<b>Maximum Issue in a Year</b>	Higher of: <ol style="list-style-type: none"> <li>15% of PAID-UP equity share capital (PUESC) or,</li> <li><b>Rs 5 crores</b> of <b>ISSUE VALUE</b> of Equity Shares.</li> </ol>	

		<b>Maximum Ratio to Other equity capital</b>	25% of <b>PAID-UP equity share capital (PUESC)</b> of the Company at any time.
		<b>Start Up Company</b>	<b>50% of PAID-UP equity share capital (PUESC) upto 10 years</b> from the date of its incorporation.
	<b>Lock in period</b>	The sweat equity shares issued shall be locked in i.e non-transferable for a period of <b>3 years</b> from the date of allotment.	
	<b>Register of sweat equity shares.</b>	(i) The company shall maintain register of sweat equity shares in <b>Form No. SH.3</b> (ii) The entries in the register shall be authenticated by company secretary of company or by person authorised by the board.	

1. Data Limited (listed on Stock Exchange) was incorporated on 1<sup>st</sup> October, 2018 with a paid-up share capital of ` 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.(RTP MAY 2019) (MTP MAY 2019) (MTP MAY 2020)

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

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

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

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

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

- (i) Whether size of issue of sweat equity shares was appropriate?
- (ii) Whether lock-in period was justifiable? 6 Marks (May 23)

1. 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
- Equity Shares
  - Preference Shares
  - Sweat Equity Shares**
  - Redeemable preference shares
2. It has been decided by Vanita Watches Limited to issue sweat equity shares to five of its employees for the 'value additions' made by them in term of economic benefits which proved beneficial to the company. For how many year(s), the employees who have been allotted sweat equity shares cannot transfer them:
- One year from the date of allotment
  - Three years from the date of allotment**
  - Five years from the date of allotment
  - Six months from the date of allotment
3. Sangam Technologies Ltd. is a newly incorporated company registered on 12th March, 2020. The company wants to issue sweat equity shares to its Directors and key employees. What is the minimum period which must have elapsed since date of commencement of business before it can issue such sweat equity shares?
- 1 year
  - 6 months
  - 3 years
  - None of the above. There is no such requirement.**
4. Which of the following statement is/are correct regarding issue of sweat equity shares of a company?
- The shares shall be of a class of shares already issued or a new class.
  - The issue is authorised by an Ordinary Resolution passed by the company.
  - Both (a) and (b)
  - None of the above**
5. A company may issue sweat equity shares to:
- A permanent employee of the company working outside India.
  - A non-executive director of the company.
  - Both (a) and (b)**
  - None of the above
6. A company may issue sweat equity shares in a year up to maximum limit of
- 15% of the existing paid-up equity share capital.
  - 5 Crore.
  - (a) or (b) whichever is higher.**
  - (a) or (b) whichever is lower.
7. The aggregate sweat equity shares in the company shall not exceed \_\_\_\_\_ of the paid-up equity capital of the company at any time.
- 25%**
  - 30%
  - 50%
  - 74%
8. The company shall maintain a register of sweat equity shares in Form No \_\_\_\_\_ and shall forthwith enter therein the particulars of sweat equity shares issued under Section 54.
- SH-2
  - SH-3**
  - SH-4
  - SH-7

### Issue of bonus shares (Sec.63)

<b>Meaning</b>	<p>(i) Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid up shares <b>free of cost</b>.</p> <p>(ii) Bonus shares are issued <b>out of profits available for distribution</b> among the members. Such profits are not distributed in cash but shareholders are allotted further shares in form of bonus shares.</p>
<b>Authorisation</b>	<p>(i) Authorisation in the articles <b>is required</b> to issue the bonus shares.</p> <p>(ii) Bonus shares can be issued only if the Board recommends such an issue. However, in lieu of Rule 14 of the Companies (Share Capital and Debenture) Rules, 2014, <b>a company once announced the Board's decision of bonus issue shall not withdraw</b> the decision subsequently.</p>
<b>Resolution required</b>	<b>Ordinary Resolution</b> in the General Meeting
<b>Other Special Points</b>	<p><b>A. Sources of Issue : Sec. 63(1)</b> A company may issue fully paid-up bonus shares to its members, in any manner, out of –</p> <ul style="list-style-type: none"> <li>(i) Its free reserves</li> <li>(ii) The securities premium account; or</li> <li>(iii) The capital redemption reserve account.</li> </ul> <p><b>However, bonus shares cannot be issued out of reserves created by the revaluation of assets.</b></p> <p><b>B. No capitalization of profits / reserves Sec. 63(2)</b> No company shall capitalise its profits or reserves for the purpose of issuing fully paid- up bonus shares, unless –</p> <ul style="list-style-type: none"> <li>(a) It is authorized by its articles</li> <li>(b) It has on recommendation of the Board, been authorized in the GM of the company.</li> <li>(c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.</li> <li>(d) It has not defaulted in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.</li> <li>(e) The partly paid- up shares, if any outstanding on the date of allotment, are made fully paid-up</li> </ul> <p><b>C. Fully paid shares:</b> Bonus shares must be fully paid.</p> <p><b>D. Issued to existing members:</b> Bonus shares can be issued only to the existing members of the company</p> <p><b>E. Not to be in lieu of dividend Sec. 63(3)</b> The bonus shares shall not be issued in lieu of dividend. <b>Example;</b> XYZ Ltd. declares bonus shares in the ratio of 1:5. It means an existing shareholders of the company, say Mr. 'R', will get 1 bonus share free of cost for every 5 shares held by him.</p>
<p><b>1. Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:</b></p> <ul style="list-style-type: none"> <li>• <b>Authorized Share Capital (25,00,000 equity shares of face value of ` 10/- each) ` 2,50,00,000</b></li> </ul>	



- Issued, subscribed and paid-up capital (10,00,000 equity shares of ₹10/- each, fully paid-up) ₹ 1,00,00,000
- 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. Discuss. (RTP NOV 2020) (RTP MAY 2021) (MTP MAY 2018)

**Hint** - But the company has to ensure that the bonus shares shall not be issued in lieu of dividend. To issue bonus shares, company will need reserves of ₹ 50,00,000 (half of ₹1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Surya Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

**2. ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:**

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

Directors of the company seeks your advice in following cases:

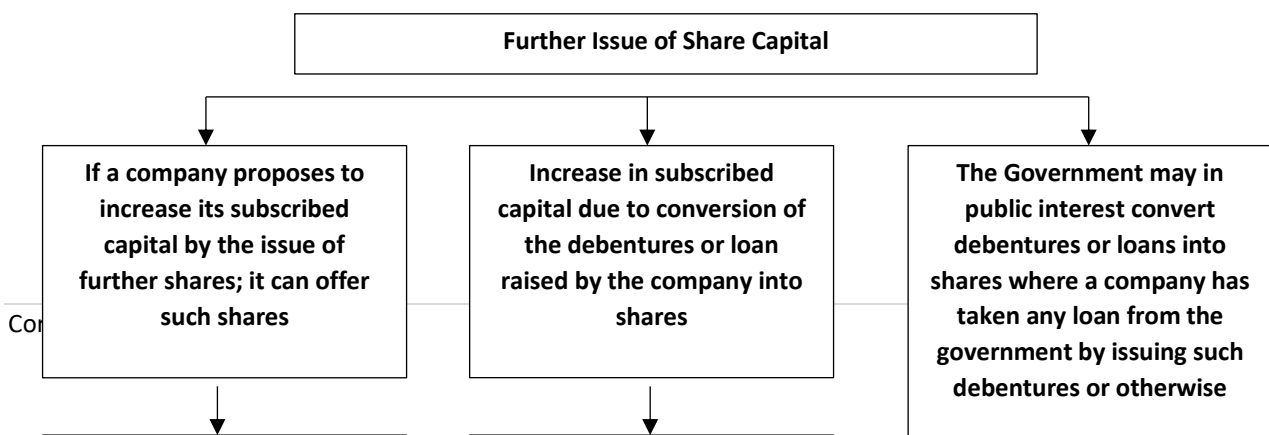
- (i) Whether company can give bonus shares in the ratio of 1:3?
- (ii) What if company decide to give bonus shares in the ratio of 1:2? (NOV 2018)

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, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
- (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., 1/2 x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2

**Further Issue of Share Capital [Sec. 62]**



Issue of right shares or right of pre-emption [Sec. 62 (1)(a)]													
<b>Meaning</b>	The shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion to the paid-up share capital on those shares.												
<b>Authorization</b>	Authorization in AOA is required.												
<b>Resolution required</b>	Board Resolution is required												
<b>Other Special Points</b>	<b>Letter of Offer and its Notice</b>	<ol style="list-style-type: none"> <li>1 The shares shall be offered by sending a 'Letter of Offer' by way of notice, specifying the number of shares offered.</li> <li>2 The notice shall be dispatched to all the existing shareholders, at least 3 days before the opening of the issue through; [Sec. 62(2)]                             <ul style="list-style-type: none"> <li>(i) Registered post ; or</li> <li>(ii) Speed post; or</li> <li>(iii) Through electronic mode; or</li> <li>(iv) Courier; or</li> <li>(v) Any other mode having proof of delivery</li> </ul> </li> </ol>											
	<b>Acceptance, Decline &amp; Renunciation of Offer</b>	<table border="1" style="width: 100%; text-align: center;"> <tr> <td colspan="3">Existing shareholders can</td> </tr> <tr> <td>Accept the offer</td> <td>Decline the offer</td> <td>Renounce the offer</td> </tr> <tr> <td>↓</td> <td>↓</td> <td>↓</td> </tr> <tr> <td>Time to accept at least 7 days to</td> <td>If offer not accepted within</td> <td>Unless articles restrict;</td> </tr> </table>	Existing shareholders can			Accept the offer	Decline the offer	Renounce the offer	↓	↓	↓	Time to accept at least 7 days to	If offer not accepted within
Existing shareholders can													
Accept the offer	Decline the offer	Renounce the offer											
↓	↓	↓											
Time to accept at least 7 days to	If offer not accepted within	Unless articles restrict;											

		<b>maximum 30 days</b> from the date of offer	time deemed to have been declined	<b>shareholders have right of renunciation</b> i.e can transfer in favour of other person (whether such person is existing shareholders or not )
	<b>Disposal of shares, if offer not accepted</b>	The shares which remain unsubscribed by the existing shareholders, may be disposed off by the BOD in manner which is not disadvantageous to the shareholders of the company.		
	<b>Exceptions</b>	<ol style="list-style-type: none"> <li>Private companies in <b>which 90% of the members</b> give their consent in writing or in electronic mode, the periods lesser than 'minimum 7 days' shall apply.</li> <li>Provision of rights issue does not apply:                     <ol style="list-style-type: none"> <li>Where forfeited shares are reissued</li> <li>Where shares are allotted to creditors in settlement of debts, if authorised by articles.</li> </ol> </li> </ol>		
<p><b>1. 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 2018)</b></p> <p><b>Preference Shareholders:</b> 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.</p> <p><b>2. Mr. Shashidhar holding shares in Green Ltd. wants to renounce the right issue offer in favour of Mr. Tuli. However, Mr. Tuli is currently not holding any share in Green Ltd. Analyse the given situation in the light of the provisions of the Companies Act, 2013.(MTP NOV 2017)</b></p> <p>Hint - Therefore, Mr. Shashidhar can renounce the shares offered to him in rights issue in favour of Mr. Tuli unless the articles provide otherwise.</p> <p><b>3. 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 MAY 2018) (NOV 2019)</b></p> <p><b>Hint -</b> 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.</p>				

<b>FUTHER ISSUE OF SHARES TO EMPLOYEES UNDER EMPLOYEE STOCK OPTION [Sec. 62(1)(b)]</b>	
<b>Meaning</b>	As per section 2(37), the term 'employees stock option' means the option <ul style="list-style-type: none"> <li>• given to the <b>directors, officers or employees</b> of a company or</li> <li>• of its holding company or subsidiary companies, if any,</li> <li>• giving them the <b>benefit or right to purchase</b>, or to subscribe for, the <b>shares of the company</b></li> <li>• at a <b>future date</b> at a</li> <li>• <b>pre-determined price</b>.</li> </ul>
<b>Authorisation</b>	Authorization in articles is required.
<b>Resolution Required</b>	1 <b>Special Resolution</b> is required 2 However, in case of <b>private companies</b> , an <b>Ordinary Resolution</b> can be passed.
<b>Other Special Point</b>	<ul style="list-style-type: none"> <li>• Employee meaning (Rule 12(1))- <b>Same like Sweat Equity Shares</b></li> <li>• There shall be a <b>minimum period of 1 year between the grant of options and vesting of option</b>.</li> <li>• The <b>company may specify lock-in-period</b> for such shares.</li> <li>• Till shares are issued on exercise of option, employees shall not have right to receive any dividend or to vote in respect of option granted to them.</li> <li>• The option granted are non-transferable, neither can it be pledged, hypothecated, mortgaged.</li> <li>• In event of death of employee during employment, all options granted shall vest in the legal heirs or nominee.</li> <li>• If employees suffers permanent incapacity during employment, all options granted shall vest in him on the date of permanent incapacitation. However, if employee resigns, all options unvested shall expire on the date of termination.</li> </ul>

<b>Preferential Allotment - [Sec. 62(1)(c)]</b>	
<b>Meaning</b>	The expression 'Preferential Offer' means an issue of shares or other securities, by a company <b>to any select person or group of persons on a preferential basis</b>
<b>Price</b>	<p><b>Case 1: Pricing of Preferential Issue for an unlisted company</b></p> <p>Price Price determined by a Registered Valuer u/s 247.</p> <p><b>Case 2: Pricing of Preferential Issue for Listed company</b></p> <p>In case of Listed companies the price shall be determined by the formula given in SEBI Regulations.</p>
<b>Resolution Required</b>	<b>Special Resolution</b> is required

<b>Other Special Point</b>	<ol style="list-style-type: none"> <li>1 The special resolution shall remain valid for making allotment with in a period of 12 months from the date of passing of the S.R.</li> <li>2 If the allotment is not completed within 12 months; another special resolution shall be passed.</li> </ol>
<p><b>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 NOV 2018)</b></p> <p><b>Hint</b> - 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.</p>	

<b>CONVERSION OF LOANS OF DEBENTURES INTO SHARES</b>	
<b>Voluntary Conversion 62(3)</b>	<p>The provisions of this section shall not apply when the Convertible Debentures/Convertible Loan are converted into Equity Shares if the following 2 conditions are satisfied —</p> <ol style="list-style-type: none"> <li>1. Such Convertible Debentures were issued or Convertible Loan was raised after passing <b>SPECIAL RESOLUTION</b>.</li> <li>2) The <b>terms of issue</b> of such debentures or loan contained such clauses regarding the right of the debenture holders or lender to exercise such conversion to equity shares.</li> </ol>
<b>Compulsory conversion 62(4)</b>	<ul style="list-style-type: none"> <li>• Where any debentures have been issued, or loan has been obtained <b>from Government</b> by a company, and</li> <li>• if <b>Government considers it necessary in the PUBLIC INTEREST so to do</b>,</li> <li>• it may direct that such debentures or loans shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case</li> <li>• <b>even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.</b></li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Note 1: Right to Appeal</b></p> <p>Where the terms and conditions of such conversion <b>are not acceptable to the company</b>, it may, <b>within 60 days from the date of communication</b> of such order, <b>appeal to the Tribunal</b> which shall after hearing the company and the Government pass such order as it deems fit.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Note 2: Factors to be considered by Government while determining the terms of conversion</b></p> <ol style="list-style-type: none"> <li>1. Financial position of the company,</li> </ol> </div>

	<ol style="list-style-type: none"> <li>2. Terms of issue of debentures or loans</li> <li>3. Rate of interest payable on such debentures or loans</li> <li>4. Public Interest and</li> <li>5. Such other matters as it may consider necessary.</li> </ol>
	<p><b>Note 3: Deemed Increase in Authorized Share Capital</b></p> <p>Where the government has directed that any debenture or loan or any part thereof shall be converted into shares in a company, the memorandum of such company shall, where such order has the effect of increasing the authorized share capital of the company, stand altered and the authorized share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.</p>

1. If a company has Authorised Share Capital of ` 6,00,000; Paid-up Share Capital of ` 5,00,000; a loan of ` 2,00,000 obtained from the State Government. The State Government ask the company to convert its loan into shares, then such order shall have the effect of increasing:
  - a. The subscribed share capital of the company
  - b. The paid-up share capital of the company
  - c. The Authorised Share Capital of the company
  - d. All of the above**
2. In terms of Section 62(1)(a), the existing shareholders of a company have a pre-emptive right to subscribe to any further issue of capital made by a company. Within what period can a shareholder accept the rights offer issued by the company?
  - a. Not less than 15 days and not exceeding 30 days from the date of the offer.**
  - b. Not less than 30 days and not exceeding 60 days from the date of the offer.
  - c. Not less than 15 days and not exceeding 60 days from the date of the offer.
  - d. Not less than 30 days and not exceeding 90 days from the date of the offer.
3. For the purpose of issuing shares under Employee Stock Option Scheme under Section 62(1)(b) of the Companies Act, 2013, an employee excludes all of the following, except:
  - a. A promoter employee.
  - b. A director holding, directly or indirectly, more than 10% of the outstanding equity shares of the company.
  - c. An independent director.
  - d. A non-executive director.**
4. The price at which Stock Option shall be granted to the employees and lock-in period, in case of a non-listed company, is decided by:
  - a. The company**
  - b. A registered valuer
  - c. Registrar of companies
  - d. The tribunal
5. A Special Resolution authorising the Preferential Issue under Section 62(1)(c) of the Companies Act, 2013 shall be valid for making the allotment within a period of from the date of passing of the Special Resolution.
  - a. 90 days
  - b. 6 months
  - c. 12 months**
  - d. 24 months
6. The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, by an unlisted company, shall be determined on the basis of:
  - a. Valuation Report by Company's Auditor
  - b. Valuation Report by a Registered Valuer**

- c. Valuation Report by a Chartered Accountant in practice
- d. Either of above
7. The subscribed capital of a company may increase by reason of conversion of debentures or loans into shares in the company as per the option attached as a term to the debentures issued or loan raised. Such terms of issue shall be approved:
- By a Special Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.**
  - By an Ordinary Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.
  - By a Special Resolution passed by the company in general meeting at the time of conversion of such debentures or the loan.
  - By a resolution passed by the Board at the time of conversion of such debentures or

the loan.

8. The authorised share capital of ABC Ltd. is '50 Lakh and the paid-up capital is 45 Lakh. It has issued debentures worth 10 Lakh to Himachal Pradesh State Government as indemnity against a project undertaken by the company. The debentures do not carry any option to convert to equity shares. Due to default by the company in the project, the State Government issues directions for conversion of debentures into equity shares. What will be the effect of such order issued by State Government?
- The subscribed and paid-up capital of the company shall stand increased.
  - The company's Memorandum shall stand altered and the revised authorised share capital of the company shall be 55 Lakh.
  - Both (a) and (b)**
  - None of the above. Since the debentures do not carry any option to convert, the State Government cannot issue directions for conversion.

### POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL (Sec. 61)

<b>Meaning</b>	A limited company having a share capital is empowered to alter its capital clause of the MOA whenever there is change in composition of the share capital.
<b>Ways</b>	<p>(i) increase its authorized share capital by such amount as it thinks expedient;</p> <p>(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares</p> <p>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.</p> <p>(iii) convert all or any of its paid-up shares into stock and reconvert that stock into fully paid shares of any denomination</p> <p>(iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum</p> <p>(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.</p>
<b>Steps</b>	<ul style="list-style-type: none"> <li>Ordinary Resolution is required to be passed in the General Meeting.</li> </ul>

	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL (Sec. 64)</b>	<ul style="list-style-type: none"> <li>A company alter its share capital in any manner specified in section 61;</li> <li>An order made by the Government u/s 62(4); that has the effect of increasing authorised capital of a company.</li> <li>A company redeems any redeemable preference shares</li> </ul> <p>the company shall file a notice with the Registrar in the <b>Form No. SH-7</b> within a <b>period of 30 days</b> of such alteration or increase or redemption, along with an altered memorandum and fee.</p>
<p><b>1 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 NOV 2019)</b></p> <p><b>2 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 Rs 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)</b></p>	

1. A limited company having a share capital may, if so authorised by its Articles, alter its Memorandum in general meeting by , to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

- Special Resolution
- Ordinary Resolution**
- Ordinary Resolution and confirmation by Tribunal
- Special Resolution and confirmation by Tribunal

### REDUCTION OF SHARE CAPITAL [Section 66]

<b>Meaning</b>	<p>A company limited by shares or by guarantee and having a share capital may <b>reduce the share capital</b> to maintain the financial health of the company.</p> <ul style="list-style-type: none"> <li>A company may reduce its share capital and of its shares accordingly, as per the provisions of Section 66.</li> <li><b>Nothing in this section shall apply to buy-back of its own securities by a Company under Section 68. [Section 66(6)]</b></li> </ul>
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<b>Ways capital can be reduced</b>	(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.
<b>Manner and conditions</b>	<ul style="list-style-type: none"> <li>▪ The reduction in share capital shall be made only <b>by passing a Special Resolution.</b></li> <li>▪ The reduction in share capital shall be <b>subject to confirmation by the Tribunal</b> on an application by the company.</li> <li>▪ <b>No such reduction shall be made if the company is in arrears in the repayment of any deposits</b> accepted by it, <b>or the interest payable thereon.</b></li> </ul>
<p><b>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:</b></p> <p><b>(i) 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.</b></p> <p><b>(ii) Conversion of 30 Lakhs partly paid up equity shares of ` 8 each to fully paid up equity shares of ` 8 each there by relieving the shareholders from making further payment of ` 2 per share.</b></p> <p><b>State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013. (MTP MAY 21)(5 Marks)</b></p>	

1. While making an application to the Tribunal for seeking its confirmation in respect of extinguishing the liability of ` 3 per equity share, Medhavi Publishers Limited has to file a certificate along with the application, that the accounting treatment proposed by it for such reduction of share capital is in conformity with the accounting standards specified in the prescribed Section. Advise the company as to who can issue such certificate?

- a. Any of the directors of the company as authorised by the Board may issue such certificate
- b. A practicing company secretary is authorised to issue such certificate
- c. **The auditor of the company is authorised to issue such certificate**
- d. The legal advisor of the company is authorised to issue such certificate

### Transfer & Transmission Of securities [sec 56]

Transfer	Transmission
1. Voluntary <ul style="list-style-type: none"> <li>• Sale of Securities</li> <li>• Gift</li> </ul>	1. Involuntary <ul style="list-style-type: none"> <li>• Death =&gt; Legal Heir</li> <li>• Insolvency =&gt; Liquidator</li> </ul>
2. Usually, there is Consideration except for gift.	2. No Consideration.
3. Instrument of Transfer i.e., Share Transfer form SH-4 is executed.	3. There is no need of SH-4 unless the legal heir or liquidator wants to transfer securities to a buyer.
<b>Requirements for transfer of securities [Sec. 56(1)]</b>	1 The application for transfer of securities must be made in the Form No. <b>SH-4</b> ; this form is called as 'instrument of transfer' or 'transfer deed' or 'transfer form'. 2 However, <b>no transfer deed</b> is required in case where names of both transferor and transferee are entered as holders of beneficial interest in the records of a <b>depository</b> . 3 The deed must be <b>duly stamped, dated and executed</b> by or on behalf of transferor and transferee specifying the name, address and occupation, if any of the transferee. 4 The deed must be <b>delivered to the company</b> by the transferor or the transferee <b>within 60 days</b> from the date of execution.
<b>Instrument is lost / not delivered [Proviso to Sec. 56(1)]</b>	Where the instrument of transfer has been lost or the instrument has not been delivered within prescribed time, then the company may register the transfer on such terms as to indemnity (security against loss) as the Board may think fit.
<b>To whom transfer deed not required</b>	(i) Transfer of bonds issued by Government company. (ii) Transfer of securities held in name of nominee of Government. (iii) Transmission of security by nomination, will, succession, Court order or order of arbitration. Provided, the Government company has not defaulted in filing its financial statements u/s 137 or Annual Return u/s 92 with Registrar. Infact, in case of transmission of shares, there is no need for submission of transfer deed [Sec. 56(2)]
<b>Notice to Transferee in case of Partly paid Securities [Sec. 56(3)]</b>	Application is made by the transferor alone and relates to partly paid shares, the transfer shall be registered only if: <ul style="list-style-type: none"> <li>(i) The company gives the notice of the application to the transferee in Form No. SH-5 and</li> <li>(ii) The transferee gives no objection to the transfer within 2 weeks from the receipt of notice.</li> </ul> <b>Example:</b> Mr. A has received a notice from XYZ Pvt. Ltd. on 7 <sup>th</sup> Aug. 2019 intimating that Mr. B has submitted transfer deed signed by him for transferring 500 partly paid shares (face value Rs. 10 paid up Rs. 6) in his name A as transferee must raise his objection latest by 21 <sup>st</sup> August, 2018.

<b>Delivery of Certificate of Security [Sec. 56(4)]</b>	Every company shall <b>deliver the certificates</b> of all securities allotted, transferred or transmitted unless prohibited by any provision or order of Court, Tribunal or other authority.	
	<b>Particulars</b>	<b>Time Period</b>
	(a) In case of <b>subscribers to the memorandum.</b>	<b>Within 2 months</b> from the date of <b>incorporation</b>
	(b) Any <b>allotment</b> of any of its shares by company	<b>Within 2 months</b> from the date of allotment
	(c) In case of <b>transfer or transmission of securities</b>	<b>Within 1 month</b> from the date or receipt of the transfer deed or intimation of transmission by the company..
(d) In case of any allotment of <b>debentures</b>	<b>Within 6 months</b> from the date of allotment	
<b>Proviso to Section 56(4)</b>	Where the securities are dealt with in a <b>depository</b> , the company shall <b>intimate the particulars to depository</b> immediately on allotment of such securities.	
<b>Cases of Transmission</b>	Company may register the Transmission of shares on receipt of: <ul style="list-style-type: none"> <li>(a) Intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted i.e., <b>Death Certificate/Court Order</b></li> <li>(b) A Securities Transfer Form in <b>Form No.SH-4</b> shall be delivered to the company within 60 days from the date of such execution. [Instrument of Transfer]</li> <li>(c) <b>Share Certificates</b></li> </ul>	

1. 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
2. Ruchi was handed over an instrument of transfer dated 21<sup>st</sup> August, 2020, duly stamped and signed by Radha who had transferred 2000 equity shares of ` 100 each allotted to her by Murti Mechanical Toys Private Limited. Advise Ruchi regarding the 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. 21<sup>st</sup> August, 2020.

b. 20<sup>th</sup> September, 2020

c. **20<sup>th</sup> October, 2020.**

d. 19<sup>th</sup> November, 2020.

<b>FORGED TRANSFER</b>	
<b>Meaning</b>	Any instrument on which signature of the transferor is forged, is called a forged instrument of transfer and the transfer made on the basis of forged instrument of transfer is termed 'forged transfer'. Forged transfer is possible only in case of physical holding of shares.
<b>Effect of forged transfer and rights of parties</b>	<ol style="list-style-type: none"> <li>1 A forged transfer is void ab initio i.e nullity, i.e. without any legal effect. It confers no title on the transferee of shares. [Rubben v. Great Fingall Consolidated Company–1906]</li> <li>2 The original owner continues to be the member (Barton vs N. Staffordshire 1988.)</li> <li>3 Where the company has registered the transferee as a member on the basis of a forged transfer, following shall be the consequences:               <ol style="list-style-type: none"> <li>(i) The original owner can compel the company to restore his name on the ROM. (Sheffield Corpn vs Barclay)</li> <li>(ii) The company shall cancel the share certificate issued to the transferee and remove the name of transferee from the ROM.</li> <li>(iii) Where the transferee has already transferred the shares to an innocent purchaser:                   <ol style="list-style-type: none"> <li>(a) The company shall refuse to register new purchaser as a member. However the new purchaser shall have the right to claim damages from the company.</li> <li>(b) The company shall have right to recover damages from the person who had deposited the forged transfer deed.</li> </ol> </li> </ol> </li> </ol>
<ol style="list-style-type: none"> <li>1. Mr. Ashok, the transferee, acquired 250 equity shares of KPMC Limited from Mr. Deepak, the transferor. But the signature of Mr. Deepak, the transferor, on the transfer deed was forged. Mr. Ashok after getting the shares registered by the company in his name, sold 150 equity shares to Mr. Sanjay on the basis of the share certificate issued by KPMC Limited. Mr. Ashok and Mr. Sanjay were not aware of the forgery. State the rights of Mr. Deepak, Ashok and Sanjay against the company with reference to the aforesaid shares. (RTP Nov 2016)</li> <li>2. 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 MAY 2020) (NOV 2016)</li> </ol>	



### PUNISHMENT FOR PERSONATION OF SHAREHOLDER [Sec.57]

<b>Nature of Personation</b>	<p>If any person deceitfully personates as :</p> <p>(a) An owner of any security or interest; or</p> <p>(b) As an owner of any shares warrant or coupon issued in lieu of the Companies Act, 2013 and thereby obtains or attempts to obtain such security or interest or share warrant or receives or attempts to receive money due to such owners.</p>
<b>Punishment</b>	<p>In such case he shall be punishable with:</p> <p>(a) Imprisonment for a term not less than 1 year and upto 3 years and</p> <p>(b) Fine of atleast Rs. 1,00,000 subject to maximum Rs. 5,00,000.</p>

### REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL (Sec. 58)

<b>Provisions for Refusal to Transfer or Transmission</b>	<p>1 Company can refuse to transfer or transmit securities by giving notice in writing to :</p> <p>a. Transferor; and</p> <p>b. Transferee</p> <p>2 Notice shall contain reason for refusal</p>	
	<b>By private company</b>	<p>1 May refuse to transfer securities <b>within 30 days</b> from the date of submission of transfer form.</p> <p>2 It can refuse to transfer as per provisions of its articles</p>
	<b>By public company</b>	<p>1 May refuse to transfer securities <b>within 30 days</b> from the date of submission of transfer form.</p> <p>2 May refuse to transfer for sufficient reason.</p>
<b>Appeal against Refusal to Transfer or Transmit</b>	<b>Private Company</b>	<p>Transferee may appeal to <b>Tribunal within 30 days from the date of refusal</b>. However, where <b>notice</b> of refusal is <b>not received</b>, transferee may appeal within <b>60 days</b> from the date of delivery of transfer instrument to the company.</p>
	<b>Public Company</b>	<p>Transferee may appeal to Tribunal <b>within 60 days</b> from the date of refusal. However, where notice of refusal is not received, transferee may appeal <b>within 90 days</b> from the date of delivery of transfer instrument to the company.</p>
<b>Remedy by Tribunal</b>	<p>1 Tribunal after hearing the parties, either</p> <p>a. Dismiss the appeal; or</p> <p>b. Direct that the transfer shall be registered by the company within 10 days</p>	

	2 The Tribunal may direct company to pay damages to aggrieved party.
<b>Penalty</b>	Person contravening the order of the Tribunal shall be punishable with imprisonment for a term of 1-3 year and fine of Rs. 1 lakh subject to maximum Rs. 5 lakh.
<b>Examples of valid refusal</b>	<ol style="list-style-type: none"> <li>1 Improper transfer deed</li> <li>2 If there is stay order granted by the Court</li> <li>3 Transfer is in violation of SEBI Takeover Code or other law</li> <li>4 If shares are subject to lock in and there is endorsement on certificate</li> <li>5 Transfer of shares in case of private company is not as per AOA.</li> </ol>
<p><b>1. 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? (RTP MAY 2018) (MTP MAY 2019) (MTP NOV 2019) (MAY 2018)</b></p> <p><b>2. A company refuses to register transfer of shares made by Mr. Leo to Mr. Element. The company does not even send a notice of refusal to Mr. Leo or Mr. Element respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.(MTP NOV 2017)</b></p>	

1. Keshika is the original owner of 1000 equity shares of ₹ 50 each being allotted by Modern Biscuits Private Limited. As she wanted these shares to be transferred to her younger sister Vanshika as a gift, she completed the transfer deed in all respects and delivered the same to the company along with share certificates on 17<sup>th</sup> July, 2020. However, the company did not register the transfer even after the expiry of more than one month nor did it send any notice of refusal. The lone reminder to the company remained unanswered. An appeal needs to be filed against the company with the National Company Law Tribunal (NCLT). Advise by choosing the correct option as to who has the right to file the appeal.
- a. Keshika, who continues to remain owner

and transferor of equity shares till they are registered in the name of Vanshika, has the right to file an appeal with NCLT against the company.

- b. Vanshika, as transferee and 'would be' owner of equity shares, has the right to file an appeal with NCLT against the company.**
- c. Both Keshika and Vanshika have to file a joint appeal with NCLT against the company, for neither Keshika nor Vanshika are authorised to file the appeal individually.
- d. As per its discretion, NCLT may allow either Keshika or Vanshika to file an appeal against the company

### RECTIFICATION OF REGISTER OF MEMBERS (ROM) [Sec. 59]

<b>Right to appeal for rectification of ROM [Section 59(1)]</b>	<ol style="list-style-type: none"> <li>1 Grounds for appeal: <ol style="list-style-type: none"> <li>(a) The name of any person is entered in ROM; or</li> <li>(b) The name of any person is omitted from the ROM; or</li> </ol> </li> </ol>
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	<p>(c) Default or unnecessary delay is being made in entering in the ROM, the fact of any person having become a member; or fact of any person having ceased to be a member.</p> <p>2 The appeal may be done by</p> <p>(a) The aggrieved person; or</p> <p>(b) Any member of the company; or</p> <p>(c) The company</p> <p>3 Appeal to whom?</p> <p>(a) The appeal shall be filed with the Tribunal in case of foreign members or debenture holders residing outside India. The appeal shall be filed in a competent Court outside India as may be specified by C.G by notification.</p>
<b>Order of Tribunal [Sec. 59(2)]</b>	<p>The tribunal shall hear the parties to the appeal and</p> <p>(a) May dismiss the appeal or</p> <p>(b) By order, direct rectification of the records of the depository or the ROM and</p> <p>(c) Tribunal may direct the company to pay damages, if any, sustained by any party aggrieved.</p>

### SHARE CERTIFICATE [Sec. 46]

<b>Meaning</b>	Share certificate is required when shares are issued in <b>physical form</b> . It is a prima facie evidence that person named is true owner of shares.
<b>Authorisation</b>	<p>1 Passed by way of <b>Board Resolution</b></p> <p>2 It is compulsory for all company having share capital (Public or Private)</p> <p>3 The company may issue certificate on surrender of letter of allotment or bonus shares.</p>
<b>Rules / Restrictions</b>	<p>1 A share certificate must be signed by :</p> <p>(i) Issued under common seal, if any; or</p> <p>(ii) Signed by 2 directors; or</p> <p>(iii) Signed by a director and the company secretary, if any appointed by the company.</p> <p>2 In case of <b>One Person Company</b>, it shall be sufficient if the certificate is signed by <b>a director and the company secretary</b> or any other person authorised by the Board.</p> <p>3 The signature can be printed on the certificate or digitally signed but not affixed by means of rubber stamp.</p> <p>4 The Director or Company Secretary shall be personally responsible for permitting the affixation of his signature and the safe custody of any machine, equipment, or other material used for the purpose.</p>
<b>Other Special Points</b>	<p>1 Every certificate shall be in Form No. SH. 1 and shall specify the name of the person (title) and amount paid up as near as possible and certificate shall be signed in manner as provided above. However, in case the company has common seal it shall be affixed in the presence of persons required to sign certificate.</p>

	2 The particulars of every share certificate issue shall be entered in the ROM maintained u/s 88 along with the name of the person to whom it has been issued, indicating the date of issue.
<b>Shares held in Demat form</b>	Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
<b>Duplicate Share Certificate</b> <b>[Sec. 46(2) &amp; Rule 6 ]</b>	<p>1 A certificate may be renewed or duplicate of a certificate may be issued if such certificate:</p> <p>(i) Is proved to have been lost or destroyed; or</p> <p>(ii) Having been defaced, mutilated or torn is surrendered to the company.</p> <p>2 Time limits for issue of Duplicate Share Certificate;</p> <p>(i) Unlisted company: within 3 months of submission of documents to the company</p> <p>(ii) Listed company : within 45 days of submission of documents to the company.</p> <p>3 Register of renewed or duplicate share certificate:</p> <p>(i) Particulars to be entered in Form No. SH-2</p> <p>(ii) The Register shall be kept at registered office of the company</p> <p>(iii) Entries in register shall be authenticated by company secretary or other person authorised by board.</p> <p>4 Procedure of issue of duplicate share certificate;</p> <p>(i) Board's consent is required and mutilated / torn certificate must be surrendered to the company for cancellation.</p> <p>(ii) Company may charge fee but shall not exceed Rs. 50 per certificate.</p> <p>(iii) In case of lost or stolen certificate, there should be proper evidence of loss as well as indemnity.</p> <p>(iv) Fact about duplicate certificate must be clearly shown on face of the share certificate with word 'duplicate'.</p> <p>(v) Required details must be recorded in the ROM.</p>
<b>Penalty</b>	<p>If a company intends to defraud issue of duplicate certificate</p> <p>Fine to company : Minimum 5 times the face value of shares or upto 10 times to the face value but maximum amount upto Rs. 10 crores.</p> <p>Every officer in default : Liable for action u/s 447</p>

1. Shreem Lakshmi Jewellery Store Private Limited was incorporated on 27<sup>th</sup> August, 2020 with 30 persons as subscribers to the Memorandum of Association and with Authorised share capital of ` 1.00 crore divided into equal number of shares of ` 1 each. Each subscriber subscribed for ` 1.00 lac shares. Advise the company about the company by what date it needs to deliver the share certificates to the subscribers.

- 17<sup>th</sup> September, 2020.
  - 30<sup>th</sup> September, 2020.
  - 27<sup>th</sup> October, 2020.**
  - 27<sup>th</sup> November, 2020.
2. Which of the following is the prima facie evidence of the title of the person in respect of shares in a company?
- The distinctive number of shares.
  - The share certificate number.
  - A certificate issued under common seal**



**and signatures of Directors of company specifying shares held by any person.**

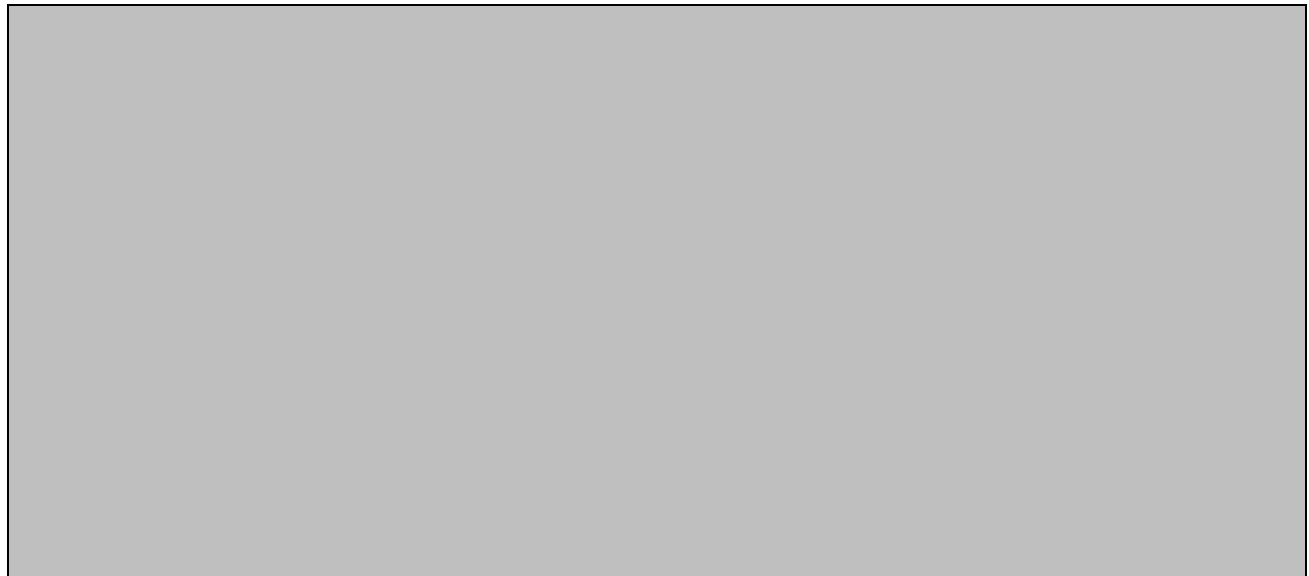
- d. A letter of allotment issued by company.
3. A duplicate certificate of shares of a company in lieu of lost or destroyed shall be issued in Form:
- SH-1
  - SH-2
  - SH-5
  - SH-9
4. A duplicate share certificate shall be issued in lieu of lost or destroyed certificate, provided:
- The applicant furnishes supporting evidence and indemnity and pays the requisite fee fixed by company.
  - The Board authorises issue of duplicate certificate.
  - Both (a) and (b)**
  - Either (a) or (b)
5. The shares of ABC Ltd. are listed on Mumbai Stock Exchange. On 13th January, 2020, Mr. Ram applies to company for issue of duplicate

share certificate and submits the requisite indemnity, fee etc. The company shall be obliged to issue the duplicate share certificate by:

- 27th February, 2020**
  - 12th February, 2020
  - 13th March, 2020
  - 12th April, 2020
6. Mr. Suresh holds 20% of share capital of PQR Private Limited. There was a burglary in his house and along with other valuables his important documents and share certificates were also stolen. After filing a police report, on 8th February, 2020 he applies to the company for issue of duplicate share certificates. By what time the company shall have to issue duplicate share certificates?
- 9th March, 2020
  - 24th March, 2020
  - 8th April, 2020
  - 7th May, 2020**

<b>VOTING RIGHTS [Sec. 47]</b>	
<b>Voting Rights of Equity shareholder [Sec. 47(1)]</b>	<ul style="list-style-type: none"> <li>Show of Hand - <b>1 Member = 1 Vote</b></li> <li><b>Poll - 1 Share = 1 Vote</b></li> <li><b>voting right on a poll</b> shall be in proportion to his share in the paid-up ESC of the company.</li> </ul>
<b>Voting Rights of Preference Share holder [Sec. 47(2)]</b>	<p>Every preference shareholder shall have right to vote</p> <ol style="list-style-type: none"> <li>On matter           <ol style="list-style-type: none"> <li><b>Related to them</b>, that directly affects their rights</li> <li><b>Reduction of share capital</b></li> <li><b>Winding up</b> of the company</li> </ol> </li> <li>In poll his voting right shall be in <b>proportion of shares in total paid up</b> preference share capital of the company</li> </ol>
<b>Note</b>	Where dividend of a class of preference shares has not been paid for a period of 2 years or more, such preference shareholders shall have right to vote on all the resolutions placed before the company.
<b>Nidhi Company</b>	In case of Nidhi companies, <b>members shall have right to vote on poll only upto 5% of total voting rights of equity shareholders.</b>

<b>Variation of Shareholders Rights [Sec. 48]</b>	
<b>Introduction</b>	The rights and obligations of share holders are clearly defined in MOA or AOA. Hence cannot be changed unless provisions are complied with. However, where a share capital of the company is divided into different classes of shares, rights may be varied as per Section 48.
<b>Authorisation</b>	Authorisation in MOA or AOA is required.
<b>Resolution Required</b>	<ol style="list-style-type: none"> <li><b>Special Resolution</b> is required at a separate meeting or consent in writing of the holders of <b>not less than 3/4<sup>th</sup> of the issued shares of that class.</b></li> <li>However, <b>if variation by one class of shareholders affects the rights of any other class of shareholders</b>, the consent of <b>3/4<sup>th</sup> of such other class</b> of shareholders shall also be obtained.</li> </ol>
<b>Dissenting Shareholders [Sec. 48(2)]</b>	Where <b>at least 10% holders</b> of the issued shares of a class did not consent to such variation, they may <b>apply to the Tribunal</b> to have variation cancelled, and if such application is made, variation shall not take effect unless confirmed by Tribunal.
<b>Application to Tribunal [Proviso to Sec. 48(2)]</b>	Application to Tribunal to be made <b>within 21 days</b> after the date on which the consent was given or the resolution was passed.
<b>Decision of Tribunal &amp; filing with ROC</b>	<ol style="list-style-type: none"> <li>In lieu of section 48 (3), the decision of the Tribunal shall bind on the shareholders.</li> <li>Section 48(4) states that the company shall, within 30 days of the date of order of the Tribunal, file a copy with Registrar.</li> </ol>
<p><b>1. Growmore 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 Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.(RTP NOV 2018) (MTP NOV 2017)</b></p> <p><b>2. The share capital of Lego Ltd. is divided as under:</b></p> <p><b>(i) Authorised Share capital: Rs. 10,00,000</b></p> <p><b>(ii) Rate per share: Rs. 100</b></p> <p><b>(iii) Number of equity shares: 8,000</b></p> <p><b>(iv) Number of 10% preference shares: 2,000</b></p> <p><b>Lego Ltd. wants to vary the rights attached to the preference shares. Lego Ltd. has obtained the consent of 1600 preference shareholders. However, 350 preference shareholders have not given consent to such variation.</b></p> <p><b>In the light of the provisions of the Companies Act, 2013, advise does the non- consenting shareholders of Lego Ltd. have any rights for not bringing into effect the variation of their rights. (MTP NOV 2017)</b></p>	



1. In a company if any change of right of one class also affects the right of other class, then: (1 Mark) (MTP M 21)
  - 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
  
2. Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote on:
  - a. Resolutions placed before the company which directly affect the rights attached to his preference shares.
  - b. Any resolution for the winding up of the company.
  - c. Any resolution for the repayment or reduction of its equity or preference share capital.
  - d. **All of the above**
  
3. Where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall:
  - a. **Have a right to vote on all the resolutions placed before the company.**
  - b. Have no right to vote on any of the resolutions *placed* before the company.
  - c. Have a right to vote only on the winding up of the company.
  - d. None of the above
  
4. A company can vary the rights of its shareholders provided consent in writing of the holders of not less than of the issued shares of that class is obtained.
  - a. 51%
  - b. **75%**
  - c. 90%
  - d. 100%
  
5. If variation by one class of shareholders affects the rights of any other class of shareholders, the consent of of such other class of shareholders shall also be obtained.
  - a. 51%
  - b. **75%**
  - c. 90%
  - d. 100%

### Other Imp Concepts Calls on Shares (Sec. 49)

<b>Calls On shares</b> (sec 49)	<ul style="list-style-type: none"> <li>calls shall be made on a <b>uniform basis</b> on all shares falling under that class.</li> <li>Max. call money = 25% of Face Value.</li> <li>Min. gap between 2 calls = 1 month</li> </ul>
<b>Calls On Advance</b> (sec 50)	<ul style="list-style-type: none"> <li>not be entitled to any voting rights</li> <li>Can be paid interest Lower of: <ul style="list-style-type: none"> <li>(1) 12% p.a. [Table F]</li> <li>(2) Rate mentioned in Company's AoA</li> <li>(3) Rate decided by BOD</li> </ul> </li> </ul>
<p><b>1. Sujeev, a shareholder, holding 2000 shares of ₹ 100 per share of Touchwood Pharma Ltd. The company has called and collected ₹ 60 per share. Sujeev has paid ₹ 40 per share (the balance amount not yet demanded by the company) as calls in advance. At the time of annual general meeting of the company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.</b></p> <p><b>Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013. (RTP May 2016)</b></p> <p><b>Hint:-</b>Therefore, according to the above provisions:-</p> <p>(i) Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.</p> <p>(ii) As per the provisions of law, the amount received in advance of calls is not refundable. However, Sujeev is entitled to claim interest on the amount of the call to the extent payable according to the Articles of Association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.</p> <p><b>2. Minda Ltd is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. Mr. Mickey, a shareholder of the Minda Ltd., deposits in advance the remaining amount due on his shares without any calls made by Minda Ltd. Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr Mickey, which will arise on the payment of calls made in advance. (MTP NOV 2017)</b></p> <p>However, section 50 (2) further provides that a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up. Hence, Mr. Mickey will not derive any additional voting rights by virtue of such advance calls paid by him.</p>	
<b>Payment Of dividend</b> (sec 51)	A company may pay dividends in proportion to the amount paid-up on each shares.

1. BSA Ltd. issued partly-paid equity shares of 10/- each, on which 2.50 per share was paid

on application and allotment. The company has adopted Articles as per Schedule I Table 'F'

to Companies Act, 2013. It made another call of 2.50 per share on 1-1-2020 which was duly paid by the due date of 15-1-2020. However, the money received from shareholders fell short of the needs of the company and it is considering to make another full and final call of 5 per share on 25-1-2020 which is required to be paid by 10-2-2020. The CFO of BSA Ltd. points out that the proposed call is invalid. Which of the following reasons make the call invalid?

- a. The company cannot make any call exceeding 25% of the nominal value of share.
  - b. The company cannot make any call which is payable at less than 1 month from the date of last preceding call.
  - c. **Both (a) and (b)**
  - d. None of the above
2. The company making a call on shares shall have to give a notice of at least days to the shareholder to pay the amount called on his shares.
- a. 7
  - b. **14**
  - c. 21
  - d. 30

3. If a sum called in respect of a share is not paid before or on specified date fixed by company, the shareholder shall pay interest thereon from the day appointed till actual payment, at the rate of
  - a. 10% per annum
  - b. The rate as the Board may determine
  - c. **(a) or (b) whichever is lower**
  - d. (a) or (b) whichever is higher
4. If any shareholder pays any sum in excess of the amount called, the company may pay to the shareholder interest on accepted, at the rate of
  - a. 12% per annum
  - b. The rate agreed or provided in the Articles
  - c. (a) or (b) whichever is higher
  - d. **(a) or (b) whichever is lower**
5. If any shareholder pays any sum in excess of the amount called, the shareholder is:
  - a. **Not entitled to any voting rights in respect of the amount in advance, until the amount has been called up.**
  - b. Entitled to obtain a refund of such amount paid in advance.
  - c. Both (a) and (b)
  - d. None of the above

### Publication of Authorized, Subscribed & Paid Up Capital (sec 60)

<b>SUBSCRIBED and PAID-UP capital</b>	Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the AUTHORISED capital of the company, then such document shall also contain the SUBSCRIBED share capital and the PAID-UP share capital, <b>with an equal prominence.</b>
<b>Punishment for contravention</b>	If any default is made in complying with the above, the company shall be liable to pay a penalty of Z 10,000 and every officer of the company who is in default shall be liable to pay a penalty of Z 5,000, for each default.

### Unlimited company to provide for Reserve Share Capital on Conversion into Limited Company [Reserve Capital] (sec 65)

An **UNLIMITED company** having a share capital may, by an **Ordinary Resolution** for registration as a **LIMITED company** under this Act, do either or both of the following things, namely—

<p><b>Case 1 - If the shares were already fully paid-up</b></p>	<p>Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up <b>except</b> in the event and for the purposes of the company being wound up;</p> <p>(Example)</p> <p>Face Value = 10.</p> <p>Paid up = 10.</p> <p><b>Step 1:</b> Increase the Face value to 15 (assume).</p> <p><b>Step 2:</b> Pass Ordinary Resolution and decide to call the balance 5 in Liquidation.</p>
<p><b>Case 2 - If the shares were not fully paid-up (there is uncalled capital)</b></p>	<p>Provided that a specified portion of its uncalled share capital shall not be capable of being called up <b>except</b> in the event and for the purposes of the company being wound up.</p> <p>(Example)</p> <p>Face Value = Z10.</p> <p>Paid up = Z8.</p> <p><b>Only 1 Step:</b> Pass Ordinary Resolution and decide to call the balance Z2 in Liquidation.</p>

### Power to Nominate (sec 72)

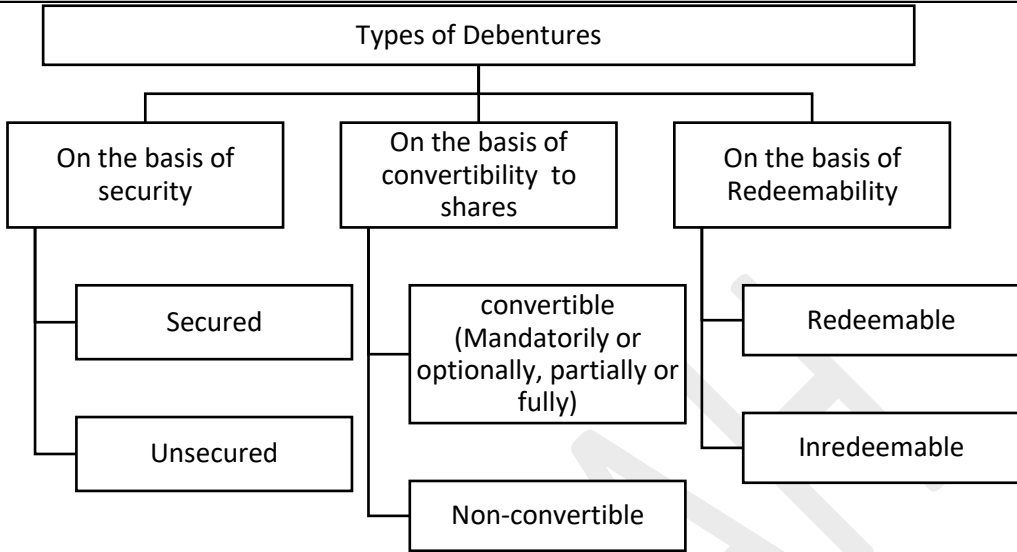
Topic	Detailed Explanation
<p><b>Nomination in Form SH-13</b></p>	<p>Any holder of securities of a company may, at any time, nominate, in Form No. <b>SH.13</b>, any person as his nominee in whom the securities shall vest in the event of his death.</p>
<p><b>Entry in the Register</b></p>	<p>On the receipt of the nomination form, a corresponding entry shall <b>forthwith</b> be made in the relevant register of securities holders, maintained under section 88.</p>
<p><b>Death of Shareholder</b></p>	<p>In the event of death of the holder of securities, the nominee may upon the production of such evidence as may be required by the Board, elect, either-</p> <p>a) To register himself as holder of the securities; or</p> <p>b) To transfer the securities, as the deceased holder could have done.</p>
<p><b>Nominee chooses to be the Security Holder</b></p>	<p>if the nominee elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder.</p>
<p><b>Entitlement of the Nominee to</b></p>	<p>The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and <b>if the notice is not complied with</b></p>

<b>benefits associated with the Security</b>	<b>within 90 days, the Board may thereafter withhold payment of all dividends or interests,</b> bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.
<b>Cancellation or Variation of the Nominee</b>	A nomination may be cancelled or varied by nominating any other person in place of the present nominee, by the holder of securities, by giving a notice of such cancellation or variation, to the company in <b>Form SH-14</b> .  The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.
<b>Minor as a Nominee</b>	Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in <b>Form SH-13</b> , who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

## Part B

### Debentures

<b>Debenture [Section 2(30)]</b>	<p>Debenture" <b>includes</b></p> <ul style="list-style-type: none"> <li>• debenture stock, bonds or any other instrument of a company <b>evidencing a debt,</b></li> <li>• whether or not constituting a <b>charge on the assets</b> of the company.</li> </ul> <p>Provided that following shall not be treated as debenture:</p> <p>(a) The instruments referred to in chapter III- D of the Reserve Bank of India Act, 1934; (Derivatives &amp; money market instruments )</p> <p>(b) Such other instruments, as prescribed by the C.G. in consultation with the RBI, such as that prescribed in Rule 18 of Companies (Share Capital and Debentures) Rule, 2014:</p> <ol style="list-style-type: none"> <li>(i) Amount received through issue of Commercial papers</li> <li>(ii) Foreign currency convertible bonds or foreign currency bonds</li> <li>(iii) Rupee denominated bonds issued exclusively to overseas investors as per RBI guidelines.</li> </ol>
<b>Features of Debentures</b>	<ol style="list-style-type: none"> <li>1. They are movable property transferrable in the manner provided in Articles (Sec. 44)</li> <li>2. Debenture holders are creditors of the company and not members.</li> <li>3. They may be secured or unsecured.</li> <li>4. Debenture certificate must be issued to the allottee <b>within 6 months from the date of allotment</b> and <b>within 1 month from the date of receipt of instrument of transfer.</b></li> <li>5. It is generally pre-fixed with the rate of interest.</li> <li>6. They may be convertible into equity shares as per terms of the issue, or may be redeemable.</li> <li>7. No company shall issue any debentures carrying any <b>voting rights</b></li> </ol>
<b>1. State whether the following statements is correct or incorrect:</b>	

Debentures with voting rights can be issued only, if permitted by the Articles of Association.(MAY 2015)	
Types of Debentures	 <pre> graph TD     A[Types of Debentures] --&gt; B[On the basis of security]     A --&gt; C[On the basis of convertibility to shares]     A --&gt; D[On the basis of Redeemability]     B --&gt; B1[Secured]     B --&gt; B2[Unsecured]     C --&gt; C1["convertible (Mandatorily or optionally, partially or fully)"]     C --&gt; C2[Non-convertible]     D --&gt; D1[Redeemable]     D --&gt; D2[Inredeemable]             </pre>
Conditions for issuing Debentures	<ol style="list-style-type: none"> <li>Date of redemption shall not <b>exceed 10 years</b> from the date of issue. However, following companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years.                             <ul style="list-style-type: none"> <li>Companies engaged in <b>infrastructural projects</b></li> <li><b>Infrastructure Debt Fund</b> Non-Banking Financial Companies,.</li> <li><b>Others</b> permitted by C.G or RBI or National Housing Bank or other Statutory Body.</li> </ul> </li> <li>Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the <b>company or its subsidiaries or its holding company or its associates companies</b>, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.</li> <li>Company shall appoint a <b>DEBENTURE TRUSTEE</b> before the issue of prospectus or letter of offer for subscription of its debentures.</li> <li>Company shall execute a <b>DEBENTURE TRUST DEED</b> in <b>Form SH-12</b> to protect the interest of the debenture holders <b>within 3 months of the closure of the issue</b>.</li> <li>The security for the debentures by way of a charge or mortgage shall be created <b>in favour of the debenture trustee</b> except Government Co</li> </ol>
Eligibility criteria for becoming a Debenture Trustee	<p>A person <b>shall not be appointed</b> as a debenture trustee, if he-</p> <ol style="list-style-type: none"> <li><b>Beneficially holds shares</b> in the company;</li> <li>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;</li> <li>Is <b>beneficially entitled</b> to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;</li> <li>Is <b>indebted</b> to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;</li> <li>Has furnished any <b>guarantee</b> in respect of the principal debts secured by the</li> </ol>



	<p>debentures or interest thereon;</p> <p>6. Has any <b>pecuniary relationship</b> with the company amounting to 2% or more of its gross turnover or total income or 50 lacs or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;</p> <p>7. Is <b>relative</b> of any promoter or any person who is in the employment of the company as a director or key managerial personnel.</p>
<p><b>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':</b></p> <p>(i) A shareholder who has no beneficial interest.</p> <p>(ii) A creditor whom the company owes 499 only.</p> <p>(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company. (Module) (Nov 2016) (MTP Oct. 23) (Nov 23)</p> <p><b>Hint –</b></p> <p>(i) A shareholder who has no beneficial interest can be appointed as a debenture trustee.</p> <p>(ii) A creditor whom company owes Rs 499 can be so appointed. The amount owed is immaterial.</p> <p>(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.</p>	
<b>Appointment of Debentures Trustee</b>	<p>The company shall appoint the debenture trustee</p> <ul style="list-style-type: none"> <li>• before the issue of prospectus or</li> <li>• letter of offer to the public or to</li> <li>• its members exceeding 500 for its subscription of debentures.</li> </ul>
<p><b>What are the provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company?(NOV 2016)</b></p>	
<b>Removal of Debenture Trustee</b>	<p>Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of <b>3/4th in value</b> of the debentures, at their meeting.</p>
<b>Casual Vacancy</b>	<ol style="list-style-type: none"> <li>1. To be filled by the <b>Board</b> but while continuation of vacancy, the remaining trustees, if any, may act.</li> <li>2. Where casual vacancy caused by <b>the resignation</b> of the debenture trustee, the vacancy shall be filled only with the <b>written consent of the majority of the debenture holders.</b></li> </ol>
<b>Role of Debenture Trustee</b>	<p>It shall be the duty of every debenture trustee to-</p> <ol style="list-style-type: none"> <li>a) <b>inform the debenture holders</b> immediately of any breach of the terms of issue of debentures or covenants of the trust deed;</li> <li>b) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances;</li> <li>c) ensure that the debentures have been converted or redeemed in accordance with</li> </ol>

	<p>the <b>terms</b> of the issue of debentures;</p> <p>d) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.</p>	
<b>Meeting of Debenture Holders</b>	<p>The meeting of all the debenture holders shall be convened by the debenture trustee on-</p> <p>a) requisition in writing signed by debenture holders holding <b>at least 1/10th in value</b> of the debentures for the time being outstanding;</p> <p>b) the happening of any event, which constitutes a <b>breach, default</b> or which in the opinion of the debenture trustees affects the interest of the debenture holders.</p>	
<b>No Indemnity to Debenture Trustee if he is Negligent of his Duties</b>	<p>Any provision contained in a trust deed for <b>shall be void</b> in so far as it would have the effect of exempting a trustee thereof from, or <b>indemnifying him</b> against any liability for breach of trust, <b>where he fails to show the degree of care and due diligence required of him as a trustee.</b></p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding <b>3/4th in value</b> of the debentures, at their meeting.</p> </div>	
<b>Application by Debenture Trustee to Tribunal</b>	<p>If the debenture trustee comes to a conclusion that the <b>assets of the company are insufficient to discharge</b> the principal amount as and when it becomes due, the debenture trustee may <b>file a petition before the Tribunal</b> and the <b>Tribunal may impose restrictions on the incurring of any further liabilities by the company</b> in the interests of the debenture-holders.</p>	
<b>Inspection and Copy of Debenture Trust Deed</b>	<ol style="list-style-type: none"> <li>1. A Trust Deed for securing any issue of debentures shall be <b>open for inspection to any Member or Debenture Holder</b> of the company, in the same manner as if it were the Register of Members of the company; and</li> <li>2. A <b>copy of the Trust Deed</b> shall be forwarded to any Member or Debenture Holder of the company, at his request, <b>within 7 days</b> of the making thereof, on payment of fee.</li> </ol>	
<b>Order by Tribunal to redeem debentures or pay interest</b>	<p>Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the <b>Tribunal may</b>, on the application of any or all of the debenture-holders, or debenture trustee <b>direct the company to redeem the debentures forthwith.</b></p>	
<b>Pari Passu Clause in Debentures</b>	<b>Meaning</b>	Pari-passu means 'ranking equally amongst themselves'
	<b>With Pari-Passu clause</b>	In such case, the security amount realised shall be divided pro-rata in the case of insufficient funds, even if debentures with issued at different points of time.
	<b>Without Pari-passu clause</b>	The debentures shall rank as per date of issue of debentures, i.e. a debenture issued first shall have priority over the debentures issued

		afterwards. If they are issued on the same day, they will be payable as per their serial number.			
	<b>Restriction on Power of the Company</b>	Company cannot issue new series of debentures having priority over an earlier series or rank pari passu with earlier series unless such right is expressed earlier.			
<b>Creation of Debenture Redemption reserve (DRR) Account [Sec. 71(4)]</b>	1 When a company issues debentures u/s 71, the company shall create a DRR account out of the profits available for payment of dividend. 2 Such amount created to DRR Account shall not be utilised by the company except for the redemption of debentures. 3 If debentures are partly convertible, DRR created for non-convertible part. Rule 18(7) specifies that company shall comply with requirements of DRR:				
	<b>Adequacy of DRR / Rates of DRR</b>				
	(I) Non- Requirement	(II) Requirement			
↓	↓				
In case of following companies, there is no need to maintain DRR: <ol style="list-style-type: none"> <li>1 All India Financial Institutions regulated by RBI.</li> <li>2 Other Financial Institutions as per Sec. 2(72) of Companies Act, 2013.</li> <li>3 Non-Banking Financial Companies registered with RBI u/s 45-IA of RBI Act.</li> <li>4 Housing Finance companies registered with National Housing Bank.</li> <li>5 Listed Companies</li> </ol>		Unlisted Companies [other than those specified in (I)] <p style="text-align: center;">↓</p> Adequacy of DRR <p style="text-align: center;">↓</p> 10% of the value of the outstanding debentures			
<b>“Board of Directors of PQR Limited wants to create a ‘Debenture Redemption Reserve (DRR)’ for the redemption of debentures issued by the company under the provisions of the Companies Act, 2013. Explain the provisions of the Companies (Share Capital and Debenture) Rules, 2014 in this regard.(MAY 2015)</b>					
<b>Applicability and Quantum of DRR</b>	<b>Type of Company</b>	<b>Mode of Issue of Debentures</b>	<b>DRR Needed?</b>	<b>How much DRR? DRF?</b>	<b>How much DRF?</b>
	All India Financial Institutions (AIFI) and Banking Companies	Public Issue or Private Placement	NC.	N/A,	N/A
	Public Financial Institution (PFI)	Public Issue	Same as for NBFC	Same as for NBFC	N/A

		Private Placement			
	Listed Companies	(A) Public Issue <b>(Listed NBFC/HFC)</b>	NO.	N/A.	15% (*)
	Listed Companies	(A) Public Issue <b>(other Listed Co.)</b>	NO.	N/A.	15% (*)
	Listed Companies	(B) Private Placement <b>(Listed NBFC/HFC)</b>	NO.	N/A.	N/A (#)
	Listed Companies	(B) Private Placement <b>(other Listed Co.)</b>	NO,	N/A.	N/A (#)
	Unlisted Companies [Private Placement]	(A) Unlisted NBFC/HFC	NO.	N/A.	N/A.
	Unlisted Companies [Private Placement]	(B) Other Unlisted Companies	YES	<b>10% of O/S Debentures</b>	15% (*)
<b>Debenture Reserve Fund (Investment) [Rule 18(7)]</b>	<b>Debentures Reserve Fund (Investment)</b>				
	When	How much	Where	Utilization	
	↓	↓	↓	↓	
	Company required to Create DRR shall invest / deposit on or before 30 <sup>th</sup> April, each year	A sum of atleast 15% of the amount of its debentures maturing during the year ending on 31 <sup>st</sup> March of the next year	Methods to deposits: (i) Deposit with any Scheduled Bank (free from charge /lien) (ii) Unencumber securities of C.G/S.G (iii) Unencumbered securities and bonds u/s 20 of the Indian Trusts Act, 1882.	(i) To be used only for the purpose of redemption of debentures maturing during the year (ii) The amount to remain in vested / deposited shall not fall below 15% of the amount of the debentures maturing during the year end on	

				31 <sup>st</sup> March of that year; at any time.
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Note 1	DRR shall be created <b>out of profits of the company available for payment of dividend.</b>
Note 2	In case of <b>Partly Convertible Debentures</b> , DRR shall be created only in respect of non-convertible portion of debentures.
Note 3	The amount credited to DRR shall not be <b>utilized</b> by the company except for the purpose of redemption of debentures.

**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 NOV 2018)**

1. Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Which of the following options is best suited in such a situation: (MTP NOV 2020)
  - 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.**
2. The meaning of 'pari passu' in relation to issue of debentures shall mean:
  - a. The debentures are issued at par value.
  - b. In respect of security available for distribution, the debentures are having same priority of repayment as other preference shareholders.
  - c. **In respect of security available for distribution, the debentures rank equally with other debenture holders already issued irrespective of the time when these debentures were issued.**
3. The voting rights of debenture holders are:
  - a. In the proportion of aggregate debentures outstanding to the total paid-up capital of the company.
  - b. In the proportion of the amount paid-up on the debentures.
  - c. At par with the rights as preference and equity shareholders.
  - d. **None of the above. Debentures cannot be issued carrying any voting rights.**
4. The maximum tenure of debentures to be issued by a company can be:
  - a. **10 years from the date of issue.**
  - b. 20 years from the date of issue.
  - c. 25 years from the date of issue.
  - d. None of the above. A company can issue irredeemable debentures.
5. A listed company is required to maintain adequate DRR to the extent to:
  - a. 25% of the value of the outstanding debentures.
  - b. 15% of the value of the outstanding debentures.
  - c. 10% of the value of the outstanding debentures.
  - d. **None of the above. A listed company is not required to maintain a DRR account.**

6. A company is required to maintain liquid funds out of DRR in prescribed investments and deposits by 30th April in each year. What is the minimum amount required to be invested or deposited?
- 5% of the amount of the debentures maturing during the relevant year.
  - 10% of the amount of the debentures maturing during the relevant year.
  - 15% of the amount of the debentures maturing during the relevant year.**
  - 25% of the amount of the debentures maturing during the relevant year.
7. Which of the following persons can be appointed as debenture trustee?
- A person who beneficially holds shares in the company.
  - A person who is indebted to the company.
  - A person who is a creditor of the company.
  - A person who has no pecuniary relationship with the company.**
8. A casual vacancy in the office of debenture trustee can be filled by:
- The members of the company
  - The Board of Directors of the company**
  - The debenture holders by 3/4th majority in value
  - The Tribunal
9. A casual vacancy in the office of debenture trustee caused by resignation, can be filled by:
- The Board of Directors of the company
  - 3/4th majority of members of the company in a general meeting
  - 3/4th majority of debenture holders in a meeting held for the purpose
  - Written consent of majority of debenture holders**
10. A debenture Trustee can be exempted from his liability:
- If approved by 3/4th of debenture holders in value at a meeting held for the purpose.**
  - If approved by 3/4th of the members in value at a meeting held for the purpose.
  - If it is approved by Tribunal on an application made by debenture trustee in this regard.
  - None of the above. A debenture trustee cannot be exempted from his liability in any case.
11. When the assets of the company are likely to be or become insufficient to discharge the principal amount of debentures as and when it becomes due, a petition may be filed with the Tribunal, by:
- Any one debenture holder
  - All of the debenture holders
  - Debenture Trustee**
  - All of the above
12. An application to Tribunal against the company for non-payment of debentures on due date of redemption or interest when it is due, can be made by:
- Any one debenture holder
  - All of the debenture holders
  - Debenture Trustee
  - All of the above**

## Chapter V

# ACCEPTANCE OF DEPOSITS BY COMPANIES

Ch. V of the Companies Act, 2013  
Acceptance of Deposits by Companies  
[Section 73-76A]

[The Companies (Acceptance of Deposits) Rules, 2014]

Section	Title
73	Conditions for acceptance of deposits from members, and prohibition on acceptance of deposits from public.
74	Repayment of deposits, etc., accepted before commencement of this Act
75	Damages for fraud
76	Acceptance of deposits from public by certain companies
76A	Punishment for contravention of section 73 or 76

### Definition of Deposit

<p><b>What is Deposit?</b> [Sec. 2(31)]</p>	<p>1 'Deposits' includes <b>any receipt of money</b> by a company by way of : <b>Deposit; or Loan; or In any other form</b></p> <p>2 The definition of deposit is <b>inclusive</b> one i.e of very wide scope and includes all kinds of deposits except those excluded in Rule 2 (1)(c).</p> <p>Chapter V (Acceptance of Deposits by Companies) is not applicable to certain companies. <b>Following are the companies to whom provisions of acceptance or renewal of deposit does not apply:</b></p> <ul style="list-style-type: none"> <li>(i) Any banking company;</li> <li>(ii) Any non-banking financial company (NBFC) as defined in the RBI Act, 1934;</li> <li>(iii) Any housing finance company registered with the National Housing Bank;</li> </ul> <p>Such other company as the C.G. may specify, after consultation with the RBI.</p>
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### Which amounts are not deposits

	Points	Details
(i)	Amount received from <b>Government</b>	Any amount received from :- 1. Central Government or 2. State Government, or

		<ol style="list-style-type: none"> <li>3. Any other source whose repayment is guaranteed by the CG/SG, or</li> <li>4. Local Authority, or</li> <li>5. Statutory Authority constituted under an Act of Parliament or a State Legislature.</li> </ol>
(ii)	Amount received from <b>Foreign Sources</b> by RBI Approval under FEMA.	<p>Any amount received from :-</p> <ol style="list-style-type: none"> <li>1. Foreign Governments,</li> <li>2. Foreign or International Banks,</li> <li>3. Multilateral Financial Institutions (including, but not <b>limited</b> to, International Finance Corporation, Asian <b>Development</b> Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction),</li> <li>4. Foreign Governments owned Development Financial Institutions,</li> <li>5. Foreign Export Credit Agencies,</li> <li>6. Foreign Collaborators,</li> <li>7. Foreign Bodies Corporate,</li> <li>8. Foreign Citizens,</li> <li>9. Foreign Authorities or</li> <li>10. Persons Resident Outside India</li> </ol> <p>subject to the provisions of <b>Foreign Exchange Management Act, 1999 [FEMA]</b> and rules and regulations.</p>
(iii)	Amount received from <b>Banks</b>	<p>Any amount received as a LOAN or FACILITY (<i>Ex: Overdraft Facility</i>) from any:-</p> <ol style="list-style-type: none"> <li>1. Banking company or</li> <li>2. State Bank of India or its subsidiary banks or</li> <li>3. Banking Institution notified by the Central Government u/s 51 of the Banking Regulation Act, 1949, or</li> <li>4. Corresponding New Bank as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or in section 2(b) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or</li> <li>5. Co-operative Bank</li> </ol>
(iv)	Amount received from <b>Financial Institutions</b>	<p>Any amount received as a LOAN or FINANCIAL ASSISTANCE from :-</p> <ol style="list-style-type: none"> <li>1. Public Financial Institutions {<i>Ex: LIC, UTI, IDFC</i>} or</li> <li>2. Regional Financial Institutions {<i>Ex: Odisha State Finance Corporation</i>} or</li> <li>3. Insurance Companies or</li> <li>4. Scheduled Banks.</li> </ol>



(v)	Amount received from <b>issue of Commercial papers</b>	Any amount received against issue of :- 1. Commercial Paper or 2. other Instruments issued in accordance with RBI guidelines.
(vi)	<b>Inter-corporate Loans</b>	Any amount received by a company from any other company.
(vii)	<b>Subscription of Securities</b>	Any amount <b>received and held</b> pursuant to an offer made for <b>subscription to any SECURITIES</b> , including <b>share application money</b> or <b>advance towards allotment of securities</b> pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for.  <div style="border: 1px solid black; padding: 5px;"> <p><b>Explanation.-</b> It is hereby clarified that -</p> <p>a) If the securities for which application money or advance for such securities was received <b>cannot be allotted within 60 days</b> and such application money or advance is <b>not refunded to the subscribers within 15 days</b> from the date of completion of 60 days, such amount shall <b>be treated as a deposit.</b></p> <p>b) any adjustment of the amount for any other purpose shall not be treated as refund.</p> </div>
(viii)	<b>Amount received from Director or Relative</b>	Any amount received from a person who, at the time of the receipt of the amount, was :- 1. a <b>DIRECTOR</b> of the <b>Public/Private</b> company or 2. a <b>RELATIVE</b> of the director of the <b>Private</b> company.  <div style="border: 1px solid black; padding: 5px;"> <p><b>The director/relative should furnish a declaration in writing (at the time of giving the money) to the effect that :-</b></p> <p>a) the amount is <b>NOT being given out of funds acquired by him by borrowing</b> or accepting loans or deposits from others and</p> <p><b>b) the company shall DISCLOSE</b> the details of money so accepted in the <b>Board's report.</b></p> </div>
(ix)	Amount received from <b>issue of Debentures</b>	Any amount raised by the issue of :- 1. <b>Secured bonds/debentures</b> excluding secured against intangible assets of the company or 2. Compulsorily Convertible Bonds/Debentures {CCB/CCD} into shares of the company within <b>10 years.</b>

(ixa)	Amount received from <b>issue of Listed Debentures</b>	Any amount raised by issue of <b>Listed Unsecured</b> non-convertible debentures.
(x)	<b>Employee Security Deposit</b>	Any amount received from an EMPLOYEE of the company <b>not exceeding his annual salary</b> under a contract of employment with the company in the nature of <b>non-interest bearing SECURITY DEPOSIT</b> .
(xi)	Other <b>Security Deposit</b>	Any non-interest bearing amount received and held in TRUST.
(xii)	<b>Advance</b> received in the course of business	<p>Any amount received in the course of the business of the company,-</p> <ol style="list-style-type: none"> <li>a) as an <b>ADVANCE</b> for the supply of goods or services provided that such advance is appropriated against supply of goods or provision of services <b>within 365 days</b>. Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days shall not apply.</li> <li>b) as <b>ADVANCE</b> received in connection with consideration for an immovable property, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.</li> <li>c) as <b>SECURITY DEPOSIT</b> for the performance of the contract for supply of goods or services.</li> <li>d) as <b>ADVANCE</b> received under long term projects for supply of capital goods except those covered under item (b) above.</li> <li>e) as an <b>ADVANCE</b> 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 <ul style="list-style-type: none"> <li>• the period prevalent as per common business practice or</li> <li>• 5 years, whichever is <b>less</b>.</li> </ul> </li> <li>f) as an <b>ADVANCE</b> received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government.</li> <li>g) as an <b>ADVANCE</b> for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications.</li> </ol> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Provided that 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 <b>deemed to be a deposit</b> under these rules.</p> </div>

		<b>Explanation</b> — For the purposes of this sub-clause the amount shall be deemed to be deposits <b>on the expiry of 15 days</b> from the date they become due for refund.
	<b>Amount brought by Promoters</b>	Any amount brought in by the <b>PROMOTERS</b> of the company by way of unsecured loan, subject to fulfillment of <b>ALL 3 conditions below:-</b> a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; AND b) the loan is provided by the promoters themselves or by their relatives or by both; AND c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.
	<b>Deposits taken by Nidhi company</b>	Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.
Last	<b>Explanation to Rule 2(1)(c)</b>	For the purposes of this clause, any amount.- a) RECEIVED by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or b) any additional contributions, over and above the amount under item (a) above, MADE by the company as part of such promise or offer, shall be considered as <b>deposits unless specifically excluded under this clause.</b>
(xv)	<b>Chit Fund</b>	Any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982.
(xvi)	<b>Collective Investment Scheme</b>	Any amount received by the company under any CIS [collective investment scheme]
(xvii)	<b>Start-Up Company</b>	An amount of 25 lakhs or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period 10 years from the date of issue) in a single tranche, from a person.
(xviii)	<b>AIF, VCF, InvIT, REIT, MF</b>	Any amount received by a company from AIF [Alternate Investment Funds], VCF [Domestic Venture Capital Funds], InvITs [Infrastructure Investment Trusts], REITs [Real Estate Investment Trusts] and MF [Mutual Funds] in accordance with SEBI regulations.
<p><b>1. 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;</b></p> <p><b>(i) Rs.5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting</b></p>		

a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.

- (ii) Rs.2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of r 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.(NOV 2019)

2. 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 MAY 2020)

**Hint:**

- (i) 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) 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.

3. 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 2022)

4. 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 ? What will be your answer in case the entire loan obtained from SIDCL is repaid?( (Mar. 22)(4 Marks) (MTP Oct. 23)

Hint - Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves. In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of Norway Limited will be regarded as deposit.

5. 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. (April 22)(4 Marks)

Hint - 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.

6. Hello Limited received share application money of ` 50 Lakh on 01.06.2023 but failed to allot shares within the prescribed time limit. The share application money of ` 5 Lakh received from Diwas, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2023. The Company Secretary of Hello Limited reported to the Board that the entire amount of ` 50 Lakh shall be deemed to be 'Deposits' as on 31.07.2023 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.(5 Marks) (MTP Sep. 23)

Hint -

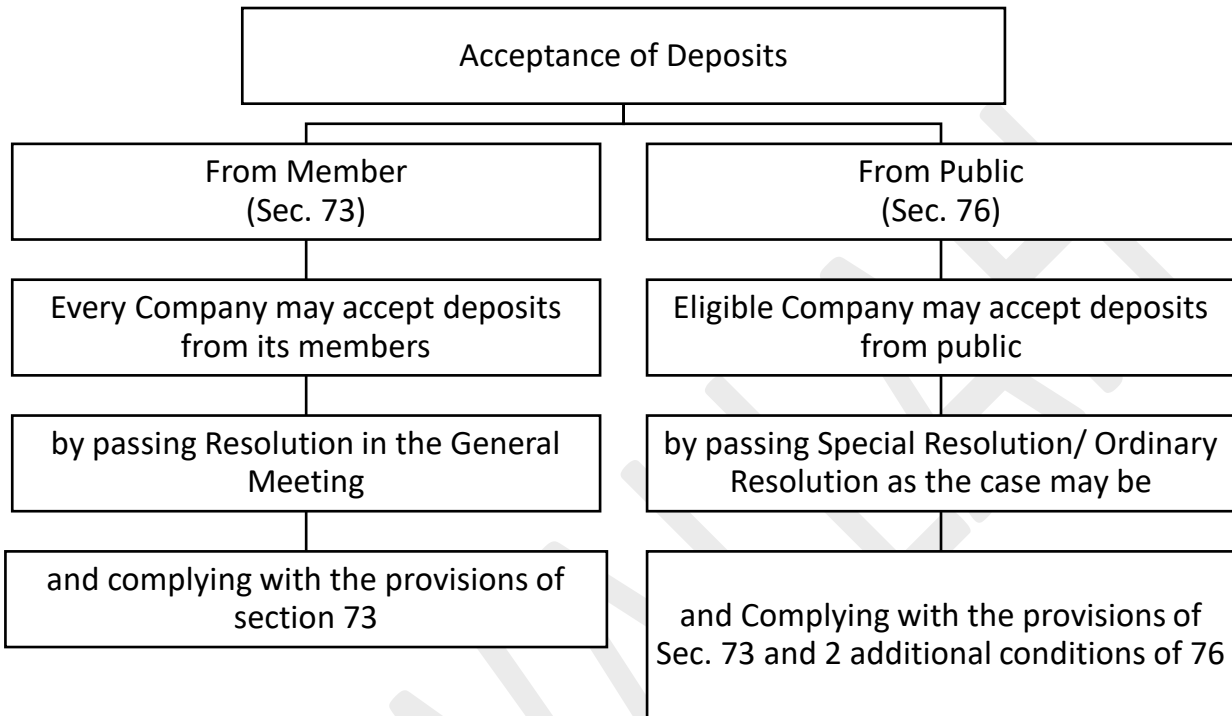
1. If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2023 and the company has 15 more days to refund such application 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 Hello Limited is not correct in treating the entire amount of ` 50 Lakh as 'Deposits' on 31.07.2023.
2. Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ` 5 Lakh adjusted against payment due to be received from Diwas, cannot be treated as refund.

CA WALLAH

**Repayment of Deposits before commencement of this Act (Transition) [Sec. 74]**

Note – this section has now become irrelevant

**Acceptance of Deposits**



**Eligible Company**

<b>Definition</b> Rule 2(1)(e)	Means a public company as referred to in Sec. 76(1), having; (a) <b>Net worth <math>\geq</math> 100 crore;</b> or (b) <b>Turnover <math>\geq</math> 500 crore</b>
<b>Resolution</b>	Special Resolution has been passed in the General Meeting and the same has been filed 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 u/s 180(1)(c), may accept deposits by means of an Ordinary Resolution.

**1. Ashish Ltd. having a net-worth of ` 80 crores and turnover of ` 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 2019)**  
**Hint -** Since, Ashish Ltd. has a net worth of ` 80 crores and turnover of ` 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.

2. **ABC Limited having a net worth of 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible company, what special care has to be taken while accepting such deposit from members.(MTP MAY 2019) (MTP Sep. 23)**

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company. Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

### Conditions for Accepting Deposits from Members [Sec. 73(2)]

**A company may accept deposits from its members by complying with the following conditions:**

- a) **Issue a circular in Form DPT — 1** to its members including therein a statement showing the financial position of the company, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the **company**;
- b) **Filing DPT — 1 with ROC** within 30 days before circulating it to members;
- c) **Maintain Liquidity:** Depositing, on or before the 30th day of April each year, such sum which shall **not be less than 20% of the amount of its deposits maturing during the financial year** and kept in a **scheduled bank** in a separate bank account to be called **Deposit Repayment Reserve Account {DRRA}**;
- d) **[Omitted via The Companies (Amendment), 2017].**
- e) **No subsisting defaults:** Company shall certify that it has not committed any default in the repayment of deposits or payment of interest on such deposits and where a default had occurred, the **company made good the default and a period of 5 years had elapsed** since the date of making good the default;
- f) **Furnishing Security:** Company shall provide security 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.

**Note - Unsecured or Partially Secured: Both are described as UNSECURED Deposits** Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "**unsecured deposits**" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(a)

1. Arpit Nirman Developers Limited has accepted deposits from its members which are being repaid without any default on maturity. As a statutory obligation, the company is required to deposit, on or before 30th April of each year, a certain amount of deposits matured during

the following financial year and kept in a separate bank account. Advise the company regarding the quantum of the amount that must be so deposited. (Nov 23)

- a. Not less than 10% of the amount.
- b. **Not less than 20% of the amount.**



- c. Not less than 30% of the amount.  
d. Not less than 50% of the amount.
2. Suneet Spices Limited decides to raise deposits of ` 20.00 lacs from its members. However, it is of the opinion to secure such deposits partially by offering 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. None of the above
3. Bhumi Real Estate Developers Limited has accepted deposits from its members which are being paid on the maturity without any default. As a statutory obligation, the company is required to deposit in a specified

account opened with its bankers, a particular amount on or before 30th April of each year till the deposits are fully repaid. Advise the company regarding the quantum of amount which must be so deposited.

- a. Not less than 50% of the amount of its deposits maturing during the following financial year.  
b. Not less than 30% of the amount of its deposits maturing during the following financial year.  
c. Not less than 20% of the amount of its deposits maturing during the following financial year.  
d. Not less than 10% of the amount of its deposits maturing during the following financial year.

Exemption to certain private companies	
<b>Exemption to private companies</b>	<p>Clause (a) to (e) of Section 73(2), shall not apply to a private company;</p> <p>(a) Which accepts monies from its members upto 100% of aggregate of the paid-up share capital, free reserves and securities premium account ; or (b) Which is a <b>start-up</b>, for 10 years from the date of its incorporation; or (c) Which fulfils <b>all of the following conditions</b> namely: (i) which is not an <b>associate or a subsidiary company</b> of any other company. (ii) if the <b>borrowings from banks or financial institutions or any body corporate</b> is less than twice of its paid-up share capital or 50 crore, whichever is lower and (iii) such a company has <b>not defaulted in the repayment of such borrowings</b> subsisting at the time of accepting deposits. However, such private company shall file the details of monies accepted to the Registrar in the Form DPT-3.</p>
<b>IFSC Public Company</b>	<p>Similarly, if a specified IFSC public company accepts deposit from its members only upto 100% of agg, of the paid-up share capital and free reserves, clause (a) to (e) of section 73 (2) shall not apply. File details of monies accepted to ROC in DPT-3.</p>
<p>1. 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?(NOV 2018)</p> <p>2. Atul Ltd. has passed a resolution in its general meeting regarding accepting deposits from its members. Can this company accept deposits from its members under the Companies Act, 2013 ? If yes, state the conditions to be fulfilled regarding this.(MAY 2016)</p>	

<b>Conditions for acceptance of deposits from Public by Eligible companies [Sec. 76]</b>	
<b>Eligible Companies</b> [Sec. 76(1)]	Only 'eligible companies' are permitted to accept deposits from the public, in addition to their members.
<b>Compliance of Section 73 (2)</b> [Sec. 76(1)]	The company shall comply with all the legal requirement contained in section 73(2) while accepting deposits from its members. <b>Except 73(2)(f)</b>
<b>Extra conditions</b>	<p><b>Extra Conditions to be followed by an Eligible Company for accepting Public Deposits</b></p> <ol style="list-style-type: none"> <li>1 Every eligible company shall be required to <b>obtain the credit rating</b> from a recognised credit rating agency which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.</li> <li>2 Every eligible company accepting secured deposits from the public shall <b>within 30 days</b> of such acceptance, <b>create a charge on its assets of an amount not less than the amount of deposits</b> accepted in favour of the deposit holders, failing which it shall be described as '<b>Unsecured Deposits</b>'.</li> </ol> <p><b>Note - In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.</b></p> <ol style="list-style-type: none"> <li>3 An 'eligible company' intending to invite deposits is required to <b>issue a circular in the form of an advertisement in DPT-1</b>. Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.</li> </ol>
<p><b>1. WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of Z 25 crores. According to financial results of the company as on 31.3.2022 net worth of the company was Z 120 crores and turnover for the year 2021-22 was Z 350 crores. The Company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of Z 1.5 crores from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty four months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. Seth affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others ,and complete details of such loan transaction is furnished in the -boards' report.</b></p> <p><b>On the basis of above facts answer the following questions :</b></p> <ol style="list-style-type: none"> <li>(i) <b>Whether Company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by Company was in accordance with provisions of Companies Act, 2013?</b></li> <li>(ii) <b>With reference to the loan advanced by Mr. Seth to Company, state whether the same is to be classified as a deposit or not 4 Marks (Nov 23)</b></li> </ol>	

Hint –

2. A Limited Company raised the secured deposit of Rs. 80 crore on 30th June, 2023 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	₹ 55 crore
Plant & machinery	₹ 15 crore
Factory Shed	₹ 10 crore
Trade Mark	₹ 10 crore
Goodwill	₹ 15 crore

Decide on the validity of the charges created with reference to the provisions of the Companies Act, 2013. (RTP Nov 23)

Particulars	Amount (in Rs)
Total value of security (value of assets on which charge can be created)	55+15+10 [Land and Building, Plant & machinery and Factory Shed] = 80 crore
Total deposits accepted and interest payable thereon	80+ [(80*12%)*3 years] = 108.8 crore

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

**Advertisement (This is required only for ELIGIBLE Companies u/s 76 when accepting Deposit from Public)**

- English language in an English newspaper and in
- Vernacular language in a Vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

#### Validity of the Advertisement

The advertisement shall remain valid till the **EARLIEST** of the following dates:

- up to **6 months** from the closure of the financial year in which it is issued; or
- the date on which the **financial statements are laid** before the company at the Annual General Meeting (AGM), or in case no AGM has been held, the latest day on which the AGM should have been held as

per the relevant statutory provisions.

<b>Maximum Quantum of Deposits [Rule 3]</b>			
<b>Type of Company</b>	<b>From</b>	<b>Maximum limit of deposits of (P.U + F.R + S.P.A)</b>	<b>Conditions u/s 73(2) (a) to (e)</b>
Eligible Public company	members	10%	✓
	Public	25%	✓
Eligible Public Government company	members + public	35 %	✓
Other Public Co (not eligible )	members	35%	✓
<ul style="list-style-type: none"> <li>• A Specified IFSC Public company</li> <li>• A private company</li> </ul>	members	100%	X
Start up Private Co (Upto 10 years from incorp. )	members	No limit	X
Private Co (which satisfies conditions)(next slide )	members	No limit	X

**1. State, with reasons, whether the following statements are True or False?**

- (i) ABC Private Limited may accept the deposits from its members to the extent of ` 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ` 50.00 Lakh.
- (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

**Hint:-**

- (i) the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of ` 50.00 lakh is True.
- (ii) Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

**2. 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:**

<b>Paid up share capital</b>	<b>` 70 Crores</b>
<b>Securities Premium</b>	<b>` 20 Crores</b>
<b>Free Reserves</b>	<b>` 20 Crores</b>
<b>Long-term borrowings</b>	<b>` 50 Crores</b>

**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. (6 Marks)(Nov 2020)**

**Hint - 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.

**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.(4 Marks) (MTP M 21)

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

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’?(MPT M 21)

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is ‘false’.

**Other Provision regarding Acceptance and Renewal of Deposits**

<b>Repayment of deposits</b> [Sec. 73(3)]	Every deposit accepted by a company shall be <b>repaid with interest</b> in accordance with the terms and conditions of the agreement.
<b>Application to Tribunal</b> [Sec. 73(4)]	In case a company fails to repay the deposit or interest due on it, the depositor <b>may apply to the Tribunal</b> to direct the company to pay the sum due or any loss or damage.
<b>Utilization of DRRA</b> [Sec. 73(5)]	By virtue of Section 73(5) and Rule 13: the <b>deposit repayment reserve account shall be used only for the purpose of repayment of deposits and not for any other purpose</b>

1. A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called:

- a. Debenture redemption reserve account
- b. Deposit repayment reserve account
- c. Capital redemption reserve account
- d. Free reserve account

<b>Tenure of Deposits</b> [Rule 3(1)]	<p>1 A company shall not accept or renew any deposit which is –</p> <ul style="list-style-type: none"> <li>(i) Repayable on demand; or</li> <li>(ii) On receiving the notice within a period of less than 6 months.</li> </ul> <p>2 <b>Minimum</b> tenure of deposits: <b>6 months</b> <b>Maximum</b> tenure of deposits : <b>36 months</b></p> <p>3 However, a company may accept or renew deposits for <b>period less than 6 months</b> subject to the conditions that:</p> <ul style="list-style-type: none"> <li>(i) Deposits accepted for the purpose of short tem requirements of funds</li> <li>(ii) <b>Deposits does not exceed 10%</b> of [paid –up share capital (+) free reserves (+) securities premium account]</li> </ul>
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	(iii) Such deposits are repayable on or after 3 months from the date of acceptance or renewal.
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1. No deposits are repayable earlier than \_\_\_\_\_ from the date of such deposits or renewal thereof. (MTP NOV 2019)

- months
- months
- months
- 12 months

2. What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?

- 12 months
- 24 months
- 36 months**
- 48 months

3. 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. (RTP Mar 23)

- six, thirty six, six**
- three, twenty four, three
- six, sixty, six
- three, sixty, six

<b>Ceiling on Interest rate and Brokerage</b> [Rule 3(6)]	A company is permitted to invite deposit at any rate of interest or brokerage provided it shall not exceed the maximum rate prescribed by the RBI as in case of NBFCs for acceptance of deposits.  Brokerage shall be paid only to person authorised by the company.
<b>Deposits in Joint Names</b> [Rule 3(2)]	1 Deposits may be accepted in joint names <b>not exceeding three.</b> 2 A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

1. Where depositors so desire, deposits may be accepted in joint names not exceeding \_\_\_\_\_

- 2

- 3**
- 5
- 7

<b>Deposits Receipt</b> [Rule 12]	1 <b>Within 21 days</b> from the date of receipt of money or date of renewal; the company shall furnish a deposit receipt to the depositor or his agent. 2 The receipt shall be signed by the authorised officer. 3 It shall state: (a) Date of deposit; (b) Name and address of the depositor; and (c) Rate of interest and the maturity date.
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<b>Return of Deposits</b> [Rule 16]	1 A duly audited return of deposits shall be filed with the ROC along with fee. 2 File in Form DPT-3; <b>on or before the 30<sup>th</sup> June</b> of that year. 3 The return shall contain particulars as on 31 <sup>st</sup> March of every year. 4 The company (other than Government Company) shall include particulars of deposits/transactions not considered as deposits in DPT-3
<b>Penal rate of Interest</b> [Rule 17]	If a company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, the company shall pay penal rate of interest of <b>18% p.a. for the overdue period.</b>
<b>Punishment for Contravention</b>	If any company inviting deposits or any other person contravenes any of the 'deposit rules' for <b>which no punishment is provided</b> in the Act, the company and every officer-in-default shall be punishable as under: <ul style="list-style-type: none"> <li>• with fine extendable to <b>Rs 5,000</b>; and</li> <li>• in case the contravention is a continuing one, with a further fine up to <b>500 for every day during which the contravention continues.</b></li> </ul>
<b>Premature Repayment of Deposit</b> [Rule 15]	1 If a depositor requests for premature repayment, i.e. <b>after the expiry of 6 months but before the actual date</b> of maturity, the rate of interest payable shall be <b>reduced by 1%</b> than the actual rate payable for actual period. 2 If period of deposit <b>contains any part of year less than 6 months</b> then it shall be excluded; otherwise if that part is <b>6 months or more it shall be taken as 1 year.</b>
(a)	

1. Dream World Entertainment Limited, has accepted deposits worth ` 50.00 lacs from public on 1<sup>st</sup> April 2019 for a period of 24 months *i.e.* repayment of deposit would be made on 31<sup>st</sup> March 2021. The rate of interest payable on such deposits is 9% p.a. One of the depositors Mr. Aman requested the company on 1<sup>st</sup> June 2020 for premature repayment of his deposit of ` 6.00 lacs along with interest. Advise the company in the said matter.

a. The company can only make premature repayment of deposit with an intention to reduce the total amount of deposits to bring it within permissible limits. Hence,

in the given case, the company cannot repay the deposit before the actual maturity.

- b. The company can prematurely repay the deposit along with interest @9% p.a. for the period of 12 months (from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020).
- c. **The company can prematurely repay the deposit along with interest @8% p.a. for the period of 12 months (from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020).**
- d. The company can prematurely repay the deposit along with interest @8% p.a. for the period of 14 months (from 1<sup>st</sup> April 2019 to 31<sup>st</sup> May 2020).

<b>Premature closure of Deposit</b>	If depositor <b>renews the deposit before its actual maturity date</b> , the company shall pay him the <b>higher rate of interest</b> only if the deposit is renewed for a longer period than the unexpired period of deposits.
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[Rule 15-2 <sup>nd</sup> Proviso]	

- |   |  |
|---|--|
| <p>1. Ruchita wants to renew her deposit of ` 5.00 lakh maintained with Kewal Constructions Limited before the expiry of original period with a view to avail higher rate of interest. For how much extended period, Ruchita is required to renew her deposit, so that the company shall pay her higher rate on deposits?</p> | <ul style="list-style-type: none"> <li>a. One and a half times the unexpired period of original deposit.</li> <li>b. Double the unexpired period of original deposit.</li> <li>c. Six months more in addition to the unexpired period of deposit.</li> <li><b>d. Longer than the unexpired period of deposit.</b></li> </ul> |
|---|--|

<p><b>Appointment of Trustee for Depositors</b> [Rule 7]</p>	<ul style="list-style-type: none"> <li>(a) A company shall not issue any circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors.</li> <li>(b) A written consent shall be obtained from the trustee(s) for depositors before his / their appointment.</li> <li>(c) A statement shall appear in the circular or advertisement with the reasonable effect that the trustee(s) for depositors has / have given his/ their consent to the company to be so appointed.</li> <li>(d) The company shall execute a deposit trust deed in <b>Form DPT-2</b> at <b>least 7 days</b> before issuing the circular or advertisement.</li> <li>(e) A person (including a company that is in the business of providing trusteeship services) shall not be appointed as trustee for the depositors, if the proposed trustee.             <ul style="list-style-type: none"> <li>(i) Is a depositor in the company;</li> <li>(ii) Is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company;</li> <li>(iii) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;</li> <li>(iv) Has any material pecuniary relationship with the company;</li> <li>(v) Has given any guarantee in respect of deposits accepted by the company or interest thereon;</li> <li>(vi) Is related to any person specified in Points (i) or (ii) above.</li> </ul> </li> </ul>
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**Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.(MAY 2018)**

<p><b>Duties of Trustees</b></p>	<ul style="list-style-type: none"> <li>• No trustee for depositors shall be <b>removed</b> from office after the issue of circular or advertisement and before the expiry of his term</li> <li>• except with the <b>consent of all the directors</b> present in a Board meeting (i.e. unanimous resolution).</li> </ul>
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	<ul style="list-style-type: none"> <li>Further, in case the company is required to have independent directors, at least 1 independent director shall be present in such Board meeting.</li> </ul>
<b>Duties of Trustees for depositors</b> [Rule 8]	(a) To ensure that <b>the assets</b> of the company on which charge is created are <b>sufficient to cover the repayment</b> of the principal amount of secured deposits outstanding and interest thereon. (b) To satisfy himself that the <b>circular or advertisement</b> inviting deposits <b>does not contain any information which is inconsistent</b> with the terms of the deposits or with the trust deed and in is in compliance with the rules of the act. (c) To ensure that the company does <b>not commit any breach of</b> provisions of the trust deed, and take steps for remedy such breach. (d) To take steps to <b>call meeting of depositors</b> as and when such meeting is required to be held. (e) To supervise the implementation of the conditions regarding creation of security for deposits. (f) To do such acts as are necessary in the event the security becomes enforceable. (g) To carry out such acts as are necessary for the <b>protection of the interest of depositors and to resolve their grievances.</b>
<b>Meeting of Depositors</b> [Rule 9]	A meeting of all the depositors shall be called by the trustee(s) for depositors on – (a) Requisition in writing signed by <b>at least 1/10<sup>th</sup> of the depositors in value</b> for the time being outstanding; (b) The happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.
<b>No right to alter</b> [Rule 3(7)]	The company shall not alter any of the terms of the deposit to the prejudice or disadvantage of the depositor after the circular is issued and deposits are accepted.
<b>Disclosure in F.S.</b> [Rule 16A ]	1. Public Company : Disclose in financial statements about the money received from its director. 2. Private Company: Disclose in F.S about the money received from the directors or the relatives of directors. 3. Every Company (other than Government Company) shall file a onetime return of outstanding receipt of money or loan by a company not considered as deposits from 1.4.2014 till 31.3.19 in form DPT-3 with the ROC within 90 days from 31.3.19 along with requisite fee.
<b>Register of Deposits</b> [Rule 14]	1. Every company accepting deposits shall maintain one or more separate registers for deposits accepted or renewed at its registered office. 2. <b>The entries shall be made within 7 days</b> from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose. 3. The said register shall be <b>preserved</b> in good order for a period of at least <b>8 years from the FY in which the latest entry is made in the register.</b>

1. A Limited Company 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. (1 Mark) (MTP Oct. 22)

- Four years from the financial year in which the latest entry is made in the Register.
- Six years from the financial year in which

the latest entry is made in the Register.

- Eight years from the financial year in which the latest entry is made in the Register.
- Ten years from the latest date of entry.

<b>Punishment for contravention of 'Deposit Rules'</b> [Rule 21]	If a company referred to in Section 73(2) or any eligible company or any other person contravenes any provision of 'deposit rule', for which no punishment is provided in the Act, the company and every officer in default shall be punishable with: <ol style="list-style-type: none"> <li>Fine upto Rs 5,000; and</li> <li>In case of continuous default with further fine upto Rs 500 per day until default continues.</li> </ol>
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- A company shall execute a deposit trust deed at least days before issuing the circular or circular in the form of advertisement. (1 Mark) (mtp m 21)

a. 7

- 14
- 21
- 28

### Damages for Fraud (sec 75)

<b>Damages for Fraud</b>	<ol style="list-style-type: none"> <li>Where a company fails to repay the deposit or part thereof or any interest thereon u/s 74 within the specified time, <b>AND</b></li> <li>It is proved that the deposits had been accepted with intent to defraud the <b>depositors</b> or for any fraudulent purpose,</li> </ol> <p>then every officer of the company who was responsible for the acceptance of such deposit shall, apart <b>from</b> the punishment mentioned in <b>Section 74</b> and Liability u/s <b>447</b>, be <b>personally responsible</b> for any losses or damages that may have been incurred by the depositors.</p>
<b>Action by the Depositors</b>	Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

### Punishment for contravention of Section 73 or Section 76 [Sec. 76A]

<b>Punishment for contravention of Section 73 or 76</b>	Where a company:- <ol style="list-style-type: none"> <li><b>Accepts or invites deposits</b> or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under <b>section 73 or 76</b> or Rules made thereunder or</li> </ol>
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<p>2. <b>Fails to repay the deposit</b> or part thereof or any interest due thereon within the time specified under <b>section 73 or 76</b> or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, then the punishment shall be as follows:-</p>		
<p><b>On Company</b></p>	<p><b>Minimum Punishment</b></p>	<p><b>1 crore or twice the amount of deposits accepted by the Company, whichever is lower</b></p>
	<p><b>Maximum Punishment</b></p>	<p><b>10 crores</b></p>
<p><b>On officer in default</b></p>	<p><b>Imprisonment 5 7 Years AND Fine - 2 25 lacs 5 Fine 5 7 2 crores</b></p>	
<p><b>Willful offence by officer in default with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities</b></p>	<p><b>Punishment u/s 447</b></p>	

1. Answer the following citing relevant provisions of the Companies Act, 2013:
- a. Wire Electricals Limited having paid-up capital of ` 1.00 crore availed a term loan of ` 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?
  - b. A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct? (RTP Mar 23)
- Hint –
- a. In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of Mr. Taar that the term loan of ` 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.
  - b. As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account. Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.
2. **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.(4 Marks) (MTP Oct. 22)

CA

## Chapter VI

# REGISTRATION OF CHARGES

Ch. VI of the Companies Act, 2013

Registration of Charges

(Section 77-87)

The Companies (Registration of Charges) Rules, 2014

Section	Title
77	Duty to register charges, etc
78	Application for registration of charge
79	Section 77 to apply in certain matters
80	Date of notice of charge
81	Register of Charges to be Kept by ROC
82	Company to report satisfaction of charge
83	Power of Registrar to make entries of satisfaction and release in absence of intimation from company
84	Intimation of appointment of receiver or manager
85	Company's Register of Charges
86	Punishment for contravention
87	Rectification by CG in register of charges

Charges											
<b>Definition</b> [Sec.2(16)]	'Charge' is an <b>interest or lien created on the property or assets of the company</b> or any of its undertaking or both as security and includes a mortgage.										
<b>Types of Charges</b>	Charges can be either <table border="1" style="width: 100%;"> <thead> <tr> <th>Fixed Charge</th> <th>Floating Charge</th> </tr> </thead> <tbody> <tr> <td>1. Charge created on ascertained / definite assets of permanent nature. Eg. Land, Building, Machinery.</td> <td>Charge on assets of fluctuating nature, no definite property. Eg. Stock-in-trade, debtors.</td> </tr> <tr> <td>2. Can't be converted into floating.</td> <td>Can be converted into fixed charge.</td> </tr> <tr> <td>3. It is less risky.</td> <td>It is more risky.</td> </tr> <tr> <td>4. Generally, created for long span of time.</td> <td>Generally, created for short span of time.</td> </tr> </tbody> </table>	Fixed Charge	Floating Charge	1. Charge created on ascertained / definite assets of permanent nature. Eg. Land, Building, Machinery.	Charge on assets of fluctuating nature, no definite property. Eg. Stock-in-trade, debtors.	2. Can't be converted into floating.	Can be converted into fixed charge.	3. It is less risky.	It is more risky.	4. Generally, created for long span of time.	Generally, created for short span of time.
Fixed Charge	Floating Charge										
1. Charge created on ascertained / definite assets of permanent nature. Eg. Land, Building, Machinery.	Charge on assets of fluctuating nature, no definite property. Eg. Stock-in-trade, debtors.										
2. Can't be converted into floating.	Can be converted into fixed charge.										
3. It is less risky.	It is more risky.										
4. Generally, created for long span of time.	Generally, created for short span of time.										

	5. Company loses right to dispose such property until unencumbered.	Company is free to deal with property until secured creditors exercises his right.
	6. Assets are identified at the time of creation of charge.	Does not attach to any definite property.
	7. Nature and identity of the property does not change during the existence of the charge.	Nature and identity of the property changes based on varying conditions from time to time.
	8. No crystallisation is possible.	On crystallisation, floating charge becomes the fixed charge.
	9. Without the consent of the chargeholder, the company cannot sell such asset; neither create subsequent charge having priority over such charge.	Without obtaining the consent of the chargeholder, the company can deal in such an asset in the ordinary course of business.

1. 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

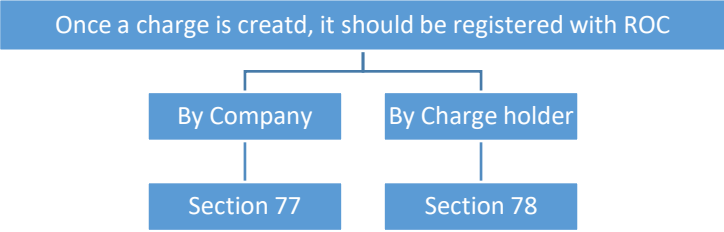
### Crystallization of Floating Charge

A floating charge crystallizes or gets fixed when:

1. The company goes into liquidation or
2. The company ceases to carry on business or
3. A receiver is appointed or
4. A default is made in paying the principal and/ or interest and the holder of the charge brings an action to enforce his security.

Points	"Mortgage"	"Hypothecation"	"Pledge"
1. Type of Asset	Immovable Property	Movable Property	Portable Asset
2. Possession	Borrower	Borrower	Lender
3. Example	Land Building, Factory Plant	Car, Vehicles, Debtors	Gold, Jewelry, Shares, Investments, FD.

### Registration of Charges with ROC



Registration of Charges by Company [Sec. 77]										
<p><b>Which charges Require Registration</b> [Sec. 77(1) &amp; Rule 3(1)]</p>	<p>It shall be the duty of <b>EVERY company</b> creating a charge on its property or assets or any of its undertakings,</p> <ul style="list-style-type: none"> <li>• whether tangible or otherwise, and</li> <li>• situated in or outside India,</li> </ul> <p>to register the particulars of the charge <b>signed by :-</b></p> <ol style="list-style-type: none"> <li>a) the company (Borrower) and</li> <li>b) the charge-holder (Lender)</li> </ol> <p>together with the: -</p> <ol style="list-style-type: none"> <li>1. Form <b>No.CHG-1</b> (for Loans) or Form <b>No.CHG-9</b> (for debentures) <b>AND</b></li> <li>2. <b>Instruments</b> creating such charge (Loan Agreement or Mortgage Deed) in, with the ROC within <b>30 days</b> of its creation.</li> </ol> <p style="text-align: center;"><b>Charges created on or after 2nd November 2018</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #cccccc;">Condonation</th> <th style="background-color: #cccccc;">Extra Payment</th> <th style="background-color: #cccccc;">Enhanced Time Limit</th> </tr> </thead> <tbody> <tr> <td>1st Condonation by ROC</td> <td>ADDITIONAL fees</td> <td>Within 60 days of such creation i.e., Next 30 days</td> </tr> <tr> <td>2nd Condonation by ROC</td> <td>AD-VALOREM fees</td> <td>Within Further 60 days.</td> </tr> </tbody> </table>	Condonation	Extra Payment	Enhanced Time Limit	1st Condonation by ROC	ADDITIONAL fees	Within 60 days of such creation i.e., Next 30 days	2nd Condonation by ROC	AD-VALOREM fees	Within Further 60 days.
Condonation	Extra Payment	Enhanced Time Limit								
1st Condonation by ROC	ADDITIONAL fees	Within 60 days of such creation i.e., Next 30 days								
2nd Condonation by ROC	AD-VALOREM fees	Within Further 60 days.								
<p><b>Verification of Charge [Rule 31]</b></p>	<p><b>Verification of Charge [Rule 31]</b></p> <p><b>A</b> copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:</p> <ol style="list-style-type: none"> <li>a) <b>in case property is situated outside India:</b> where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by :-             <ul style="list-style-type: none"> <li>• a certificate issued either under the seal, if any, of the company, or</li> <li>• under the hand of any director or</li> <li>• company secretary of the company or</li> <li>• an authorised officer of the charge holder or</li> <li>• under the hand of some person other than the company who is</li> </ul> </li> </ol>									



	<p>interested in the mortgage or charge;</p> <p>b) <b>in case property is situated in India (whether wholly or partly):</b> where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by :-</p> <ul style="list-style-type: none"> <li>• a certificate issued under the hand of any director or</li> <li>• company secretary of the company or</li> <li>• an authorised officer of the charge holder.</li> </ul>
<b>How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?(3 Marks) (MTP M 21)</b>	
<p><b>Certificate of Registration</b> [Sec. 77(2) &amp; Rule 6(1), 6(3)]</p>	<ol style="list-style-type: none"> <li>1. On registration of charge, the <b>Registrar shall issue a certificate of registration of charge in Form No. CHG-2.</b></li> <li>2. The certificate shall be issued to the company and the charge holder.</li> </ol>
<p><b>Non-applicability of Section 77</b></p>	<p>The section 77 shall not apply to certain charges as may be prescribed by C.G. in consultation with RBI.</p>
<p><b>1. 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?(MAY 2018)</b></p> <p><b>2. MNC Limited realised on 2<sup>nd</sup> May, 2016 that particulars of charge created on 12<sup>th</sup> March, 2016 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 12<sup>th</sup> February, 2016 instead of 12<sup>th</sup> March, 2016? Explain with reference to the relevant provisions of the Companies Act, 2013.(NOV 2016) (MTP NOV 2018)</b></p> <p><b>Hint –</b></p> <p><b>3. 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.</b></p> <p><b>(a) What procedure should the company follow to get the charge registered?</b></p> <p><b>(b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?</b></p> <p><b>Advise with reference to the relevant provisions of the Companies Act, 2013. (RTP May 2022)</b></p> <p>(a) 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.</p> <p>(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.</p>	

If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

4. **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. (5 Marks) (MTP Oct. 22)**

1. Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of ` 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of ` 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of ` 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? (RTP NOV 2019)
  - 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 ` 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 ` 2.00 crores.
2. A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ` 1.00 crore availed from Next\_Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16<sup>th</sup> 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. (RTP NOV 2019)
  - a. With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27<sup>th</sup> 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 17<sup>th</sup> 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 2<sup>nd</sup> May, 2019.

- d. The company cannot now get the charge register as the time prescribed by Law has expired.
3. Cyplish Games and Toys Limited was sanctioned a term loan of ` 60.00 lacs by Zawnn Industrial Bank Limited on 21<sup>st</sup> 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. (RTP NOV 2019)

- a. Special Fees.
- b. Ad-valorem Fees.**
- c. A Late Registration Fees.
- d. Ad-valorem Duty.

Effects of Non-registration of Charges	
<b>Validity of unregistered charge</b> [Sec. 77(3)]	<ol style="list-style-type: none"> <li>1. If the winding up of a company commences, the unregistered charge shall become void and consequently, the unregistered charge holder shall become an unsecured creditor.</li> <li>2. However, if the winding up has not commenced, the unregistered charge shall continue to be valid and hence, the unregistered charge-holder shall continue to be a secured creditor.</li> <li>3. On winding up such unregistered charge shall become void against the liquidator and other creditors of the company.</li> </ol>
<b>Priority of subsequent registered charge</b>	If the company creates a subsequent charge which is registered, such subsequent registered charge shall have priority over the previous unregistered charge. [Proviso to Sec. 77(1)]

Registration of Charge by Charge- holder [Sec. 78]	
<b>Legal Provisions</b> [Sec. 78]	<ol style="list-style-type: none"> <li>1. If a company <b>fails to register</b> any charge <b>within 30 days of its creation</b>, the <b>charge holder may make an application</b> to the Registrar for registration of charge.</li> <li>2. The application shall be made in Form No. CHG-1 or Form No. CHG-9 (for debentures).</li> <li>3. On receipt of application from the charge holder, the Registrar shall give a notice to the company.</li> <li>4. If no objection is received from the company, <b>Registrar may allow such registration within 14 days</b> after giving notice to the company on payment of the prescribed fees.</li> <li>5. However, the Registrar shall not allow such registration by the charge holder, if;               <ol style="list-style-type: none"> <li>(i) The company itself registers the charge; or</li> <li>(ii) The company shows sufficient cause that the charge should not be registered.</li> </ol> </li> </ol>

<b>Recovery of Fees paid</b> [Proviso to Sec. 78]	Where a charge is registered by the Registrar on an application made by the charge holder, the charge holder shall be entitled to recover from the company the fees paid by him to the Registrar.
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1. With a view to augment its production, Surya Techno-Products Limited availed a loan of ` 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ` 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. (RTP NOV 2019)
- 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.

### Modification of charge [Sec. 79]

<b>Modification of charge when there is change in Terms &amp; Conditions, etc.</b> [Sec. 79(b)]	<ol style="list-style-type: none"> <li>1. Any modification in charge (i.e. change in terms and conditions or change in extent or operation of any charge, etc.) to be registered by the company in accordance with section 77.</li> <li>2. Even if the rights of a charge holder are assigned to a 3<sup>rd</sup> party, it will be regarded as a modification.</li> <li>3. <b>Such modification also to be registered with ROC in Form No. CHG-1 or CHG-9 (for debentures). The time limits for registration are same as u/s 77.</b></li> <li>4. As per Rule 6 (2), the Registrar shall issue a certificate of modification of charge in Form No. CHG-3; where the particulars of modification of charge is registered u/s 79.</li> <li>5. Other <b>examples of modification</b> are as under: <ol style="list-style-type: none"> <li>(i) where the charge is modified by varying any terms and conditions of the existing charge through an agreement;</li> <li>(ii) where the modification is in pursuance of an agreement for enhancing or decreasing the limits;</li> <li>(iii) where the modification is by ceding a pari passu charge;</li> </ol> <p><b>Note:</b> A pari passu charge-holder is entitled to a proportionate share in the property mortgaged. When this ceded the charge-</p> </li> </ol>
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	<p>holder will become a second charge-holder and as such his right entitlement will be subject to full satisfaction of the First Charge-holders claim.</p> <ul style="list-style-type: none"><li>(iv) where there is change in rate of interest (other than bank rate);</li><li>(v) where there is change in repayment schedule of loan; (not applicable in case of working loans which are repayable on demand); and</li><li>(vi) where there is partial release of the charge on a particular asset or property.</li></ul>
<p><b>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 NOV 2020)</b></p>	

<b>Date of Notice of Charge [Sec. 80]</b>	
<b>Registration of Charges to act as Constructive Notice</b>	<ol style="list-style-type: none"> <li>1. All charges registered with the registrar are public document.</li> <li>2. Any document filed with the registrar for registration acts as Constructive Notice. Constructive means 'deemed'. Notice means 'Knowledge'. Thereby, it means 'deemed knowledge'. This means even though the 3<sup>rd</sup> party has not referred to the public document he would still be considered or deemed to have seen it.</li> </ol>
<b>Legal provision of Section 80</b>	Where any charge is registered u/s 77, any person acquiring such property, assets, undertaking or part of it or any share or interest on it; <b>shall be deemed to have notice of the charge</b> from the date of such registration.
<b>No recovery of damages</b>	In case, any person enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot claim the loss from the company, for it shall be deemed that he had notice of the charge.
<p><b>1. Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat 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 Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? (RTP MAY 2018) (MTP NOV 2019)</b></p>	
<p><b>2. 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 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.(4 Marks) (MPT M 21)</b></p>	

1. Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:
- Thirty days of such charge
  - Date of application for charge
  - Date of acquiring the property
  - Date of such registration**

Satisfaction of Charge [Sec. 82]	
<b>Intimation of Satisfaction of Charge</b> [Sec. 82(1) & Rule 8]	<ol style="list-style-type: none"> <li>The company shall give intimation to the Registrar of payment or satisfaction in full of any charge registered earlier.</li> <li>The intimation shall be given in <b>Form CHG-4 within 30 days</b> from the date of payment or satisfaction.</li> </ol>
<b>Extension of intimation</b>	<ol style="list-style-type: none"> <li>On application by the company or the charge holder, the <b>Registrar may, allow such intimation of payment or satisfaction to be made within 300 day</b> from the date of payment or satisfaction along with additional fees.</li> <li>In case of IFSC public and IFSC private company, the Registrar may, on an application by the company allow such registration to be made within 300 days of such creation on payment of additional fees as may be prescribed.</li> </ol>
<b>Notice to the Chargeholder</b> [Sec. 82(2)]	<ol style="list-style-type: none"> <li>On receipt of intimation, the Registrar shall send a notice to the charge holder calling him to show cause within time specified in the notice <b>but not exceeding 14 days</b>. The charge holder shall show cause as to why payment or satisfaction in full should not be recorded.</li> <li>However, <b>no notice is required to be sent, where the intimation to the Registrar in Form CHG-4 is signed by the chargeholder.</b></li> <li>If the charge holder does not show any cause within specified time or within 14 days, the Registrar shall:             <ol style="list-style-type: none"> <li>Record the satisfaction of charge in the register of charges maintained; and</li> <li>Inform the company that the satisfaction of charge has been reorded.</li> </ol> </li> <li>Where any cause is shown by the charge holder, the Registrar shall             <ol style="list-style-type: none"> <li>Record a note to that effect in the register of charges maintained by him;</li> <li>inform the company regarding the cause shown by the chargeholder.</li> </ol> </li> </ol>
<b>Issue of certificate</b> [Rule 8(2)]	Where the Registrar enters a memorandum of satisfaction of charge in full; he shall issue a certificate of registration of satisfaction of charge in <b>Form No. CHG-5</b>
<p><b>1. DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.(NOV 2019)</b></p>	

**2. 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 NOV 2020) (5 Marks) (MTP Sep. 22)**

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.

1. 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: (1 Mark) (MTP NOV 2019)

- a. 14
- b. 21
- c. 30
- d. 300

**Power of Registrar to Record Satisfaction of Charge [Sec. 83]**

<b>Where Registrar may record satisfaction of charge in absence of such intimation</b> [Sec. 83(1)]	If, the Registrar is satisfied (on the basis of evidence produced before him) that in relation to a registered charge.-  (a) The debt has been repaid in full; or (b) The property charged has been released from charge; or (c) The property charged has ceased to be the property of the company; then, the Registrar may record the satisfaction of charge in the register of charges maintained by him; even if, no intimation of satisfaction of charge has been given to him by the company.
<b>Notice to parties</b> [Sec. 83(2)]	Within 30 days of recording satisfaction of charge in the register of charges, the Registrar shall inform the affected parties regarding recording of satisfaction of charge.
<b>Certificate</b> [Rule 8(2)]	The Registrar shall issue certificate of registration of satisfaction of charge in Form No. CHG-5

**What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.(RTP NOV 2020) (MTP MAY 2019)**

**Appointment of Receiver or Manager [Sec. 84]**

<b>Notice of Appointment of Receiver or Manager</b>	1. If;
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[Sec. 84(1) & Rule 9]	<p>(a) Any person obtains an order from the Court to appoint a person as receiver or manager of any property of the company on which charge is created; or</p> <p>(b) Any person appoints a receiver or manager of any property of the company on which charge is created due to the power contained in any instrument; then, such person shall <b>within 30 days</b>, give a notice to the <b>company and the Registrar in Form No. CHG-6</b> along with fee; along with a copy of order of Court or instrument conferring power.</p> <p>2. The Registrar shall register the same.</p>
<p><b>Notice of Cessation</b></p> <p>[Sec. 84(3)]</p>	<p>If the person appointed as a receiver or manager ceases to hold his office:</p> <p>(i) He shall give a notice of such fact to the company and the Registrar; and</p> <p>(ii) The Registrar shall register the same.</p>

### Register of Charges to be kept by ROC (sec 81)

Topic	Detailed Explanation
<b>Register to be kept by the ROC for all the Companies</b>	<p>The ROC shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter.</p> <p>The particulars of charges maintained on the Ministry of Corporate Affairs portal (<a href="http://www.mca.gov.in/MCA21">www.mca.gov.in/MCA21</a>) shall be deemed to be the register of charges for the purposes of this Section.</p>
<b>Register to be open for Inspection</b>	<p>A register kept in pursuance of this section shall be open to inspection <b>by any person</b> on payment of <b>such fees as may be prescribed</b> for each inspection.</p>
a)	

1. The Registrar shall keep a register of charges which shall be open to inspection by on payment of fee: **(1 Mark) (MTP Oct. 23)**
- a. the company

- b. the charge holder
- c. holder
- d. **any person**

### Company's Register of Charges [Sec. 85]

<b>Register of Charges to be kept in the Registered Office of the Company</b>	<p>Every company shall keep at its registered office</p> <ol style="list-style-type: none"> <li>1. Register of Charges in <b>Form CHG 7</b>.</li> <li>2. Copy of the <b>Instrument</b> (Loan Agreement) creating the charge.</li> </ol>
<b>Preservation of Register</b>	<p>The Register of Charges and Instrument of Charges shall be kept at <b>registered office</b> and <b>open for inspection</b> during business hours—</p> <ol style="list-style-type: none"> <li>a) by any member or creditor without any payment of fees; or</li> <li>b) by any other person on payment of fees, subject to such reasonable restrictions</li> </ol>

	as the company may, by its <b>Articles</b> , impose.	
<b>Preservation of Register</b>	<b>Register of Charges</b>	Permanently
	<b>Copy of the Instrument</b>	8 years from the date of satisfaction of charge
<b>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.(NOV 2018)</b>		

- 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---(MTP MAY 2019)
  - for minimum 8 years from the date of creation of charge
  - For minimum 10 years from the date of creation of charge
  - For minimum 8 years from the date of satisfaction of charge**
  - permanently, without any time limit
- Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees: **(RTP Mar 23)**
  - Any member of the company
  - The Creditor of the company
  - Persons other than member and creditor of the company**
  - No person is allowed to inspect the register of charges

### **Punishment for Contravention [Sec. 86]**

<b>Punishment</b>	<b>On company</b>	<b>5,00,000</b>
[Sec. 86(1)]	<b>On officer in default</b>	<b>' 50,000</b>
<b>Wilful Defaults</b>	If any person wilfully:	
[Sec. 86(2)]	(a) Furnishes any false or incorrect information;	
	(b) Knowingly suppresses any material fact required to be registered in accordance with Sec. 77;	
	- he shall be liable for action u/s 447.	

**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.(MTP MAY 2019)**

### **Power of Central Govt. for Rectification in Register of Charges [Sec. 87]**

<b>Application to C.G.</b>	A company or any person interested can make an application in Form <b>No. CHG-8</b> for rectification in the Register of Charges to the C.G. in the following cases:
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	<p>(a) <b>Omission</b> to give <b>Intimation to the Registrar</b> of the payment or satisfaction of a charge, within time allowed; or</p> <p>(b) <b>Omission or misstatement</b> of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction.</p>
<b>Grounds / Reasons</b>	<p>The CG shall make order under Section 87 only if it is satisfied that such <b>omission or misstatement</b> was:</p> <p>(i) Accidental; or</p> <p>(ii) Due to inadvertence (unintentionally); or</p> <p>(iii) Some other sufficient cause; or</p> <p>(iv) It is not of a nature to prejudice the position of creditors or shareholders of the company.</p>
<b>Powers of C.G.</b> [Rule 12]	<p>The CG may on an application filed in Form No. CHG-8 in accordance with section 87-</p> <p>(a) <b>direct rectification</b> of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar w.r.t any charge or modification thereof, or w.r.t any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>(b) <b>direct extension of time</b> for satisfaction of charge, if such filing is not made within a period of 300 days from the date of such payment or satisfaction.</p>
<p><b>Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. (MTP NOV 2018) (MTP MAY 2018)</b></p>	

- 1 Which of the following definition of 'Charge' is correct as per Section 2(16) of the Companies Act, 2013?
  - a. '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 but does not includes a mortgage.
  - b. 'Charge' means mortgage or lien created on the property or assets of a company or any of its undertakings or both as security and but does not includes interest.
  - c. **'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 a mortgage.**
  - d. None of the above
- 2 A charge made to cover definite and ascertained assets of permanent nature is called as:
  - a. Floating charge
  - b. **Specific charge**
  - c. Registered charge
  - d. Modified charge
- 3 Which of the following statement is/are correct?
  - a. In case of fixed charge, the company retains possession of the assets charged and it can sell/ dispose the asset charged without the consent of the charge holder.
  - b. In case of floating charge, the company retains possession of the assets charged but it cannot sell/dispose the asset charged without the consent of the charge holder.
  - c. A fixed charge becomes floating when the money borrowed against the asset is repaid in full.
  - d. **None of the above**
- 4 A floating charge becomes fixed when:
  - a. The borrowing company goes in liquidation
  - b. The borrowing company ceases to be in

- business
- c. **Both (a) and (b)**  
d. None of the above
- 5 Which of the following statement is/are not correct with respect of Registration of charges under Companies Act, 2013?
- a. **It shall be the duty of every company creating a charge only if it is within India.**  
b. It shall be the duty of every company creating a charge on its assets irrespective of whether they are tangible or intangible.  
c. It shall be the duty of every company creating a charge on its assets whether in India or outside India.  
d. All of the above
- 6 A company took loan from bank against security of its book debts. Particulars of the charge would be filed with Registrar of companies in:
- a. **Form No.CHG-1**  
b. Form No.CHG-9  
c. Form No.CHG-5  
d. Form No.CHG-10
- 7 Particulars of the charge to be filed with the Registrar of Companies should be in prescribed form and duly signed by authorised signatory of:
- a. the Company  
b. the Charge holder  
c. **Both (a) and (b)**  
d. None of the above
- 8 A company creating a charge is required to register the charge with the Registrar by paying normal fee within:
- a. 30 days of intimation by the lender  
b. **30 days of execution of instrument creating charge**  
c. 30 days from the Board Meeting where the lending is approved  
d. 30 days from the date of Annual General Meeting
- 9 Rana Machines Ltd. took a term loan of 150 Lakh from PBN Bank Ltd. by mortgaging its factory land. The mortgage was registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). The Director of Rana Machines Ltd. is of the opinion that there is no further registration required with Registrar of Companies. What is your advice to the company?
- a. When the mortgage is registered with Central Registry, no registration is required with Registrar of Companies.  
b. **Registration of charge with Registrar of Companies is required irrespective of the fact that mortgage is registered with the Central Registry.**  
c. Registration of charge with Registrar of Companies is required only if the value of Bank loan exceeds 100 Lakh.  
d. Registration of charge with Registrar of Companies is required only if directed so by Central Government.
- 10 X Ltd. took a loan on its Plant & Machinery and created a charge in favour of the Bank. The Plant & Machinery was sold to Y Ltd. in a slump sale whereby all the assets and liabilities get transferred to Y Ltd. Which of the following statement is/are correct with respect to Registration of charges?
- a. X Ltd. is required to file intimation of sale of Plant & Machinery.  
b. **Y Ltd. is required to file Registration of charge in respect of Plant & Machinery**  
c. X Ltd. is required to file Modification of charge in respect of Plant & Machinery  
d. All of the above
- 11 ABC Ltd. took a term loan from XYZ Finance Company for 10 Lakh @ 15% interest per annum against security of stock in trade of the company. The charge was duly registered by ABC Ltd. in due course. Due to ease of credit in economy, XYZ Finance company decided to lower the interest rate to 12% per annum. It is the duty of ABC Ltd. to:
- a. File for fresh Registration of charge  
b. **File for Modification of charge**  
c. File for Intimation of payment of interest  
d. File for Rectification of charge

- 12 Reliant Hydra Limited was sanctioned a term loan of ns Lakh by Yesterday Bank Limited on 13th January, 2020 on mortgage of title deeds of its Corporate Office Building situated in Gurgaon (Haryana) and an instrument of charge was executed. Reliant company omitted to get the charge registered with the Registrar of companies. This fact came to light during the annual audit of the company in April, 2020 when the Chief Manager of Yesterday Bank issued a warning to recall the loan unless the company takes steps for registration of charge. In addition to the normal fee and additional fee for filing of Registration of Charge, the company would be required to pay:
- Special Registration Fee
  - Ad valorem Fee**
  - Late Registration Fee
  - Ad valorem Cess
- 13 A charge was created by PQR Ltd. on its office premises to secure a term loan of no Lakh availed from IndusInd Bank Ltd. through an instrument of charge executed by both the parties on 8th January, 2020. Soon after the Company Secretary of PQR Ltd. died and the charge could not be registered. Advise the company regarding the latest date within which it must register the charge with the Registrar to avoid ad valorem fee.
- 7th February, 2020
  - 31st January, 2020
  - 8th March, 2020**
  - 7th May, 2020
- 14 Where the charge is not registered by the borrower company, it can be filed for registration by the charge holder within:
- 30 days of creation of charge
  - 60 days of creation of charge
  - 90 days of creation of charge
  - Time originally allowed to company creating the charge**
- 15 Where registration is effected on the application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of:
- Normal fee paid by him to the Registrar
  - Normal fee plus any additional fees paid by him to the Registrar**
  - Normal fee paid by him to the Registrar plus incidental charges
  - Normal fee plus any additional fees paid by him to the Registrar plus incidental charges
- 16 A charge was created on assets of Prakash Limited. Such charge is registered on 12th January, 2020. As per the provisions of Companies Act, 2013, any person acquiring such assets shall be deemed to have notice of the charge from:
- 12th January, 2020**
  - 13th January, 2020
  - 12th February, 2020
  - 12th March, 2020
- 17 The maximum time allowed by the Registrar to the company for filing intimation of satisfaction of charge is:
- 30 days from the date of creation of charge
  - 30 days from the date of satisfaction of charge
  - 300 days from the date of satisfaction of charge**
  - 330 days from the date of satisfaction of charge
- 18 On receipt of intimation of satisfaction of charge, the Registrar of Companies issues a notice to .the charge holder calling upon him to show cause as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. The time allowed to charge holder in this show cause notice is:
- Maximum 7 days
  - Minimum 14 days
  - Maximum 14 days**
  - Maximum 21 days
- 19 The entries in the Register of Charges maintained by a company shall be authenticated by:
- A Director of the company
  - Company Secretary of the company
  - Any person authorised by the Board for the

purpose

**d. Any one of above**

20 The register of charges and the instrument of charges maintained by the company shall be open for inspection during:

a. Working hours of the company

**b. Business hours of the company**

c. At all times

d. 9AM to 5PM

21 Which of the following statement is/are correct with respect to provisions of Companies Act, 2013?

a. The Register of Charges shall be open for inspection by any member or creditor on payment of such fees as may be prescribed.

b. The Register of Charges shall be open for inspection by any other person (other than member or creditor) without any payment of fees.

c. Both (a) and (b)

**d. None of the above**

22 The Register of Charges maintained by the company is required to be preserved:

a. For a period of 8 years

**b. Permanently**

c. For a period of 10 years

d. For a period of 6 years

23 The instrument creating a charge or modification thereof is required to be

preserved by the company:

a. For a period of 8 years from the date of creation of charge by company

b. For a period of 8 years from the date of modification of charge by company

**c. For a period of 8 years from the date of satisfaction of charge by company**

d. Permanently

24 Which of the following statement is not correct with respect to provisions of Section 77 of Companies Act, 2013:

a. Any charge which is not registered shall be void as against the liquidator.

b. Any charge which is not registered shall be void as against any other creditor of the company.

**c. Any charge which is not registered shall be void as against the company.**

d. None of the above

25 The company shall be liable to punishment for contravening any provision of Chapter VI of the Companies Act, 2013 shall be:

**a. A fine which shall not be less than 1 Lakh but which may extend to 10 Lakh.**

b. A fine which shall not be less than 25,000 but which may extend to 1 Lakh.

c. Imprisonment for a term which may extend to 6 months.

d. All of above

## Chapter VII

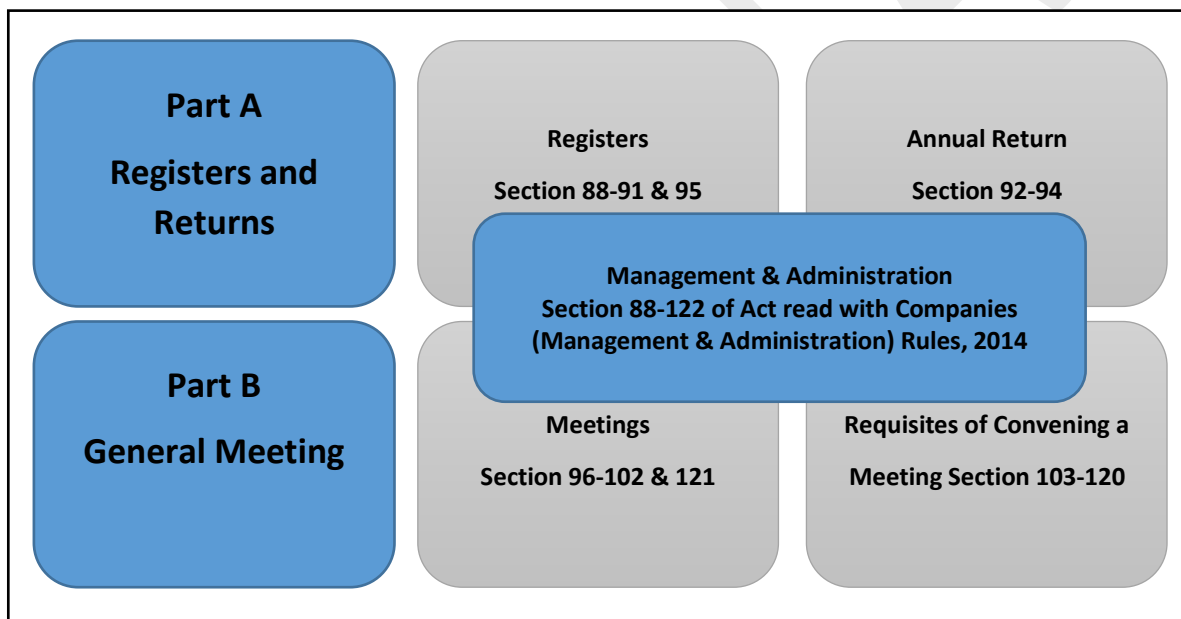
### MANAGEMENT AND ADMINISTRATION

(Section 88 to 122) & The Companies (Management and Administration) Rules, 2014

Section	Title
88	Register of members, etc.
89	Declaration in respect of beneficial interest in any share
90	Register of significant beneficial owners in a company
91	Power to close register of members or debenture-holders or other security holders
92	Annual return
93	**** [Omitted]
94	Place of keeping and inspection of registers, returns, etc.
95	Registers, etc., to be evidence.
96	Annual General Meeting
97	Power of Tribunal to call AGM
98	Power of Tribunal to call meetings of members, etc.
99	Punishment for default in complying with provisions of sections 96 to 98
100	Calling of EGM
101	Notice of meeting
102	Statement to be annexed to notice
103	Quorum for meetings
104	Chairman of meetings
105	Proxies
106	Restriction on voting rights
107	Voting by show of hands
108	Voting through electronic means
109	Demand for poll
110	Postal ballot
111	Circulation of members' resolution
112	Representation of President and Governors in meetings
113	Representation of corporations at meeting of companies and of creditors

114	Ordinary and special resolutions
115	Resolutions requiring special notice
116	Resolutions passed at adjourned meeting
117	Resolutions and agreements to be filed
118	Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot
119	Inspection of minute-books of general meeting
120	Maintenance and inspection of documents in electronic form
121	Report on AGM
122	Applicability of this Chapter to One Person Company

Note: Sec. 93 has been omitted by the Companies (Amendment) Act, 2017, and so, it has not been included in this Book.



**Part B : General Meeting [Sec.96-122]**

<b>Requisites of a Valid Meeting (3C)</b>	
<b>Properly Convened</b>	called by a proper authority; and Proper notice
<b>Properly Constituted</b>	Proper quorum & Proper chairman
<b>Properly Conducted</b>	Follow Companies Act

**Meetings and General Meeting**



<b>Meaning of Meeting</b>	A meeting may be defined as the gathering, assembly or coming together of two or more persons for transacting any lawful business.
<b>General Meeting (GM)</b>	The meetings of <b>all</b> the members (shareholders) of a company are referred to as general meetings.
<b>Purpose</b>	Decision making

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<b>Annual General Meeting (AGM) [Sec. 96]</b>		
<b>Meaning</b>	<ul style="list-style-type: none"> <li>▪ General Meeting (GM) held once every year is termed as AGM.</li> <li>▪ As per section 96(1), every company shall hold an AGM every year except <b>One Person Company</b>.</li> </ul>	
<b>1<sup>st</sup> AGM</b> [Sec. 96(1)]	<b>Time Limits</b>	<ul style="list-style-type: none"> <li>▪ 1<sup>st</sup> AGM to be held within 9 months from the date of closing of 1<sup>st</sup> F.Y.</li> <li>▪ It is not necessary for the company to hold any AGM in the year of its incorporation if 1<sup>st</sup> AGM is duly held.</li> </ul>
	<b>No Extension</b>	The Registrar shall not grant any extension for holding the 1 <sup>st</sup> AGM.
<b>Subsequent AGM</b> [Sec. 96(1)]	<b>Time Limits</b>	<p>the last date for holding AGM shall be earliest of the below 3 time limits:</p> <ul style="list-style-type: none"> <li>(i) Within 6 months from the closure of the F.Y.</li> <li>(ii) Gap between previous AGM and the next AGM does not exceed 15 months i.e. AGM is to be held within 15 months of last AGM.</li> <li>(iii) AGM is to be held in each calendar year. (i.e upto 31<sup>st</sup> Dec.)</li> </ul>
	<b>Extension</b>	The Registrar may, for any special reasons, extend the time for holding the AGM for any period not exceeding 3 months.
<b>Time, Place &amp; Day of holding AGM</b> [Sec. 96(2)]	<b>Time of AGM</b>	AGM shall be held during business hours i.e between 9 am and 6 pm.
	<b>Day of AGM</b>	<ul style="list-style-type: none"> <li>▪ AGM shall not be called on a day of National Holiday.</li> <li>▪ 'National Holiday' means and includes a day declared as National Holiday by the C.G.</li> </ul>
	<b>Place of AGM</b>	<p>AGM shall be held at the:</p> <ul style="list-style-type: none"> <li>(i) Registered office of the company; or</li> <li>(ii) Some other place within the city, town or village in which the registered office is situated.</li> </ul> <p>However, AGM of an <b>unlisted company</b> may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members.</p>
<b>Other Imp points</b>	<ul style="list-style-type: none"> <li>• The C.G may exempt any company from the provisions of Sec. 96(2) subject to conditions as it may impose.</li> <li>• Section 8 Company may hold its AGM at such time, date and place as decided upon before-hand by the Board of Directors having regard to the directions, if any, given by the shareholders in its general meeting.</li> <li>✓ <b>Government Companies: Section 96(2) - Place for holding AGM</b> Government Company may hold its AGM at :-</li> <li>• such other place within the city, town or village in which the registered office of the company is situate or</li> </ul>	

- such other place as the Central Government may approve in this behalf.

1. Rjwan 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 6<sup>th</sup> Annual General Meeting at 3 PM on 22<sup>nd</sup> August, 2019 at Hinal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Hinal Plaza. The company has approached you to advise them in this regard. Suppose, Rjwan Limited is an unlisted company and wants to call their 6<sup>th</sup> AGM at Jaipur, will your answer differ. (RTP NOV 2019)

2. Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. (5 Marks)(MTP M 21)

**Hint** - 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.

3. 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. (MTP Mar. 22)(4 Marks)

4. Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022-23 as under:

- (i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.

Advise the Company on the feasibility of the above with reference to the provisions of Companies Act, 2013.4 M (Nov 23)

#### Power of Tribunal to call AGM [Sec. 97]

<b>Member to apply to Tribunal</b>	If any default is made in holding the AGM, any member may make an application to the Tribunal.
<b>Powers of the Tribunal</b>	(a) The Tribunal may call a GM or direct the calling of a GM, which shall be deemed to be an AGM of the company. (b) The Tribunal may give ancillary or consequential directions as it may think fit, including a direction that 1 member present in person or proxy shall be the quorum.

	Section 97 — Power of NCLT to call AGM	Section 98 - Power of NCLT to call EGM
<b>Ground</b>	There is DEFAULT in holding AGM.	It is IMPRACTICABLE to call EGM.
<b>Who applied to NCLT</b>	Any Member may apply to NCLT.	<ul style="list-style-type: none"> <li>• NCLT suo-moto</li> <li>• Any Member</li> <li>• Any Director</li> </ul>

1 ABC Ltd. held its AGM for the financial year 2017-18 on 9th June, 2018. The company held

its AGM for the following financial year on 30th September, 2019. With regard to the

provisions of Companies Act, 2013, which of the following statement is correct?

- a. The AGM for financial year 2018-2019 is valid since it is held 6 months from the date of closing of the financial year.
  - b. The AGM for financial year 2018-2019 is valid since it is held 9 months from the date of closing of the financial year.
  - c. The AGM for financial year 2018-2019 is not valid since more than 15 months have elapsed from the date of meeting of previous year.**
  - d. None of the above.
- 2 The Annual General Meeting of XYZ Ltd., for the financial year ending 31-3-2019 was held on 27-9-2019. However, the audited accounts of the company are yet to be received from its auditors. Therefore, the meeting was held on due date to conduct the remaining business and it was adjourned and finally held on 31-1-2020 at which the audited financial statements were adopted. The AGM of previous year was held on 30-9-2018. With regard to the provisions of Companies Act, 2013, which of the following statement is correct?

- a. The meeting held on 31-1-2020 is valid since not more than 15 months have elapsed from the date of meeting of previous year.
- b. The meeting held on 31-1-2020 is invalid since the AGM, including any adjournment thereof, must be held not later than 6 months from date of closing of the Financial Year.**
- c. The meeting held on 31-1-2020 can be validated by taking the approval from Registrar.
- d. The meeting held on 31-1-2020 is invalid since there is no provision in law for adjournment of an AGM.

- 3 The Annual General Meeting of an unlisted company may be held:
- a. At the Registered Office of the company.
  - b. At some other place within the City, Town or Village in which the Registered Office of the Company is situated.
  - c. Any place in India if consent is given in writing or by electronic mode by all the members in advance.
  - d. Either of above.**

Extraordinary General Meeting [Sec. 100]			
<b>Meaning</b>	<ul style="list-style-type: none"> <li>▪ All GM other than AGM is an Extraordinary General Meeting (EGM).</li> <li>▪ If there is any matter of urgent or special nature arising between two AGMs, an EGM may be held.</li> <li>▪ Every business transacted at such a meeting is <b>special business</b>.</li> </ul>		
<b>Who can call EGM</b>	An EGM can be called by: <ul style="list-style-type: none"> <li>(i) BOD on its own [Sec.100(1)]</li> <li>(ii) BOD on requisition of members [Sec.100(2)]</li> <li>(iii) Requisitionists themselves [Sec.100(4)]</li> <li>(iv) Tribunal [Sec.98]</li> </ul>		
<b>By Board</b>	BOD may call EGM whenever it deems fit.		
<b>BOD may call EGM on Requisition being raised by the shareholders</b>	<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Requisition By Whom?</b></td> <td><b>(a)</b> in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, <b>not less than 1/10th of Equity shares;</b></td> </tr> </table>	<b>Requisition By Whom?</b>	<b>(a)</b> in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, <b>not less than 1/10th of Equity shares;</b>
<b>Requisition By Whom?</b>	<b>(a)</b> in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, <b>not less than 1/10th of Equity shares;</b>		

		(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, <b>not less than 1/10th of the total voting power.</b>
	<b>Essentials of a valid requisition</b>	<ol style="list-style-type: none"> <li>1. The requisition shall specify the <b>matters</b> for the consideration of which EGM is to be called.</li> <li>2. The requisition shall be valid even if it does not <b>specify the reasons</b> for the matters.</li> <li>3. shall be <b>SIGNED</b> by the requisitionists and</li> <li>4. sent to the <b>REGISTERED OFFICE</b> of the company.</li> </ol>
	<b>Action by Board</b>	<p>On receipt of a valid requisition</p> <ul style="list-style-type: none"> <li>• the Board shall <b>within 21 days</b> issue notice</li> <li>• within <b>45 days</b> conduct EGM</li> </ul>
<b>By requisitionists themselves</b> [Sec. 100(4)]		<ol style="list-style-type: none"> <li>1. If the Board fails <b>to call EGM within 45 days</b>, it may be called by requisitionists themselves.</li> <li>2. The EGM shall be held <b>within 3 months</b> from the date of deposit of the requisition.</li> <li>3. The requisitionists shall call the EGM in the <b>same manner</b> in which a meeting is called by the BOD [Sec. 100(5)].</li> <li>4. All reasonable expenses incurred by the requisitionists in calling an EGM shall be reimbursed to them by the company.</li> </ol>
<b>Time, place, day for holding EGM</b>		<ol style="list-style-type: none"> <li>1. The requisitionists should convene the EGM on <b>any day except National Holidays.</b></li> <li>2. The requisitionists should convene the EGM at the registered office or in the same city or town in which the registered office is situated.</li> <li>3. <b>However, the EGM of a wholly owned subsidiary of a company incorporated outside India shall be held within or outside India.</b></li> <li>4. In case of Specified IFSC Private/Public Company, EGM may be held within or outside India on consent of all the shareholders.</li> </ol>
<p><b>1. 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: (RTP MAY 2019)</b></p> <p>(i) EGM be held in India (ii) EGM be held in Netherlands</p> <p><b>Conclusion - In the light of the above provisions:</b></p> <p>(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.</p>		

2. 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) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting. (6 Marks) (MTP Oct. 23)

### Punishment for Default in Complying with Sec. 96, 97 & 98 [Sec. 99]

<b>Applicability of Sec. 99</b>	1. If default is made in holding AGM u/s 96 or 97 or EGM u/s 98. 2. If default is made in complying with any directions of the Tribunal.
<b>Punishment</b>	Company o& officer-in-default: <ul style="list-style-type: none"> <li>➔ Fine upto Rs. 1 lakh</li> <li>➔ Fine Rs. 5,000 per day in case of continuing default.</li> </ul>

- 1 ABC Ltd. is a company incorporated in India and holds 100% shares of EFG GmbH, a company incorporate in Germany. An Extraordinary General Meeting of ABC Ltd. can be held:
  - a. At the Registered Office of ABC Ltd. or some other place within the City, Town or Village in which the Registered Office of the Company is situated.
  - b. At any place in India.**
  - c. At any place outside India.
  - d. Either of above.
- 2 ABC Ltd. is a wholly owned subsidiary of EFG GmbH, a company incorporated in Germany. An Extraordinary General Meeting of ABC Ltd. can be held:
  - a. At the Registered Office of ABC Ltd. or some other place within the City, Town or Village in which the Registered Office of the Company is situated.
  - b. At any place in India.
  - c. At any place outside India.
  - d. Either of above.**
- 3 The Board of Directors of ABC Ltd. include two Directors representing financial institutions, which together hold more than 20% of the equity capital of the company. The financial institutions served a requisition under Section 100 of the Companies Act for calling an extraordinary general meeting for removal of Managing Director of the company. However, they refused to give any reasons for the removal of Managing Director. The company refused to convene the meeting on the ground that the requisition is not accompanied by a proper explanatory statement. Decide which of the following statement gives the correct state of law.
  - a. The stand taken by company is correct, since as per Section 102 of Companies Act, an explanatory statement is required to be annexed in respect of every item of special business.
  - b. The requisitionists are under no obligation to attach the explanatory statement to the requisition.**

- c. The requisitionists an extraordinary general meeting of the company can be given by natural persons and no body corporate can call for an EGM.
- d. None of the above.
- 4 If the Board does not call a meeting requested by required number of members, the meeting may be called and held by the requisitionists themselves within a period of:
- 60 days from the date of receipt of such requisition by the company.
  - 90 days from the date of receipt of such requisition by the company.
  - 3 months from the date of the requisition.**
  - 6 months from the date of the requisition.
- 5 Under Section 98 of the Companies Act, the Tribunal may order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit and give such ancillary or consequential directions as it considers expedient. The order under Section 98 may be made by the Tribunal:
- On its own motion.
  - On the application of any Director of the Company.
  - On application of any member entitled to vote at the meeting.
  - Either of above.**
- 6 In case of one person company, if any item is required to be transacted at an AGM or EGM of the company by an ordinary or special resolution, it shall be passed:
- By the member himself along with the Director or Secretary of the company.
  - By means of communication of resolution by the member to the company and entering in the Minutes Book is required to be maintained and signed under the Act.**
  - By means of communication of resolution by the member to the Registrar.
  - Either of above.

<b>Notice of Meeting [Sec. 101]</b>	
<b>Meaning</b>	intimation of time, place, date and agenda of the meeting to the members and invitation to attend the meeting.
<b>Who can give notice?</b>	<ol style="list-style-type: none"> <li>A general meeting has to be called by the <b>Board</b>.</li> <li>An individual director has no authority to call a GM.</li> <li>BOD can delegate its powers to secretary, manager, etc.</li> <li>If secretary or other issue notice without the sanction of the Board, notice will be invalid. However, it can be ratified by the BOD.</li> </ol>
<b>Who are entitled to receive notice?</b> <b>[Sec. 101(3)]</b>	The notice of every meeting of the company shall be given to – <ol style="list-style-type: none"> <li>Every member of the company, or</li> <li>Legal representative of any deceased member, or</li> <li>Official assignee of an insolvent member; and</li> <li>Auditor of the company, and</li> <li>Every director of the company;</li> <li>In case of joint holding, notice is to be given to First named joint holders.</li> </ol>
<b>Time limit (Length of notice)</b> <b>[Sec. 101(1)]</b>	<ol style="list-style-type: none"> <li>Notice shall be sent <b>atleast 21 clear days</b> before the meeting.</li> <li>A <b>section 8</b> company may give notice <b>atleast 14 clear days</b> before the meeting provided no default has been made in filing F.S u/s 137 or annual return u/s 92 with the Registrar.</li> </ol>



	<p>3. The following days are not counted in 21 clear days:-</p> <ul style="list-style-type: none"> <li>(i) Day of Dispatch = 1 day.</li> <li>(ii) Deemed Postage Duration u/s 20 = 2 Days (48 Hours)</li> <li>(iii) Date of meeting = 1 day.</li> </ul>						
<p><b>Chetan Ltd. issued a notice for holding its Annual general meeting on 7<sup>th</sup> November 2019. The notice was posted to the members on 16<sup>th</sup> 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:</b></p> <ul style="list-style-type: none"> <li>(i) Whether the meeting has been validly called?</li> <li>(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?</li> <li>(iii) Can the delay in giving notice be condoned? (RTP NOV 2020) (MAY 2019)</li> </ul>							
<p><b>Omission</b> [Sec. 101(4)]</p>	<p><b>Accidental Omission</b> to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall <b>not</b> invalidate the proceedings of the meeting.</p> <p><b>Deliberate Omission</b> shall invalidate the meeting.</p>						
<p><b>Shorter Notice</b> [Proviso to Sec. 101(1)]</p>	<p>A GM may be called after giving shorter notice than that of 21 clear days, if consent, in writing or by electronic mode, is given:</p> <table border="1" data-bbox="440 1715 1430 2000"> <tr> <td data-bbox="440 1715 635 1771">AGM</td> <td data-bbox="635 1715 1430 1771">Not less than 95% of the <b>members (ESH)</b> entitled to vote.</td> </tr> <tr> <td data-bbox="440 1771 635 1944">EGM</td> <td data-bbox="635 1771 1430 1944"> <p><b>Case 1: If the company has a share capital</b></p> <p><b>A. Majority</b> in number of members (ESH) entitled to vote <b>AND</b></p> <p><b>B. who represent 95% of ESC.</b></p> </td> </tr> <tr> <td data-bbox="440 1944 635 2000">EGM</td> <td data-bbox="635 1944 1430 2000"><b>Case 1: If the company has no share capital</b></td> </tr> </table>	AGM	Not less than 95% of the <b>members (ESH)</b> entitled to vote.	EGM	<p><b>Case 1: If the company has a share capital</b></p> <p><b>A. Majority</b> in number of members (ESH) entitled to vote <b>AND</b></p> <p><b>B. who represent 95% of ESC.</b></p>	EGM	<b>Case 1: If the company has no share capital</b>
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EGM	<b>Case 1: If the company has no share capital</b>						

	Members holding atleast 95% of the <b>total voting power</b> .
<b>Contents of the Notice</b> <b>[Sec. 101(2)]</b>	A valid notice must state: <ol style="list-style-type: none"> <li>1. Time, day, date, place of the meeting.</li> <li>2. Agenda (business) of the meeting.</li> <li>3. Documents accompanying notice: <ol style="list-style-type: none"> <li>(i) AGM → Financial Statement, Auditors Report, Directors Report, Admission Slip, Proxy Form.</li> <li>(ii) EGM → Explanatory Statement, Admission Slip, Proxy Form.</li> </ol> </li> </ol>
<b>Serving of Notice</b>	<ol style="list-style-type: none"> <li>1. As per Sec. 20 of the Act; notice may be served on any member by: <ol style="list-style-type: none"> <li>(a) Post or registered post or speed post; or</li> <li>(b) Courier; or</li> <li>(c) Personal delivery; or</li> <li>(d) Electronic mode; or other as prescribed.</li> </ol> </li> <li>2. However, if the Articles prescribe the mode of delivery of notice, it should be given accordingly.</li> <li>3. A member may request delivery through a particular mode on payment of fees as determined by the company in its AGM.</li> </ol>
<p><b>Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general 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. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide:</b></p> <p>(i) <b>Whether the contention of Vijay is valid.</b></p> <p>(ii) <b>Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?(RTP NOV 2020)(MTP April 22)</b></p>	
<b>Manner of giving Notice</b> <b>[Sec. 101(1)]</b>	The notice shall be given- <ol style="list-style-type: none"> <li>(i) In writing; or</li> <li>(ii) By electronic mode, in manner as per Rule 18.</li> </ol>

	(iii) Oral not allowed
<b>Notice through electronic mode</b> <b>[Rule 18]</b>	<p><b>Meaning of electronic mode</b></p> <p>Any communication sent secured computer programme which is capable of producing confirmation and keeping record of it</p> <p><b>Notice given by e-mail</b></p> <p>Notice may be sent through e-mail as a –</p> <ul style="list-style-type: none"> <li>▪ Text; or attachment to e-mail; or</li> <li>▪ Notification providing electronic link or Uniform Resource Locator for accessing such notice.</li> </ul> <p><b>E-mail to whom?</b></p> <p>Addressed to the person entitled to receive such e-mail-</p> <p>(a) As per records of the company; or (b) As provided by the depository.</p> <p><b>Register and update e-mail</b></p> <p>The company shall provide an advance opportunity atleast once in a F.Y, to the members to register their e-mail addresses and to update their e-mail addresses.</p> <p><b>Download Software</b></p> <p>If notice is sent in the form of a non-editable attachment, such attachment shall be –</p> <ul style="list-style-type: none"> <li>(i) In the Portable Document Format (PDF); or</li> <li>(ii) In a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.</li> </ul> <p><b>Failure in Transmission</b></p> <ul style="list-style-type: none"> <li>(i) The company's obligation shall be satisfied when it transmits the e mail.</li> <li>(ii) The company shall not be held responsible for a failure in transmission beyond its control.</li> <li>(iii) If a member 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.</li> </ul> <p><b>Notice to be paced on website</b></p> <p>The notice of GM shall be simultaneously placed on-</p> <ul style="list-style-type: none"> <li>(i) the website of the company, if any; and</li> <li>(ii) such website as may be notified by CG</li> </ul>
<p><b>P Limited had called its Annual General Meeting on 30<sup>th</sup> 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</b></p>	

**Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.(4 Marks) (MTP M 21)**

**Hint** - 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. Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

1. DBSL convene its 7<sup>th</sup> AGM on 10<sup>th</sup> September 2020 at the registered office of the company. Notice for same was served on 21<sup>st</sup> August 2020. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11<sup>th</sup> September 2020 on account of the second wave of COVID-19. Considering the provision relating to length of Notice for AGM, pick out the right option: (RTP MAY 2021)
  - 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 to be at least 50% of the members entitled to vote at AGM that too in writing.
2. **Annual general meeting need to be called by giving 21 days' clear notice. However it can be called on a shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such case, how many members have to give their consents? (MTP MAY 2019)**
  - a. 75% of members entitled;
  - b. 90% of members entitled;
  - c. 91% of members entitled;
  - d. 95% of members entitled;**
3. **The AGM needs to be called by giving 21 days clear notice. However, it can be called on shorter notice if members entitled to vote in 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
  - c. 91% of members entitled
  - d. 95% of members entitled**
4. A general meeting of a company can be convened by giving a notice not less than \_\_\_\_\_ clear days before the date of the meeting.
  - a. 14
  - b. 21**
  - c. 30
  - d. 45
5. A general meeting of a company licensed under Section 8 of the Companies Act, 2013 can be convened by giving a notice not less than \_\_\_\_\_ clear days before the date of the meeting.
  - a. 14**
  - b. 21
  - c. 30
  - d. 45
6. The notice of a general meeting of a company can be given:
  - a. Orally
  - b. In writing or electronically**
  - c. By publishing as an advertisement in the newspaper
  - d. All of the above
7. The auditor of a company complains that he was not given notice of an ensuing general

meeting of the company. The Secretary of the company contend that as no part of the business of that meeting concerned the auditor, no notice was required to be given to him. In view of the provisions of Companies Act, 2013, which of the following statement is correct?

- a. **The notice of general meeting must be given to the Auditor of company, irrespective of the fact that any matter therein concerns him or not.**
- b. The Secretary of the company is correct and if in the proposed agenda, there is nothing concerning the Auditor, the notice is optional.
- c. No notice of general meeting, other

than Annual General Meeting, is required to be given to the Auditor of the company.

- d. None of the above.
8. In case of shares held jointly by more than one shareholder, the notice of the general meeting shall be given to:
  - a. To every joint holder whose name appears in the records of the company.
  - b. To the first joint holder i.e. person whose name appears first as per records of the company.**
  - c. To any joint holder which shall be deemed as notice to all.
  - d. None of the above.

Ordinary Business and Special Business [Sec. 102]	
<b>Ordinary Business</b> [Sec. 102]	<ol style="list-style-type: none"> <li><b>1. At an AGM</b> Following business shall be ordinary business:             <ol style="list-style-type: none"> <li>(i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.</li> <li>(ii) Declaration of Dividend.</li> <li>(iii) Appointment &amp; Removal of directors</li> <li>(iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.</li> </ol> </li> <li><b>2. At EGM</b> No business is ordinary.</li> </ol>
<b>Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. (MTP MAY 2017)</b>	
<b>Special Business</b>	<ol style="list-style-type: none"> <li><b>1. At an AGM</b> All business except those specified u/s 102(2)(a) shall be deemed as special business.</li> <li><b>2. At EGM</b> <b>All business shall be deemed to be special business.</b></li> <li><b>3. Explanatory Statement</b> Explanatory statement shall be annexed to the notice of transacting every item of special business.</li> </ol>
<b>Contents of explanatory statement</b>	<b>Contents of explanatory statement</b> <ol style="list-style-type: none"> <li><b>1. All material facts</b> concerning each item of business to enable members to take decisions.</li> </ol>

[Sec. 102(1)]	<p>2. The nature of concern <b>or interest</b> (financial or non-financial) of:</p> <p>(i) Every director and manager;</p> <p>(ii) Every other key managerial person;</p> <p>(iii) Relatives of (i) and (ii) above.</p> <p>3. If any item of the special business <b>affects any other company</b>, then the <b>extent of shareholding of every director and manager</b> in that company in case their shareholding interest is <b>at least 2% of the paid up share capital</b> of the other company [Proviso to Sec. 102(2)]</p> <p>4. If special business refers to any document which is to be considered at the GM, <b>the time and place where such document can be inspected</b> shall be specified in the Explanatory Statement. [Sec. 102(3)]</p>
<p>1. <b>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. (RTP May 2015) (MTP NOV 2017)</b></p> <p><b>Hint – Notice invalid as E.S do not specify all material facts regarding special business</b></p> <p>2. <b>Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:</b></p> <p>(i) <b>Resolution to increase the Authorised share capital of the company.</b></p> <p>(ii) <b>Appointment and fixation of the remuneration of Mr. Prateek as the auditor.</b></p> <p><b>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.(NOV 2019)</b></p> <p>3. <b>Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.(MAY 2018)</b></p> <p><b>Conclusion - Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.</b></p>	

1. Which one of the following requires ordinary resolution? (MTP MAY 2020)
  - 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.**
2. Which of the following is not an ordinary business at the Annual General Meeting of the company:
  - a. Consideration of Financial Statements

- b. Buy-back of shares
- c. Declaration of Dividend
- d. Appointment of Directors
3. Under Section 102(1) of Companies Act, 2013, where any item of special business relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, KMP is

required to be disclosed, if the extent of such shareholding is:

- a. **Not less than 2% of the Paid-up share capital of that other company.**
- b. Not less than 5% of the Paid-up share

capital of that other company.

- c. Not less than 10% of the Paid-up share capital of that other company.
- d. Not less than 20% of the Paid-up share capital of that other company.

<b>Quorum for Meetings [Sec. 103]</b>									
<b>Meaning</b>	minimum number of members who must be present in order to constitute a valid meeting.								
<b>Quorum Required [Sec. 103(1)]</b>	<p>(i) <b>Private Company:</b> 2 members shall be personally present as quorum.</p> <p>(ii) <b>Public Company:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">No. of members as on the date of meeting</th> <th style="text-align: center;">Required quorum</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Upto 1,000</td> <td style="text-align: center;">5 members personally present</td> </tr> <tr> <td style="text-align: center;">More than 1000 but upto 5000</td> <td style="text-align: center;">15 members personally present</td> </tr> <tr> <td style="text-align: center;">Exceeds 5000</td> <td style="text-align: center;">30 members personally present</td> </tr> </tbody> </table> <p><b>However, articles may provide for larger numbers as the quorum in both private and public company.</b></p>	No. of members as on the date of meeting	Required quorum	Upto 1,000	5 members personally present	More than 1000 but upto 5000	15 members personally present	Exceeds 5000	30 members personally present
No. of members as on the date of meeting	Required quorum								
Upto 1,000	5 members personally present								
More than 1000 but upto 5000	15 members personally present								
Exceeds 5000	30 members personally present								
<b>Counting of Quorum</b>	<p><b>The following shall be counted as quorum:</b></p> <ol style="list-style-type: none"> <li>1. Members personally present.</li> <li>2. Representative of:               <ol style="list-style-type: none"> <li>(a) President</li> <li>(b) Governor of States</li> <li>(c) Body corporate</li> <li>(d) A donee of a power of attorney.</li> </ol> </li> <li>3. Person in more than one capacity is counted as such for quorum. One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one member for the purpose of quorum.</li> <li>4. Joint members are considered as one member for counting as quorum.</li> </ol> <p><b>The following shall not be counted as quorum:</b></p> <ol style="list-style-type: none"> <li>1. Proxy is not counted as quorum.</li> <li>2. Preference shareholders are not counted for quorum except for business which affects their rights.</li> </ol>								
<p><b>1 The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:</b></p> <ol style="list-style-type: none"> <li>(i) <b>A, the representative of Governor of Uttar Pradesh.</b></li> <li>(ii) <b>B and C, shareholders of preference shares,</b></li> </ol>									

- (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? (RTP MAY 2020) (MTP Sep. 22)

**2 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?(MAY 2019)**

**Hint -** In the instant case, the quorum for the public company will be 5 members personally present.

**3 The Annual General Meeting of KMP Limited was held on 30<sup>th</sup> April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman’s decision.(MAY 2015)**

**Hint -** In the instant case, KMP Limited is a public company with total number of 2750 members, hence atleast 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting. Decision of chairman valid

**If No Quorum Present**  
[Sec. 103(2)]

If the quorum is not present within half-an-hour from the time decided for holding a meeting of the company, then:

- (i) The EGM, if called by requisitionists u/s 100; the meeting shall stand cancelled.
- (ii) In other cases;
  - (a) The meeting shall adjourn to such day, time and place as may be determined by the Board.
  - (b) However, if it is not determined by the Board, the meeting shall automatically adjourn to same day, time and place in the next week.
  - (c) Atleast 3 days’ notice of adjourned meeting shall be given to the members either individually or by publishing in advertisement in 2 newspapers (1 in English and 1 in vernacular language).



	<p>(d) If at the adjourned meeting also, quorum is not present; members present will form the quorum.</p> <p><b>Rule :</b> But there should be at least 2 members; hence, quorum of a meeting cannot be 1 member.</p> <p>However, there are exceptions to the above rule:</p> <p>(a) Where 1 person holds all the shares of a particular class, he alone can constitute a meeting of that class.</p> <p>(b) Where the meeting is called by an order of Tribunal u/s 97 or 98, it may direct that 1 member present in person or by proxy shall constitute a valid meeting.</p>
<p><b>1 KMN Ltd. scheduled its annual general meeting to be held on 11<sup>th</sup> March, 2018 at 11:00 A.M. The company has 900 members. On 11<sup>th</sup> March, 2018 following persons were present by 11:30 A.M.</b></p> <ol style="list-style-type: none"> <li><b>1 P1, P2 &amp; P3 shareholders</b></li> <li><b>2 P4 representing ABC Ltd.</b></li> <li><b>3 P5 representing DEF Ltd.</b></li> <li><b>4 P6 &amp; P7 as proxies of the shareholders</b></li> </ol> <p>(a) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.</p> <p>(b) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?</p> <p>(c) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time &amp; place.</p> <p>(d) What happens if there is no Quorum in the Adjourned meeting?(NOV 2018)</p> <p><b>Hint –</b></p> <ol style="list-style-type: none"> <li><b>(i)</b> 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.</li> <li><b>(ii)</b> 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.</li> <li><b>(iii)</b> 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.</li> <li><b>(iv)</b> Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.</li> </ol> <p><b>2 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.</b></p> <p><b>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.</b></p>	

**What would be your answer in the above case, if PQ Limited is a Private company?(Nov 2020)**

**Hint** - 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.

- 3. Examine the validity -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. (RTP NOV 2018) (4 Marks) (MTP M 21)**

**Hint** - 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.

**Other Important Points**

1. If all the members are present, it is immaterial that the quorum required is more than the total number of members.
2. Quorum must be present throughout the meeting and not just at the time of commencement.
3. The quorum is required even if some members have already cast their votes through E-voting facility; such members shall have right to attend the GM and shall be counted for quorum.

**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.**

**(April 22) (5 Marks)**

**Hint - 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).

- 1 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: (RTP NOV 2020) (Nov 23)

- 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,

- 2 The Articles of ABC Ltd. having 998 members, provide that the quorum for its general meeting shall be 7 members personally present. With regard to provisions of Companies Act, 2013, decide what will be the quorum for its general meeting.

- a. Five members personally present.
- b. Seven members personally present.**
- c. Two members personally present.
- d. Whatever number of members greater than two that are present at the meeting.

- 3 According to the Register of Members of ABC Ltd., it has 998 members. In the general

meeting of the company, four members are personally present and three proxies are present on behalf of other members. Which of the following statement is correct?

- a. The quorum of company which has not more than 1000 members as on the date of meeting is 5 members. Since there are seven members present either in person or by proxy, the quorum is complete for the general meeting.
- b. The quorum of company which has not more than 1000 members as on the date of meeting is 5 members personally present. Since there are only four members present in person, the quorum for the general meeting is not there.**
- c. The quorum of company which has not more than 1000 members as on the date of meeting is 2 members personally present. Since there are four members present in person, the quorum is complete for the general meeting.
- d. None of the above.

- 4 The Articles of Association of X Ltd. require the personal presence of seven members to constitute quorum of general meetings. At an EGM called by the company, the following persons were present at the time of commencement of the meeting:

- 1 Mr. G, being representative of Governor of Punjab.
- 2 Mr. A and Mr. B, *preference* shareholders
- 3 Mr. L and Mr. M, equity shareholders
- 4 Mr. R, representing 3 member companies P Ltd., Q Pvt. Ltd. and R Ltd.
- 5 Mr. E, Mr. F, Mr. G and Mr. H, who were proxies of shareholders.

Which of the following statement is correct in respect of the quorum at the EGM?

- a. Number of members personally present are six. Therefore, the quorum is not complete.**
- b. Number of members personally present are eight. Therefore, the quorum is complete.
- c. Number of members personally present are

10. Therefore, the quorum is complete.
- d. Number of members personally present are 12. Therefore, the quorum is complete.
- 5 In which of the following case(s), a single member present can constitute valid meeting:
- a. Where one person who holds all the shares of a particular class, is present at the Class meeting.
  - b. Annual General Meeting convened as per directions of Tribunal under Section 97, if it directs that one member can constitute valid meeting.
  - c. Extraordinary General Meeting convened as per directions of Tribunal under Section 98, if it directs that one member can constitute valid meeting.
- 6 If the quorum is not present within half an hour from the time appointed for holding a general meeting of the company (other than that called by requisitionists under Section 100), the meeting:
- a. **Shall stand adjourned to the same day in the next week at the same time and place, or such other date and such other time and place as the Board may determine.**
  - b. Shall stand cancelled.
  - c. Shall stand postponed indefinitely.
  - d. None of the above.

<b>Chairman of Meetings [Sec. 104]</b>	
<b>Who is Chairman?</b>	'Chairman' is the person who has been <b>designated or elected to preside over</b> and conduct the proceedings of a meeting.
<b>Election of Chairman by members [Sec. 104(1)]</b>	If the articles do not provide manner of election of the Chairman, the members personally present at the meeting shall elect one of themselves to be the Chairman by <b>show of hands</b> .
<b>Demand of poll [Sec. 104(2)]</b>	If a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman until some other person is elected as Chairman as a result of poll.
<b>Table F of Schedule I (Regulation 45, 46, 47) (If Company adopts Table F)</b>	<ul style="list-style-type: none"> <li>• If the BOD have appointed a Chairperson, that Chairperson, if present, will preside as Chairperson of the meeting.</li> <li>• If there is no such Chairperson, or is not present within 15 minutes after the time fixed for holding meeting, or is unwilling to act as chairperson; the directors present shall elect one of themselves as Chairperson of the meeting.</li> <li>• If at any meeting, no directors is willing to act as Chairperson or if no director is present within 15 minutes after the time fixed for holding the meeting, the members present shall choose one of themselves as chairperson.</li> </ul>
<b>Casting Vote</b>	It means that in event of equality of vote ( tie ) on a particular business being transacted at the meeting, the Chairman shall have a right to cast a vote.
<b>Powers and Duties of Chairman</b>	<ol style="list-style-type: none"> <li>1. To maintain order and decorum of the meeting.</li> <li>2. Execute the minutes of the meeting, post meeting. To ensure that the meeting is properly convened and constituted (required quorum is present).</li> <li>3. To adjourn the meeting.</li> <li>4. To declare the result of voting by show of hands.</li> <li>5. To appoint scrutinizers to scrutinize the votes given on the poll and to report to him.</li> <li>6. To see that the proceedings of the meeting are conducted according to rules and the business is discussed in order set out in agenda.</li> </ol>
<b>Chairman of Adjourned Meeting</b>	<ol style="list-style-type: none"> <li>1. The Chairman of the original meeting should be the Chairman of the adjourned meeting, since an adjourned meeting is a continuation of the original meeting.</li> <li>2. However, if such chairperson is unable or unwilling to act or is validly removed at the meeting, the procedure of election of Chairperson should be followed to elect a new Chairman to preside at the adjourned meeting.</li> </ol>

<b>Proxies [Sec. 105]</b>	
<b>Meaning</b>	<ul style="list-style-type: none"> <li>▪ A person who is appointed by a member to represent themselves to attend the meeting and vote on their behalf.</li> <li>▪ A proxy is an agent of person appointing him.</li> <li>▪ The form in which proxy is appointed is called as proxy form.</li> </ul>

<b>Who can appoint a proxy?</b> [Sec. 105(1)]	Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether member or not) as his proxy to attend and vote on his behalf.	
<b>Who can be appointed as proxy?</b> [Rule 19]	<ol style="list-style-type: none"> <li>Any person member or non-member can be appointed as a proxy. However, in case of a Section 8 Company, a member cannot appoint a non-member as a proxy.</li> <li>A person can act as proxy on behalf of member-           <ol style="list-style-type: none"> <li><b>Not exceeding 50;</b></li> <li>Holding in the aggregate not more than <b>10%</b> of the total <b>share capital</b> of the company <b>carrying voting rights.</b></li> </ol> </li> </ol> <p>Note - However, a member holding more than 10% of the total share capital of the company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.</p>	
<b>Proxy Form</b>	<b>Time to Deposit</b> [Sec.105(4) ]	<ol style="list-style-type: none"> <li>The instrument appointing proxy needs to be deposited with the company at least 48 hours before the meeting.</li> <li>Articles may specify lesser period but not more than 48 hours.</li> <li>If articles specify more than 48 hours, it shall have effect as if a period of 48 hours had been specified.</li> </ol>
	<b>Inspection</b> [Sec. 105(8)]	<ol style="list-style-type: none"> <li>Any member can inspect the proxy form; at any time during the business hours.</li> <li>However, at least <b>3 days notice</b> in writing to inspect must be given to the company.</li> <li>Inspection can be done during the period <b>beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.</b></li> </ol>
	<b>Requirements of Proxy form</b>	<ol style="list-style-type: none"> <li>Company can send its own proxy form or can straightaway use Form No. MGT-11.</li> <li>Same applies to person appointing proxy form</li> </ol>
	<b>Rights of proxy</b>	<ol style="list-style-type: none"> <li>A proxy has the right to attend the meeting.</li> <li>A proxy has the right to vote on poll.</li> <li>A proxy, if eligible u/s 109, has the right to demand a poll.</li> </ol>
	<b>Limitations of a proxy</b>	<ol style="list-style-type: none"> <li>A proxy has no right to speak at the meeting.</li> <li><b>A proxy cannot vote on a show of hands.</b></li> <li>A proxy is not counted for the purpose of quorum.</li> <li>A proxy cannot appoint another person as his proxy.</li> </ol>
<b>Other Imp Points regarding Proxy :</b> <ol style="list-style-type: none"> <li>The proxy can be revoked by the member at any time.</li> <li>If after appointment of proxy, the member himself attends the GM, it is automatic revocation of proxy.</li> <li>Once the proxy has voted, it cannot be revoked; the member cannot recast his vote.</li> <li>In case of joint holders, holder whose name is first in the register of members should sign proxy form.</li> <li>Proxy will be valid for original meeting as well as adjourned meeting.</li> </ol>		

6. If more than one proxy is appointed by the same member, the proxy received later in time shall be considered provided it has been duly received by the company 48 hours before the meeting.

1. **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 2021) (MTP MAY 2019) (May 23)**

**Hint** - 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.

2. **Sekhar, 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 MAY 2017)**

**Hint** - In the given case, Sekhar 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, Sekhar can undertake the inspection only during the above mentioned period and not two days prior to the meeting

1 A proxy appointed by a member of the company shall not have:

- a. Right to speak at a meeting.
- b. Right to vote except on a poll.
- c. **Both (a) and (b)**
- d. None of the above.

2 With regard to the provisions of Companies Act, 2013, which of the following statement is correct:

- a. **A member who has already cast his vote through remote E-Voting may appoint a proxy to attend the meeting instead of himself, but such proxy will not be able to cast his vote at the meeting.**
- b. A member who has already cast his vote through remote E-Voting cannot appoint a

proxy to attend and vote at the meeting.

- c. A member who has already cast his vote through remote E-Voting may appoint a proxy to attend the meeting instead of himself, and such proxy can cast his vote at the meeting.
  - d. None of the above.
- 3 Mr. P was duly appointed as proxy by Mr. M, a member of XYZ Ltd, to attend the AGM and vote on his behalf. Mr. M died and Mr. P attended and voted in a poll at the AGM. Decide which of the following statement is correct with regard to the vote cast by Mr P.
- a. If the company becomes aware of the death of Mr. M before the meeting, the proxy stands cancelled.

- b. The vote cast by Mr. P shall be valid, if the company has no notice of death of Mr. M.
- c. **Both (a) and (b).**
- d. None of the above.
- 4 A person can act as proxy on behalf of members not exceeding \_\_\_\_\_ and holding in the aggregate not more than \_\_\_\_\_ of the total share capital of the company carrying voting rights.
- a. 10,0%
- b. 50, 5%
- c. 20, 20%
- d. **50, 10%**
- 5 A member holding more than of the total share capital of the company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.
- a. 5%
- b. **10%**
- c. 20%
- d. 50%
- 6 A member of shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company
- a. Government Company
- b. Unlimited Company
- c. **Section 8 Company**
- d. Private Company
- 7 A member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled to inspect the proxies received by the company, provided he gives notice to the company in writing of the intention so to inspect, minimum days before the meeting.
- a. **3**
- b. 5
- c. 7
- d. 10
- 8 The inspection of proxies lodged can be made at any time during the business hours of the company, during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with:
- a. 12 hours before the meeting.
- b. The commencement of the meeting.
- c. **The conclusion of the meeting.**
- d. 24 hours after the conclusion of the meeting.
- 9 Mr. M after, appointing Mr. P as proxy, himself attends the AGM of ABC Ltd. Decide which of the following statement is correct.
- a. Both Mr. M and Mr. P can attend and vote at the meeting.
- b. **Only Mr. M can vote in person and the proxy stands revoked.**
- c. Both Mr. M and Mr. P can attend but only Mr. P, the proxy can vote at the meeting.
- d. None of the above.

### Voting [Sec. 106-109]

<b>Meaning</b>	Voting is a method by which the meeting decides whether it approves or disapproves the resolution.
<b>Types of voting</b>	(a) Voting by Show of Hands (Sec. 107) (b) Voting by Electronic means (Sec. 108) (c) Voting by Demand of Poll (Sec. 109) (d) Voting by Postal Ballot (Sec. 110)



<b>Restriction on Voting Rights [Sec. 106]</b>		
<b>Provision in Articles</b>	An express provision in the articles is required to restrict the voting rights of members.	
<b>Grounds for imposing restrictions</b>	A company may restrict the voting rights of members if : [Sec. 106(1)] (i) Calls on shares or any other sums payable by the member have not been paid. (ii) The company has exercised any right of lien on shares.	
<b>Other imp Points</b>	<ul style="list-style-type: none"> <li>• A company shall not restrict the voting right of any member on any other ground. [Sec. 106(2)]</li> <li>• If there is no provision contained in the articles, then a member cannot be prevented from voting, even though, calls or other sums remain unpayable to the company or the company has exercised right of lien on such shares.</li> </ul>	
<b>Section</b>	<b>Voting Methods</b>	<b>Vote count</b>
107	Voting by Show of Hands	1 member = 1 vote
108	Voting through Electronic Means	1 share = 1 vote
109	Demand for Poll	1 share = 1 vote
110	Postal Ballot	1 share = 1 vote
<p><b>1. Mr. John held certain partly paid up shares of Ltd. company. 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. John contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of John is valid. (RTP May 2015) (MTP NOV 2017)</b></p> <p>Hint - 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. John's contention is not valid.</p> <p><b>2. '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. (NOV 2018)</b></p> <p>Conclusion - 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</p>		

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.

3. '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)

Hint - 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

4. Explain the provisions of e-voting in an Annual General Meeting (AGM) in the following cases as per the Companies Act, 2013:

- (i) 'A' and his wife 'B' has joint Demat Account in Brown Investment Limited. In such a case, who will cast the vote in e-voting system?
- (ii) If an AGM is going to be held on 7<sup>th</sup> September, 2023, what will be the e-voting period and the time of closing?(4 Marks) (MTP Oct. 23)

Hint –

- (i) Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in chronological order in the register of members/ shareholders shall be entitled to vote.
- (ii) Thus, if the Annual General Meeting is going to be held on 7<sup>th</sup> September 2023, the facility for remote e- voting shall open on 4<sup>th</sup> September 2023 and close at 5.00 p.m. on 6<sup>th</sup> September 2023.

- 1 A company by its Articles 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.
  - In regard to which the company has exercised any right of lien.
  - Both (a) and (b).**
  - None of the above.
- 2 Mr. S, a member of KKR & Co. Ltd., holding shares in his own name on which final call money has not been paid is denied voting right at a general meeting. The Articles of the company are silent about this matter. With regard to the provisions of the Companies Act, 2013, decide what is correct position of law?
- Section 106 of Companies Act, 2013 provides that a member can be prohibited from exercising his voting rights if his calls are in arrears.
  - If the Articles of company do not provide for restriction of voting rights on shares on which calls etc. are not paid, the company cannot prohibit any member from exercising his voting right.**
- 3 Mr. A, a member of XYZ Ltd., who purchased and registered the shares of company few weeks before its AGM, is denied voting right at the meeting on the grounds that company's Articles prohibit a member from voting if he has not held the shares for minimum 3 months. With regard to the provisions of the Companies Act, 2013, decide what is correct position of law?
- A company cannot by its Articles, prohibit any member from exercising his voting right on any ground except if his calls/other sum due is in arrears or if the shares are under lien.**
  - A company can by its Articles provide for grounds on which a member can be

- prohibited from exercising his voting rights.
- c. The Board of Directors of company can impose any restriction on voting rights of

- any member.
- d. The voting rights of a member cannot be restricted in any case.

<b>Voting By Show of Hands [Sec. 107]</b>	
<b>Basics</b>	At a GM, a resolution shall be passed by show of hands, unless: <ul style="list-style-type: none"> <li>(a) A poll is demanded u/s 109; or</li> <li>(b) Voting is carried out electronically u/s 108.</li> </ul>
<b>Other imp Points</b>	<ul style="list-style-type: none"> <li>• Proxy cannot vote by show of hand</li> <li>• Here every member present in person shall have 1 vote; and [<b>1 member = 1 vote</b>]</li> </ul>

<b>Voting by Electronic Means [Sec. 108] read with Rule 20</b>	
<b>Applicability</b>	<p>The prescribed classes of companies for this purpose, are:</p> <p>[Rule 20(2)]</p> <ul style="list-style-type: none"> <li>(i) Every listed company.</li> <li>(ii) All companies having members <math>\geq 1000</math>.</li> </ul> <p><b>Exception:</b></p> <p>A Nidhi or an enterprise or institutional investor referred in SEBI Regulations, 2009 is not required to provide the facility to vote by electronic means.</p>
<b>Notice of the meeting</b>	<p><b>Contents of Notice:</b> The notice of the meeting shall clearly state:</p> <ul style="list-style-type: none"> <li>(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;</li> <li>(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;</li> <li>(c) 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;</li> </ul> <p><b>Additional content of notice:</b> The notice shall indicate:</p> <ul style="list-style-type: none"> <li>(a) the process and manner for voting</li> <li>(b) time period during which the votes may be cast by remote e-voting;</li> <li>(c) details about the login ID;</li> <li>(d) process and manner for generating or receiving the password and for casting of vote in a secure manner.</li> </ul>

<b>Display of Notice on website</b>	The notice shall also be placed on the website, if any, of the company and of the agency immediately after it is sent to the members.
<b>Advertisement</b>	<ol style="list-style-type: none"> <li>1. The company shall issue public notice by way of an advertisement on completion of dispatch of notices, but <b>at least 21 days before the date of GM.</b></li> <li>2. The advertisement shall be published in following manner: <ol style="list-style-type: none"> <li>(i) At least once in a vernacular newspaper of the district in which the registered office is situated, and having a wide circulation in that district; and</li> <li>(ii) At least once in English newspaper having country wide circulation.</li> </ol> </li> <li>3. The advertisement shall contain all details of E-voting</li> </ol>
<b>Voting Rules</b>	<ol style="list-style-type: none"> <li>(i) The facility for remote e-voting shall remain <b>open for atleast 3 days.</b></li> <li>(ii) The facility shall <b>close at 5.00 pm</b> on the date preceding the date of the GM.</li> <li>(iii) Once voted , it cannot be changed</li> </ol>
<b>Scrutinizer</b>	<ol style="list-style-type: none"> <li>I. <b>Appointment of Scrutinizer :</b> Appointed by BOD</li> <li>II. <b>Who can be appointed:</b> <ol style="list-style-type: none"> <li>(a) CA in practice; or</li> <li>(b) Cost Accountant in practice; or</li> <li>(c) Company Secretary in practice; or</li> <li>(d) An Advocate; or</li> <li>(e) Other person not in employment of the company, authorised by the Board.</li> </ol> </li> <li>III. <b>Duties and Rights of Scrutinizer:</b> <ol style="list-style-type: none"> <li>1. count the votes</li> <li>2. Unlock the in the presence of at least 2 witnesses not in the employment of the company.</li> <li>3. make a consolidated scrutinizer's report to the Chairman within 3 days of conclusion of the GM.</li> </ol> </li> </ol>
<b>Declaration of Result</b>	<ol style="list-style-type: none"> <li>1. The Chairman shall declare the result of the voting.</li> <li>2. If the requisite number of votes are cast in favour of the resolution, the resolution shall be deemed to be passed on the date of the relevant GM.</li> <li>3. The result declared along with the report of the scrutinizer shall be placed on the website of the company, if any, immediately after the result is declared by the Chairman.</li> <li>4. In case of listed companies, the company shall, simultaneously, forward the results to the concerned stock exchange and such stock exchange shall place the results on its website.</li> <li>5. A resolution proposed to be considered through voting by electronic means shall not be withdrawn.</li> </ol>
<b>Other imp points</b>	Quorum should be present in the Physical GM otherwise e-votes will be lost.
<b>1. Explain the concept of 'electronic voting system' as provided by the Companies Act, 2013. (4 Marks) (May 2015)</b>	

**2. 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?(MAY 2019)**  
**Conclusion** - 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.

### Voting by Demand of Poll [Sec. 109]

<b>When Poll can be demanded?</b> [Sec. 109(1)]	Poll can be demanded at any time before or on the declaration of the result of the voting on any resolution on show of hands.		
<b>Who can Demand Poll?</b> [Sec. 109(1)]	Poll can be demand by: (i) Chairman – Suo moto; or (ii) On Request of Required number of members:		
	<b>Company has a share capital</b>	<b>Demand shall be made by members present in person or by proxy</b>	
	YES	<ul style="list-style-type: none"> <li>➤ Members having 1/10th of the total voting power or</li> <li>➤ Members holding shares of Rs 5,00,000 PUSC.</li> </ul>	
	NO	<ul style="list-style-type: none"> <li>➤ Members having 1/10 of the total voting power.</li> </ul>	
<b>Withdrawal of Poll</b>	The demand for a poll may be withdrawn at any time before declaration of results by Poll.		
<b>Time for taking Poll</b>	<b>Case 1</b>	If Poll is demanded for: - a) Adjournment of GM b) Election of Chairperson	Forthwith (immediately)
	<b>Case 2</b>	Poll for any other matters	48 Hours
<b>Process or Procedure in case of Poll</b> [Rule 21]	<b>Appointment of Scrutinizers</b>	The Chairman shall appoint scrutinizer to report on result on poll. [Sec. 109(5)]	
	<b>Distribution of Polling Papers</b>	<ul style="list-style-type: none"> <li>• The scrutinizers shall arrange for polling papers and distribute them to the members and proxies present at the meeting.</li> <li>• The polling papers shall be in <b>Form MGT-12</b>.</li> </ul>	
	<b>Counting of vote and Scrutinizer's Report</b>	<ul style="list-style-type: none"> <li>• The scrutinizer shall count the votes cast on poll and prepare a report on it, addressed to the Chairman, in the <b>Form No. MGT-13</b>.</li> <li>• The report shall be submitted by them to the Chairman <b>within 7 days</b> from the date the poll is taken.</li> </ul>	
<b>1. (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for</b>			

**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. (RTP May 2016) (RTP NOV 2018) (MTP NOV 2017) (MTP MAY 2020)**

CA WALLAH

Voting by Postal Ballot [Sec. 110]	
Read with Rule 22 of Companies (Management & Administration) Rules, 2014.	
<b>Meaning of Postal Ballot</b> [Sec. 2(65)]	Postal Ballot means voting by post or through any electronic mode.
<b>Applicability of Postal Ballot</b>	Following companies are <b>not required</b> to transact any business through postal ballot: <ol style="list-style-type: none"> <li>(i) One Person Company;</li> <li>(ii) All other companies having members upto 200.</li> </ol>
<b>Businesses Mandatorily transacted through Postal Ballot</b> [Rule 22]	The following businesses shall be transacted <b>only</b> by means of voting through a postal ballot: [Mnemonic – A <sup>2</sup> B C <sup>2</sup> D E F G]
	<b>A →</b> Alteration of the Object Clause of MOA.
	<b>A →</b> Alteration of articles for insertion or removal of provisions defining a private company.
	<b>B →</b> Buy-back of own shares by the company.
	<b>C →</b> Change in place of registered office outside the local limits of any city, town or village.
	<b>C →</b> Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of money so raised.
	<b>D →</b> Issue of shares with (DVR) differential rights as to voting or dividend or otherwise.
	<b>E →</b> Election of a small shareholders' director u/s 151.
	<b>F →</b> For variation in the rights attached to shares or debentures or other securities.
<b>G →</b> Giving loans; or extending guarantees or providing security in excess of the limits specified u/s 186(3).	
<b>Procedure for Postal Ballot</b> [Rule 22]	<ol style="list-style-type: none"> <li>1. The Board shall appoint a scrutinizer.</li> <li>2. The Board shall pass BR for postal ballot.</li> <li>3. The company shall send a notice to all the shareholder along with a draft resolution and requesting them to send their assent or dissent, <b>within period of 30 days</b> from the date dispatch of notice.</li> <li>4. The scrutinizer shall submit his report as soon as possible but not later than 7 days.</li> </ol> <p><b>Note:</b> The other provisions as to notice, advertisement, Register and its custody with scrutinizer as u/s 108, shall apply mutatis mutandis to section 110/Rule 22.</p>

<b>Declaration of Result</b>	<ul style="list-style-type: none"> <li>▪ The result of postal ballot along with scrutinizer’s report shall be placed on website of the company.</li> <li>▪ The resolution if assented by the requisite majority by means of postal ballot, it shall be deemed to have been duly passed at GM convened in that behalf.</li> </ul>
<p>1. SV Technologies Limited is proposing to convene a General Meeting of its members. Briefly explain the provision of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting through "postal ballot". (8 Marks) (Nov 2016)</p> <p>2. XYZ Energy Ltd. Set up with the object of setting up a windmill project, raised money from public through prospectus and still has unutilized amount out of the money raised. XYZ Energy Ltd. Proposes to be obtained by passing a special resolution by Postal ballot. Explain the procedure to be followed for transacting the business of the general meeting of members of a company through postal ballot of passing special resolution. (8 Marks) (Nov 2018 )</p> <p>3. SV Technologies Limited is proposing to convene a General Meeting of its members. Explain briefly the provision of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting through “postal ballot”.(NOV 2016)</p>	

1. Decide which of the following statement is correct in respect of any member who has participated in electronic voting.
  - a. **A member may participate in the general meeting even after voting electronically but shall not be allowed to vote again.**
  - b. A member after voting electronically shall not be allowed to participate and vote in the general meeting.
  - c. A member may participate in the general meeting even after voting electronically and can be allowed to vote again.
  - d. None of the above.
2. A Chairman of a general meeting may order a poll:
  - a. On his own motion.
  - b. On demand made in that behalf by members present in person or proxy, having not less than 10% of the total voting power.
  - c. On demand made in that behalf by members present in person or proxy, holding shares on which not less than nomow- in aggregate is paid-up.
  - d. **Either of above.**
3. The demand for poll made at a general meeting can be withdrawn at any time by:
  - a. **The persons who made it.**
  - b. The Chairman of the meeting.
  - c. The members present at the meeting.
  - d. None of the above — a demand for poll cannot be withdrawn.
4. A company may transact any business by means of postal ballot, except:
  - a. Any item of ordinary business.
  - b. Any business in respect of which directors or auditors have a right to be heard at any meeting.
  - c. **Both (a) and (b)**
  - d. None of the above.

<b>Circulation of members’ resolution [Sec. 111]</b>	
<b>Number of members needed</b>	A company shall be bound to act on the requisition of such number of members as are <b>eligible to call an EGM u/s 100</b> : [ 1/10th of ESC or VP]



<b>Rights of Requisitionists</b> [Sec.111(1)]	Members may requisition u/s 111 to: <ul style="list-style-type: none"> <li>(i) Include a business and move such resolution at the GM.</li> <li>(ii) Circulate to members any statement w.r.t. matters referred to in proposed resolution or business to be dealt with at that meeting.</li> </ul>
<b>Time limit</b>	a) A copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company— <ul style="list-style-type: none"> <li>(i) in the case of a requisition requiring notice of a resolution, <b>at least 6 weeks</b> before the meeting;</li> <li>(ii) in the case of any other requisition, <b>at least 2 weeks</b> before the meeting</li> </ul>
<b>Exception from circulation of any statement</b>	<ul style="list-style-type: none"> <li>(i) The company shall not be bound to circulate any statement, if CG on application by company or person aggrieved; is satisfied that rights u/s 111 are abused.</li> <li>(ii) CG may also order that the requisitionist shall pay to the company the cost incurred by the company in making application to CG.</li> </ul>

### To Act as a Representation of the President & Governor [Sec. 112]

<b>President &amp; Governor</b> [Sec. 112]	Representative of The President of India or the Governor of a State shall be deemed to be a member of such company and shall be entitled to exercise the same rights and powers including the right to vote by proxy and by postal ballot, as the President or Governor could exercise as a member of the company.
<b>Body Corporates</b> [Sec. 113]	<b>REPRESENTATIVE</b> shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

### Ordinary & Special Resolution [Sec. 114]

<b>Basic Requirements</b>	<ol style="list-style-type: none"> <li>1. The notice required under this Act has been duly given</li> <li>2. The votes may be cast by a show of hands, or electronically or on a poll, or by postal ballot and include the casting vote, if any, of the Chairman.</li> </ol>		
<b>Ordinary Resolution</b> [Sec. 114(1)]	The votes cast in favour of the resolution, are required to exceed the votes cast against the resolution. ( $V_F > V_A$ )		
<b>Special Resolution</b> [Sec. 114(2)]	The votes cast in favour of the resolution, are required to be at least 3 times the number of votes cast against the resolution.		
<b>Counting of Votes</b>	The votes will be counted only of members present, whose votes are valid and are not abstained to vote.		
<b>Resolution</b>	<b>Formula 1</b>	<b>Formula 2</b>	<b>Percentage</b>

Ordinary Resolution	$V_F > V_A$	$V_F > \frac{1}{2}$ of Total Votes	> 50%
Special Resolution	$V_F \geq 3V_A$	$V_F \geq \frac{3}{4}$ of Total Votes	$\geq 75\%$
<b>1 Give the points of distinction between ordinary resolution and special resolution. (5 Marks) (May 2019 )</b>			
<b>2 Give the points of distinction between ordinary resolution and special resolution. (MAY 2019)</b>			

- 1 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. Advise the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution? (MTP MAY 2019)
- 60 Votes
  - 80 Votes
  - 41 votes
  - 20 votes
- 2 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. (1 Mark) (mtp M 21)
- Twice
  - Three times**
  - One third
  - One fourth
- 3 A resolution shall be a special resolution when:
- 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.
  - The notice required under this Act has been duly given.
  - The votes cast in favour of the resolution, are required to be not less than three times the number of the votes cast against the resolution.
  - All of the above.**

### Resolutions Requiring Special Notice [Sec. 115]

<b>When is a special notice required?</b> [Sec. 115]	<b>Special Notice by Members to Company is required in only 4 cases:</b> <ol style="list-style-type: none"> <li>Removal of Auditors at the AGM u/s 140</li> <li>Removal of Auditors and Proposing a NEW Auditor at the AGM u/s 140</li> <li>Removal of Directors at the AGM/EGM u/s 169.</li> <li>Removal of Directors and Proposing a NEW Director at the AGM/EGM u/s 169.</li> </ol>
<b>By whom?</b>	The notice of the intention to move a resolution shall be given to the company <b>by members-</b> <ol style="list-style-type: none"> <li>Holding <b>atleast 1% of the total voting power</b>; or</li> <li>Holding shares on which aggregate sum does not exceed <b>Rs. 5 lakh paid-up.</b></li> </ol>
<b>Time Limits</b> [Rule 23(2)]	The notice shall be sent by members- <ol style="list-style-type: none"> <li>At least 14 days before the GM (minimum time);</li> <li>But not before 3 months from the GM (maximum time).</li> </ol> The day of sending of notice and the day of the GM shall be excluded.

<b>Reply by the Company</b> [Rule 23(3)]	The company shall immediately after the receipt of notice, give notice of the resolution to its members at least 7 days before the meeting.
<b>Publication of Notice</b>	<ol style="list-style-type: none"> <li>Where it is not practicable to give the notice in the same manner as given in any GM, the notice shall be published in both English and vernacular newspapers. Such notice shall also be posted on the website, if any, of the company. [Rule 23(4)]</li> <li>The notice shall be published at least 7 days before the meeting, exclusive of the day of publication of the notice and day of the meeting. [Rule 23(5)]</li> </ol>
<p><b>1 Briefly explain the law relating to "Resolutions requiring Special Notice under the Companies Act, 2013. Mention the resolutions that require "Special Notice" under the Act. (4 Marks) (May 2016) (May 2017)</b></p> <p><b>2 Members of ZA Ltd. holding less than 1% of total voting power want the company to give a 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.(NOV 2018)</b></p> <p><b>Conclusion</b> - 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.</p>	

- 1 Where, by any provision contained in this Act or in the Articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than \_\_\_\_\_ of total voting power or shares on which an aggregate sum of not less than \_\_\_\_\_ has been paid up on the date of notice.
- 1%; 1,00,000/-
  - 1%; 5,00,000/-**
  - 5%; 5,00,000/-
  - 10%; 10,00,000/-

<b>Resolution Passed at Adjourned Meeting [Sec. 116]</b>	
<b>Date of passing of Resolution</b>	Where a resolution is passed at an adjourned meeting of – <ol style="list-style-type: none"> <li>a company; or</li> <li>the holders of any class of shares in a company; or</li> <li>the BOD of a company;</li> </ol> The resolution shall be deemed to be passed on actual date of passing and not on any earlier date.
<b>Example</b>	The general meeting of the company was due to be held on 13rd August 2022. However, due to want of quorum, the meeting was adjourned to a later date on 1st sep 2022 and 3 resolutions were passed on that date.
	<b>Answer</b>

	Now, as per section 116 of the Companies Act, 2013, the said 3 resolutions shall be deemed to have been passed on the <b>adjourned date</b> of meeting, i.e. 1st Sep 2022 and not on the earlier date.
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- 1 Where a resolution is passed at an adjourned meeting of members, the resolution shall, for all purposes, be treated as having been passed:
- a. **On the date on which it was actually passed in the adjourned meeting.**
  - b. On the date of original meeting.
  - c. On the date on which the minutes of the general meeting are signed by the Chairman.
  - d. None of the above.

### Resolutions and Agreements to be Filed [Sec. 117]

<b>Filing with ROC</b> [Sec. 117(1)]	(i) The company shall file with ROC the copy of- <ol style="list-style-type: none"> <li>(a) Every resolution or agreement specified u/s 117(3); and</li> <li>(b) Explanatory statement u/s 102, if any, annexed to the notice calling the meeting;</li> </ol> within 30 days of passing of such resolution or making of such agreement in Form No. MGT-14 along with fees.  (ii) In case of specified IFSC Public or Private Company, MGT-14 shall be filed within 60 days from date of passing or making resolution or agreement.  (iii) Every resolution, which has the effect of altering the articles, and every agreement which is required to be filed u/s 117(3) shall be embodied in the articles; or annexed to the articles.
<b>Resolutions and Agreements Required to be filed u/s 117(3)</b>	(a) Special Resolutions (b) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions (c) Any resolution of the BOD or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation in terms of appointment, of a managing director. (d) Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members. (e) Resolutions for voluntary winding up of the company. (f) Resolutions passed in pursuance of section 179(3). However, no person shall be entitled u/s 399 to inspect or obtain copies of such resolutions. Exception: This Clause shall not be applicable to: <ol style="list-style-type: none"> <li>(i) Banking company, any class of NBFC or housing finance company under NHB, in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans u/s 179(3) in the ordinary course of its business.</li> </ol>

	<ul style="list-style-type: none"><li>(ii) Private company which has not defaulted in filing its F.S u/s 137 or annual return u/s 92 with the Registrar.</li><li>(iii) Specified IFSC Public Company.</li><li>(g) Any other resolution or agreement as may be prescribed and placed in the public domain.</li></ul>
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<b>Minutes [Sec. 118] Read with Rule 25</b>									
<b>Meaning</b>	<ol style="list-style-type: none"> <li>Minutes means a <b>fair and correct summary</b> of the proceeding of the meeting.</li> <li>It is <b>official record</b> of the company and it helps us in understanding decision taken at the meeting.</li> </ol>								
<b>Applicability</b> [Sec. 118(1)]	<ol style="list-style-type: none"> <li>Every company shall prepare and sign minutes of Proceeding of -</li> <li>every GM;</li> <li>Class meeting;</li> <li>Every Board Meeting</li> <li>Every resolution passed by postal ballot.</li> </ol> <p>Note - A Section 8 company is not required to have minute book provided it has not defaulted in filing its F.S. u/s 137 an annual return u/s 92 with the Registrar.</p>								
<b>Signing of the minutes</b>	<p>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—</p> <ol style="list-style-type: none"> <li><b>In case of Board Minutes</b> - The chairman of the said meeting or the chairman of the next succeeding meeting;</li> <li><b>In case of General Meeting Minutes</b> - The chairman of the same meeting within 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;</li> <li><b>In case of every resolution passed by Postal Ballot</b> - The chairman of the Board within 30 days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.</li> </ol>								
<b>Manner of Signing of minutes</b> [Rule 25]	<p>Each page of every minute book shall be initialled or signed, and the last page shall be dated and signed, as follow:</p> <table border="1"> <thead> <tr> <th><b>Type of minutes book</b></th> <th><b>Signed by</b></th> </tr> </thead> <tbody> <tr> <td><b>Minutes of Board meetings and committee meetings</b></td> <td> <ul style="list-style-type: none"> <li>The chairman of the same meeting or the chairman of the next meeting.</li> </ul> </td> </tr> <tr> <td><b>Minutes of GM</b></td> <td> <ul style="list-style-type: none"> <li>The chairman of the same meeting, within 30 days.</li> <li>In the event of the death or inability of that chairman, by a director duly authorised by the Board for this purpose.</li> </ul> </td> </tr> <tr> <td><b>Resolutions passed by postal ballot</b></td> <td> <ul style="list-style-type: none"> <li>The chairman of the Board, within 30 days.</li> <li>If there is no chairman of the Board or in the event of the death or inability of the chairman of the Board, by a director duly authorised by the Board for this purpose.</li> </ul> </td> </tr> </tbody> </table>	<b>Type of minutes book</b>	<b>Signed by</b>	<b>Minutes of Board meetings and committee meetings</b>	<ul style="list-style-type: none"> <li>The chairman of the same meeting or the chairman of the next meeting.</li> </ul>	<b>Minutes of GM</b>	<ul style="list-style-type: none"> <li>The chairman of the same meeting, within 30 days.</li> <li>In the event of the death or inability of that chairman, by a director duly authorised by the Board for this purpose.</li> </ul>	<b>Resolutions passed by postal ballot</b>	<ul style="list-style-type: none"> <li>The chairman of the Board, within 30 days.</li> <li>If there is no chairman of the Board or in the event of the death or inability of the chairman of the Board, by a director duly authorised by the Board for this purpose.</li> </ul>
<b>Type of minutes book</b>	<b>Signed by</b>								
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<b>Minutes of GM</b>	<ul style="list-style-type: none"> <li>The chairman of the same meeting, within 30 days.</li> <li>In the event of the death or inability of that chairman, by a director duly authorised by the Board for this purpose.</li> </ul>								
<b>Resolutions passed by postal ballot</b>	<ul style="list-style-type: none"> <li>The chairman of the Board, within 30 days.</li> <li>If there is no chairman of the Board or in the event of the death or inability of the chairman of the Board, by a director duly authorised by the Board for this purpose.</li> </ul>								
<b>Power of Chairman</b>	<ol style="list-style-type: none"> <li>The Chairman shall exercise absolute discretion as to inclusion or non-inclusion of any matter in the minutes on the grounds specified in section 118(5).</li> </ol>								

	<p>2. No matter shall be included in the minutes, if the Chairman is of the opinion that it is – [Sec. 118(5)]</p> <p>(a) Defamatory of any person; or</p> <p>(b) Irrelevant or immaterial; or</p> <p>(c) Detrimental to the interests of the company.</p>
<p><b>In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013? (RTP MAY 2018) (MTP NOV 2019)</b></p> <p><b>Conclusion</b> - Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.</p>	
<b>Preservation and custody</b>	<p>(a) The minutes book of GM shall be kept at the registered office of the company, and shall be preserved permanently.</p> <p>(b) It shall be kept in the custody of the CS or any director duly authorised by the board. [Rule 25(1)(e)]</p> <p>(c) The minutes books of the Board and committee meetings shall be kept in the registered office or such place as Board may decide. [Rule 25(1)(f)]</p>

### Inspection of Minutes of GM [Sec. 119]

<b>Place and Time</b>	<p>(a) The minutes book shall be kept at the registered office of the company.</p> <p>(b) Inspection can be done during business hours subject to reasonable restrictions imposed by articles or a resolution passed in GM. However, at least 2 hours in each business day shall be allowed for inspection.</p> <p>(c) Inspection can be done by any member without any charges.</p>
<b>Copies of minute book</b>	<p>(a) The copies of the minute book of any GM shall be made available by the company to any member, within 7 working days of the request made.</p> <p>(b) Payment of fees as specified in the AOA, but it shall not exceed Rs. 10 per page or part of any page.</p> <p>(c) However, if the member has made a request for soft copy of minutes of any GM held during immediately preceding 3 FYs, it shall be free of cost.</p>
<b>Punishment</b>	<p>If inspection is refused or copy is not furnished,</p> <p>Company: Penalty of Rs. 25,000 } for each refusal</p> <p>Officer in default : Penalty of Rs. 5,000</p>
<b>Power of Tribunal</b> [Sec. 119(4)]	<p>If inspection is refused or copy is not furnished, the Tribunal may direct the company to allow immediate inspection or direct the company to immediately send the copy.</p>

1. 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 2018-19 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018. (RTP MAY 2020)**
  - 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 2018-19 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.
2. The minute book of General meetings of Alpha Limited will be kept at: (RTP MAY 2020)
    - 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.**
    - d. That place where senior officials of Alpha Limited will decide.
  3. Awareness Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Awareness Limited will be kept at: (Mar. 22) (1 Mark)
    - a. That place where members of Awareness Limited will decide.
    - b. That place where all employees of Awareness Limited will decide.
    - c. **Registered office of Awareness Limited.**
    - d. That place where senior officials of Awareness Limited will decide.
  4. 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. (2 Marks) (MTP Oct. 22)
    - 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**
  5. The minutes of general meeting shall be signed by:
    - a. **Chairman of the same meeting within period of 30 days of the conclusion of the meeting.**
    - b. Chairman of the next general meeting.
    - c. Either (a) or (b)
    - d. None of the above.
  6. In the event of the death or inability of the Chairman of a general meeting to sign the minutes within period of 30 days of the conclusion of the meeting, the minutes can be



signed by:

- a. Chairman whenever he is able to do so.
  - b. Chairman of the next general meeting.
  - c. **A Director duly authorised by the Board for the said purpose.**
  - d. None of the above.
7. The Chairman has absolute discretion to exclude from the minutes, any matter:
- a. Which is or could reasonably be regarded as defamatory of any person?
  - b. Which is irrelevant or immaterial to the proceedings of the meeting?
  - c. Which is detrimental to the interests of the company?
  - d. **All of the above.**
8. The minutes book of general meetings of a company shall be preserved:
- a. For a period of 5 years
  - b. For a period of 7 years
  - c. For a period of 10 years
  - d. **Permanently**

<b>Maintenance and Inspection of Documents in Electronic Form[Sec. 120]</b>	
<b>Scope of Sec. 120</b>	Any document, record, register, minutes etc. : (a) required to be kept by a company, may be kept in electronic form: (b) allowed to be inspected by any person, may be inspected in electronic form; (c) copies to be given to any person by a company, may be given in electronic form.
<b>Companies Prescribed</b> [Rule 27(1)]	1. Following classes of companies may maintain their records in electronic form: (a) Every listed company (b) A company having at least 1,000 shareholders, debenture holders and other security holders 2. In case of existing companies, data may be converted from physical mode to electronic within 6 months from the date of notification of provisions of Sec. 120.
<b>Manner of maintenance of records</b>	The records shall be maintained in electronic form in such manner as the BOD of the company may think fit, provided that - (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules. (b) the information as required under the provisions of the Act or the rules should be adequately recorded for future reference: (c) the records must be capable of being readable, retrievable and reproducible in printed form: (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules. (e) the records, once dated and signed digitally, shall not be capable of being edited or altered; (f) the records shall be capable of being updated, according to the provisions of the Act or the rules, and the date of updating shall be capable of being recorded on every updation. Explanation: For the purpose of this rule, the term 'records' means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company

<b>Security of Records maintained in Electronic form</b> [Rule 28]	Following persons shall be responsible for the maintenance and security of electronic records: <ul style="list-style-type: none"> <li>(i) The Managing Director</li> <li>(ii) Company Secretary</li> <li>(iii) Any other director or officer of the company as the Board may decide.</li> </ul>
<b>Inspection and Copies of records maintained in electronic form.</b> [Rule 29 ]	<ul style="list-style-type: none"> <li>(i) The records maintained in electronic form shall be made available for inspection by the company in the electronic form.</li> <li>(ii) Copies of the records maintained in electronic form shall be provided by the company in the electronic form on payment of not exceeding Rs. 10 per page.</li> </ul>

<b>Report on AGM [Sec. 121]</b>	
<b>Applicability</b> [Sec. 121(1)]	Applicable only to listed public companies.
<b>Legal Requirements</b>	<ol style="list-style-type: none"> <li>1. The report shall confirm that the AGM was convened, held and conducted as per the provisions of this Act and rules.</li> <li>2. File the copy of report with ROC <b>within 30 days</b> of conclusion of AGM in Form No. <b>MGT-15</b>, along with the fee. [Sec. 121(2) and Rule 31(3)]</li> <li>3. The report shall be prepared in addition to minutes of GM.</li> </ol>
<b>Signing of the report</b>	The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by – <ul style="list-style-type: none"> <li>(a) any 2 directors of the company, one of whom shall be the Managing Director, if there is any; and</li> <li>(b) the company secretary of the company;</li> </ul>
<b>Contents of the report</b>	<ul style="list-style-type: none"> <li>(i) the day, date, hour and venue of the AGM;</li> <li>(ii) confirmation with respect to appointment of Chairman of the meeting;</li> <li>(iii) number of members attending the meeting;</li> <li>(iv) confirmation of quorum;</li> <li>(v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;</li> <li>(vi) business transacted at the meeting and result thereof;</li> <li>(vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and</li> <li>(viii) any other points relevant for inclusion in the report</li> </ul>
<b>Punishment</b> [Sec. 121(3)]	If the company fails to file the report within the prescribed period- <p><b>Company:</b> Penalty of Rs. 1 lakh and Rs. 500 per day for continuous default after the 1<sup>st</sup> default; subject to a maximum of Rs. 5 lakh.</p> <p><b>Officer in default:</b> Penalty of at least Rs. 25,000 and Rs. 500 per day for continuous default after the 1<sup>st</sup> default; subject to a maximum of Rs. 1 lakh.</p>

**Pristine Limited, a listed public company, conducted its Annual General Meeting on 31<sup>st</sup> August, 2020. However, 10 days have passed since 31<sup>st</sup> August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?(RTP MAY 2021)**

- |  |   |
|--|---|
| <p>1 Every listed company shall file with the Registrar a copy of the report on each annual general meeting within ___ of the conclusion of the annual general meeting.</p> <p>a. 15 days<br/> <b>b. 30 days</b><br/> c. 60 days<br/> d. 90 days</p> | <p>2 The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar? (2 Marks) (MTP Sep. 22)</p> <p>a. 30.06.2022<br/> b. 10.07.2022<br/> c. 24.07.2022<br/> <b>d. 25.07.2022</b></p> |
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### Applicability of this Chapter to OPC [Sec. 122]

<b>Non-applicability</b> [Sec. 122(1)]	The provision of Sec. 98 and Sec. 100 to 111 shall not apply to OPC.
<b>Manner of passing of resolution in GM</b> [Sec. 122(3)]	<p>(i) In case of OPC, for the purpose of transacting any business (whether ordinary or special) at any GM (whether AGM or EGM) by means of any resolution (whether ordinary or special), it shall be sufficient if</p> <p style="margin-left: 20px;">a) the resolution is communicated by the member to the company;  b) the resolution is entered in the minutes-book; and  c) the minutes-book is signed and dated by the member.</p> <p>(ii) The date of signing the minutes-book by the member shall be deemed to be the date of the meeting for all the purposes of this Act.</p>
<b>Business required to be transacted in BM</b> [Sec. 122(4)]	<p>(i) In case there is only one director in OPC, for transacting any business which is required to be transacted at a BM, it shall be sufficient if</p> <p style="margin-left: 20px;">a) the resolution is entered in the minutes-book; and  b) the minutes book is signed and dated by such director.</p> <p>(ii) The date of signing the minutes-book by the director shall be deemed to be the date of the meeting for all the purposes of this Act.</p>

### Register of Members (sec 88)

<b>Registers Required to be maintained by a Company</b>	<p>Every company shall keep and maintain the following registers—</p> <p>a) <b>Register of Members</b> indicating separately for each class of <b>Equity and Preference</b> shares held by each member <b>residing in or outside India</b>; [MGT — 1]</p> <p>b) Register of <b>Debenture-Holders</b>; and [MGT— 2]</p>
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	<p>c) Register of any <b>Other Security Holders</b>. [MGT — 2]</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Exemption: Listed Company</b></p> <p>The register and index of beneficial owners maintained by a <b>DEPOSITORY</b> (NSDL) on behalf of Listed company shall be deemed to be the corresponding register and index for the purposes of this Act.</p> </div>
<b>Indexing of Names in Register</b>	Every register maintained as detailed above shall include an index of the names included therein. necessary in case the number of members is <b>50 or more</b>
<b>Foreign Register [Register of Foreign Members]</b>	<p>A company <b>may</b>, if so authorised by its articles, keep in any country outside India, called "Foreign Register" [MGT-1] containing the names and particulars of the-</p> <ul style="list-style-type: none"> <li>✓ Members , Debenture holders , Other security holders , Beneficial owners</li> <li>✓ residing outside India</li> </ul> <div style="border: 1px solid black; padding: 5px;"> <p>The Company may keep its Register of Foreign Members at Foreign Branch and inform the exact address of Foreign Branch to ROC in <b>Form MGT-3</b>.</p> </div>
<b>Contents OF ROM</b>	<p>a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;</p> <p>b) date of becoming member;</p> <p>c) date of cessation;</p> <p>d) amount of guarantee, if any;</p> <p>e) any other interest if any; and</p> <p>f) instructions, if any, given by the member with regard to sending of notices etc:</p>
<b>Entry</b>	within <b>7 days</b> after the Board of Directors APPROVES the ALLOTMENT or TRANSFER of shares, debentures or any other securities.
<b>Maintained at</b>	<p>at the <b>registered office</b> of the company unless a <b>SPECIAL RESOLUTION</b> is passed in a general meeting authorising the keeping of the register at :-</p> <ul style="list-style-type: none"> <li>a) any other place <b>within the city, town or village</b> in which the registered office is situated <b>or</b></li> <li>b) any other place in India in which <b>more than 1/10th of the total members reside</b>.</li> </ul>
<p><b>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.</b></p> <p><b>(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.</b></p> <p><b>(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? (MAY 2018)</b></p> <p><b>Hint -</b></p>	

(i) 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.

<b>Foreign Register</b>	<ol style="list-style-type: none"> <li>1. The company shall, within <b>30 days</b> from the date of the opening of any foreign register, file with the Registrar notice of the situation of the foreign office in <b>Form No.MGT.3.</b></li> <li>2. The company shall—             <ol style="list-style-type: none"> <li>a) transmit to its registered office in India a copy of every entry in any foreign register within <b>15 days</b> after the entry is made; and</li> <li>b) keep at such office a <b>duplicate register</b> of every foreign register duly entered up from time to time.</li> </ol> </li> </ol>
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**The paid-up share capital of Golden Shoes Limited is ` 25,00,000 divided into 2,50,000 equity shares of ` 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office. (RTP Nov 23)**

<b>Authentication (Verifying &amp; Signing) of entries:</b>	<ol style="list-style-type: none"> <li>1. The entries in the registers and index shall be authenticated by the :-             <ol style="list-style-type: none"> <li>a) company secretary [CS] of the company or</li> <li>b) any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.</li> </ol> </li> <li>2. The entries in the FOREIGN register shall be authenticated by the :-             <ol style="list-style-type: none"> <li>a) company secretary [CS] of the company or</li> <li>b) person authorised by the Board.</li> </ol> </li> </ol>
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<b>Note</b>	<ul style="list-style-type: none"> <li>• <b>Minors</b> names <b>cannot be entered</b> in the register of members and if minor is shareholder <b>its guardians name should appear</b> in register</li> <li>• <b>Joint holders</b> of shares <b>may request</b> the company to enter their names on the register in a <b>certain order</b>, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition that only the name of his 1 should appear in the register as a member CANNOT be catered to</li> </ul>
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### **Declaration in respect of Beneficial Interest in any share (sec 89)**

<b>Meaning of a beneficial interest</b>	<p>For the purposes of Section 89 and 90, <b>BENEFICIAL INTEREST</b> in a share includes the right of a person to—</p> <ol style="list-style-type: none"> <li>(i) <b>exercise</b> any or all of the <b>rights attached</b> to such share; or</li> </ol>
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	(ii) <b>receive dividend</b> or other distribution in respect of such share.						
<b>Registered Shareholder but no beneficial interest</b>	A <b>registered shareholder who does not hold beneficial interest</b> in such shares shall make a declaration in <b>MGT — 4 within 30 days</b> to the company specifying the name of the <b>beneficial shareholder</b> .						
<b>Beneficial Shareholder</b>	Every <b>beneficial shareholder</b> who holds or acquires a beneficial interest in share of a company shall make a declaration in <b>MGT— 5 within 30 days</b> to the company specifying the nature of his interest, particulars of the <b>registered shareholder</b> .						
<b>Change in the beneficial interest</b>	Where any change occurs in the beneficial interest in such shares, the <b>registered shareholder</b> and <b>beneficial shareholder</b> shall make a declaration to the company in <b>MGT— 4 &amp; 5 within 30 days</b> from the date of such change.						
<b>Penalty for Non-Compliance CAA-2020</b>	The concerned person shall be punishable as follows:						
	<table border="1"> <tr> <td><b>Minimum Penalty</b></td> <td><b>50,000</b></td> </tr> <tr> <td><b>Continuing Penalty</b></td> <td><b>200 for each day</b></td> </tr> <tr> <td><b>Maximum Penalty</b></td> <td><b>5,00,000</b></td> </tr> </table>	<b>Minimum Penalty</b>	<b>50,000</b>	<b>Continuing Penalty</b>	<b>200 for each day</b>	<b>Maximum Penalty</b>	<b>5,00,000</b>
	<b>Minimum Penalty</b>	<b>50,000</b>					
<b>Continuing Penalty</b>	<b>200 for each day</b>						
<b>Maximum Penalty</b>	<b>5,00,000</b>						
<b>Intimation by the Company to ROC</b>	Where any declaration under this section is made to a company, the company shall make a note of such declaration in the <b>Register concerned [MGT — 1]</b> and shall file a return with ROC in <b>MGT - 6 within 30 days</b> from the date of receipt of declaration by it.						
<b>Penalty for Non-Compliance CAA-2020</b>	Punishment for contravention:-						
	<table border="1"> <tr> <td><b>On Company</b></td> <td><b>Rs 1,000 for each day</b> during which such default continues, subject to a <b>maximum of 5,00,000</b>.</td> </tr> <tr> <td><b>On officer in default</b></td> <td><b>1,000 for each day</b> during which such default continues, subject to a <b>maximum of 2,00,000</b>.</td> </tr> </table>	<b>On Company</b>	<b>Rs 1,000 for each day</b> during which such default continues, subject to a <b>maximum of 5,00,000</b> .	<b>On officer in default</b>	<b>1,000 for each day</b> during which such default continues, subject to a <b>maximum of 2,00,000</b> .		
<b>On Company</b>	<b>Rs 1,000 for each day</b> during which such default continues, subject to a <b>maximum of 5,00,000</b> .						
<b>On officer in default</b>	<b>1,000 for each day</b> during which such default continues, subject to a <b>maximum of 2,00,000</b> .						
<b>Exemptions by CG</b>	The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, if it is considered necessary to grant such exemption in the public interest.  Following Class of Companies have been exempted:-  1. <b>Government Company</b> . 2. <b>Trust</b> , which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. These entities need not file the declarations as envisaged under this section.						

### Register of Significant Beneficial Owners [SBO] in a Company (sec 90)

<b>Declaration by significant beneficial owner [BEN-1]</b>	Every INDIVIDUAL, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of:  1. 25%. or <b>such other percentage [10%]</b> as prescribed, in shares of a company or
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2. the right to exercise, or the actual exercising of **SIGNIFICANT INFLUENCE or CONTROL** as defined in section 2(27), over the company (herein referred to as "significant beneficial owner"),

shall make a declaration to the company in **BEN-1 within 30 days** of acquiring such significant beneficial ownership or any change therein, specifying the nature of his interest within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

**"Significant Beneficial Owner [SBO]"** in relation to a reporting company means an **INDIVIDUAL**, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

- (i) holds indirectly, or together with any direct holdings, **10% of the shares;**
- (ii) holds indirectly, or together with any direct holdings, **?10% of the voting rights** in the shares;
- (iii) has right to receive or participate in **10% of the total distributable dividend**, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- (iv) has right to exercise, or actually exercises, **SIGNIFICANT INFLUENCE or CONTROL**, in any manner other than through direct-holdings alone.

**Non-Applicability**

These rules shall not be made applicable to the extent the share of the reporting company is held by,-

- a) IEPF authority u/s 125;
- b) its holding reporting company whose details have been reported in Form No. BEN-2.
- c) the Central Government, State Government or any local Authority;
- d) Any entity/body corporate controlled by the CG or SG, or partly by the CG and partly by one or more SG;
- e) Investment Vehicles such as Mutual Funds (MF), Alternative Investment Funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs).
- f) Investment Vehicles regulated by Reserve Bank of India (RBI), or Insurance Regulatory and Development Authority of India (IRDA), or Pension Fund Regulatory and Development Authority (PFRDA).

**Penalty [The Companies (Amendment) Act, 2020]**

<b>Minimum Penalty</b>	<b>50,000</b>
<b>Continuing Penalty</b>	<b>1,000 per day</b>

	Maximum Penalty	2,00,000
<b>Register [BEN-3]</b>	<p>Every company shall maintain a register of the interest declared by individuals and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.</p> <p>The register shall be open for inspection during business hours, at such reasonable time of not less than 2 hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding ₹ 50 for each inspection.</p>	
<b>Filing Return [BEN-21]</b>	<p>Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed <b>within 30 days</b> from the date of receipt of such declaration</p>	
<b>Identify SBO</b>	<p>Every company shall take necessary steps to identify an individual who is a SBO in relation to the company and require him to comply with the provisions of this section.</p>	
<b>Notice to such person by Company if he has not made declaration [BEN-4]</b>	<p>A company shall give notice to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—</p> <ol style="list-style-type: none"> <li>to be a significant beneficial owner of the company;</li> <li>to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or</li> <li>to have been a significant beneficial owner of the company at any time during the 3 years immediately preceding the date on which the notice is issued, <b>and who is not registered as a significant beneficial owner with the company as required under this section.</b></li> </ol> <p>The information required by the notice shall be given by the concerned person within a period not exceeding <b>30 days</b> of the date of the notice.</p>	
<b>Application to NCLT on failure to receive information</b>	<p>The company shall, —</p> <ol style="list-style-type: none"> <li>where that person fails to give the company the information required by the notice within the time specified therein; or</li> <li>where the information given is not satisfactory, apply to the Tribunal within a period of <b>15 days</b> of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions &amp; suspension as follows:- <ul style="list-style-type: none"> <li>restrictions on the transfer of interest attached to the shares in question;</li> <li>suspension of the right to receive dividend;</li> <li>suspension of voting rights;</li> <li>any other restriction on all or any of the rights attached with the shares in question.</li> </ul> </li> </ol>	



	<p>The Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of <b>60 days</b> of receipt of application or such other period as may be prescribed.</p> <p>The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed as above within a period of <b>1 year</b> from the date of such order:</p> <p>Provided that if no such application has been filed within a period of <b>1 year</b> from the date of the order, such shares shall be transferred to the IEPF.</p>
<b>Rules by CG</b>	The Central Government may make rules for the purposes of this section.
<b>Wilful defaulters</b>	If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under <b>section 447</b> .

Power to Close Register of Members or Debenture Holders or Other Securities Holder (sec 91)			
<b>Time Period for which Register can be closed by a company</b>	<p>A company may close the</p> <ul style="list-style-type: none"> <li>• Register of Members or</li> <li>• Register of Debenture holders or</li> <li>• Register of other Security holders</li> </ul> <p>for any period not exceeding in the aggregate <b>45 days</b> in each year, but not exceeding <b>30 days at any one time</b>, subject to giving of previous notice of at least <b>7 days</b></p>		
<b>Penalty for Non-Compliance of the Provision</b>	<p>The Company and every officer in default shall be punishable as follows:</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 20%;"><b>Punishment</b></td> <td><b>5,000 per day during which the register is kept closed upto a maximum of 1,00,000</b></td> </tr> </table>	<b>Punishment</b>	<b>5,000 per day during which the register is kept closed upto a maximum of 1,00,000</b>
<b>Punishment</b>	<b>5,000 per day during which the register is kept closed upto a maximum of 1,00,000</b>		

Annual Return (Sec 92)	
Topic	Detailed Explanation
<b>Contents of Annual Returns to be submitted by companies</b>	<p>Every company shall prepare an annual return in the <b>MGT- 7</b> containing following particulars as they stood <b>on the close of the financial year</b> regarding—</p> <ol style="list-style-type: none"> <li>a) <b>Principal Activities &amp; Group Companies:</b> Its principal business activities, particulars of its holding, subsidiary and associate companies;</li> <li>b) <b>Shareholding Pattern:</b> Its shares, debentures and other securities and shareholding pattern;</li> <li>c) Its indebtedness;</li> <li>d) <b>Membership &amp; Debenture holders:</b> Its members and debenture-holders along with changes therein since the close of the previous financial year;</li> <li>e) <b>Management:</b> Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;</li> <li>f) <b>Meetings:</b> Meetings of members or a class thereof, board and its various committees along with attendance details;</li> <li>g) <b>Managerial Remuneration:</b> Remuneration of directors and key managerial personnel;</li> <li>h) <b>Punishment Imposed:</b> 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;</li> <li>i) <b>Certification of compliances, disclosures:</b> Matters relating to certification of compliances, disclosures as may be prescribed;</li> <li>j) <b>Foreign Institutional Investors:</b> Details, as may be prescribed, in respect of shares</li> </ol>

	<p>held by or on behalf of the foreign institutional investors; and</p> <p>k) Such other matters as may be prescribed.</p> <p><b>Authentication (Signing) of Annual Return</b></p> <ol style="list-style-type: none"> <li>1. It shall be signed by a director <b>and</b></li> <li>2. It shall be signed by the CS, or where there is no CS, by a CS in practice.</li> </ol>
<p><b>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. (MAY 2018)</b></p>	
<p><b>Abridged Form of Annual Return MGT- 7A</b></p>	<p><b>Special Provision for One Person Company &amp; Small Company</b></p> <p>Central Government has prescribed <b>Abridged Annual Return (MGT- 7A)</b> for :-</p> <ol style="list-style-type: none"> <li>1. One Person Company.</li> <li>2. Small Company.</li> </ol> <p>In relation to <b>One Person Company, Small Company</b> and <b>Start-up private company</b>, the annual return shall be signed by:-</p> <ol style="list-style-type: none"> <li>1) The CS, where there is a CS <b>or</b>,</li> <li>2) The DIRECTOR of the company, where there is no CS.</li> </ol>
<p><b>Companies for which CS Certification of Annual Return is required</b></p>	<p>The annual return, filed by a</p> <ol style="list-style-type: none"> <li>1) A Listed company or,</li> <li>2) A company having paid-up capital <math>\geq</math> 10 crores or,</li> <li>3) A company having turnover <math>\geq</math> 50 crores,</li> </ol> <p>shall be certified by a CS in practice in the <b>MGT - 8</b>, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.</p>
<p><b>Annual Return to be place on website</b></p>	<p>Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.</p>
<p><b>Time limit for Filing of Annual Return with the Registrar</b></p>	<p><b>Case 1: - When the AGM is held</b></p> <p>Within 60 days from the date on which the AGM is held.</p> <p><b>Case 2: - When the AGM is NOT held</b></p> <p>Within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.</p>
<p><b>Wills Pvt. Ltd. convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations</b></p>	

outlined in the Companies Act, 2013 ? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face ? 4 M (Nov 23)			
Penalty CAA-2020	The Company and every officer in default shall be punishable as follows: <b>New Penalty [The Companies (Amendment) Act, 2020]</b>		
	On Company	Minimum Penalty	10,000
		Continuing Penalty	100 per day
		Maximum Penalty	2,00,000
	Officer in Default	Minimum Penalty	10,000
		Continuing Penalty	100 per day
Maximum Penalty		50,000	
Penalty on CS [CAA-2020]	Punishment	2,00,000	

Place of Keeping & Inspection of Registers, Returns, etc (sec 94)	
Maintenance of Registers and Returns	at the <b>registered office</b> of the company.
Keeping Registers and Returns in any other place [Special Resolution]	Such registers or copies of return may also be kept at any other place in India in which <b>more than 1/10th of the TOTAL. NUMBER OF MEMBERS</b> entered in the register of members reside, if approved by a <b>SPECIAL RESOLUTION</b> passed at a general meeting of the company.
Preservation of Registers and Returns	<ol style="list-style-type: none"> <li>1) <b>Register of Members</b> — Permanently</li> <li>2) <b>Foreign Register of Members</b> — Permanently</li> <li>3) <b>Register of Debenture holders or any other Security Holders</b> — 8 years from the date of <b>redemption of debentures or securities</b></li> <li>4) <b>Annual Returns</b> — 8 years from the date of filing with the ROC.</li> </ol>
Inspection facility for Registers and Returns	<p>The registers and their indices, except when they are closed u/s 91, and the copies of all the returns shall be open for inspection by</p> <ol style="list-style-type: none"> <li>1) Any member, debenture-holder, other security holder or beneficial owner, during business hours (not less than 2 per day) without payment of any fees. <b>[FREE]</b></li> <li>2) Any other person (outsiders) on payment of such fees not exceeding ₹ 50 for each inspection. <b>g 501</b></li> </ol>
Copies of Registers and Returns	<p>Any such member, debenture-holder, other security holder or beneficial owner or any other person may—</p> <ol style="list-style-type: none"> <li>a) <b>Take EXTRACTS</b> from any register, or index or return without payment of any fee; or <b>FREE</b></li> </ol>

	b) <b>Require a COPY</b> of any such register or entries therein or return on payment of fees not exceeding <b>Z 10 per page</b> . Such copy or entries or return shall be supplied within 7 days of deposit of such fee. [ <b>? 10 per page</b> ]		
<b>Not available</b>	Provided that SUCH PARTICULARS of the register or index or return as may be prescribed shall NOT be available for inspection or for taking extracts or copies.		
<b>Penalty for Non-Compliance of the Provision</b>	<p>If any inspection or the making of any extract or copy required under this section is refused, the Company and every officer in default shall be punishable as follows:</p> <table border="1"> <tr> <td><b>Punishment</b></td> <td><b>1,000 per day during which the refusal or default continues upto a maximum of 1,00,000</b></td> </tr> </table> <p>Also, the Central Government may, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.</p>	<b>Punishment</b>	<b>1,000 per day during which the refusal or default continues upto a maximum of 1,00,000</b>
<b>Punishment</b>	<b>1,000 per day during which the refusal or default continues upto a maximum of 1,00,000</b>		

### Registers, etc. to be Evidence (sec 95)

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorized to be inserted therein by or under this Act.

**Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with .an authorized capital of 1,000 crores. According to financial statements as on 31st March, 2023, paid-up capital of company was 600 crores and free reserves were 650 crores. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.**

**MCL is planning to expand its existence throughout the country. For this purpose, Company has taken 200 crores term loan and 125 crores of Working Capital loan from Banks on 18th June, 2023. Charge was created on all the assets of company on that day for above loan of 325 crores, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.**

**MCL wants to convene its 23<sup>rd</sup> AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22<sup>nd</sup> August, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plan.**

**With reference to provisions of Companies Act, 2013, answer the following questions :**

- (i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid ?**
  - (ii) Which type of Charge was created by Company on 18th June, 2023 ? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of Companies Act, 2013 ?**
  - (iii) Whether the notice given to convene AGM at shorter notice was in compliance of Companies Act, 2013 ?**
- (Nov 23)**

## Chapter VIII

# DECLARATION AND PAYMENT OF DIVIDEND

Ch. VIII of The Companies Act, 2013  
Declaration and Payment of Dividend  
[Sec. 123-127]

The Companies (Declaration and Payment of Dividend) Rules, 2014

Section	Title
123	Declaration of dividend
124	Unpaid Dividend Account
125	Investor Education and Protection Fund
126	Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.
127	Punishment for failure to distribute dividends.

### Introduction to Dividend

<b>Definition of Dividend</b> [Sec. 2(35)]	<ul style="list-style-type: none"> <li>▪ Dividend includes <b>any interim dividend</b>. [Sec. 2(35)]</li> <li>▪ The word 'dividend' has origin from the latin word '<b>dividendum</b>'; means a thing to be divided.</li> <li>▪ The portion of profits available for distribution of dividend is known as '<b>divisible profits</b>'.</li> <li>▪ Dividend is not debt till it is declared.</li> </ul> <ol style="list-style-type: none"> <li>1 Dividend is <b>recommended by BOD</b> in the Board's Report and <b>approved by shareholders</b> at the AGM.</li> <li>2 But <b>Dividend cannot be declared at a rate higher than that recommended by the Board</b>.</li> </ol>											
<b>Types of Dividend</b>	<ol style="list-style-type: none"> <li>1 Final Dividend</li> <li>2 Interim Dividend</li> </ol> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">BASIS FOR COMPARISON</th> <th style="width: 40%;">INTERIM DIVIDEND</th> <th style="width: 35%;">FINAL DIVIDEND</th> </tr> </thead> <tbody> <tr> <td><b>Definition</b></td> <td>Interim dividend is declared and paid <b>during an accounting year</b>, i.e. before the finalization of accounts for the year.</td> <td>Final dividend is the dividend recommended by the BOD, and approved by shareholders at the company's AGM, <b>after the close of FY</b>.</td> </tr> <tr> <td><b>Announcement</b></td> <td>Announced by <b>Board of Directors</b>.</td> <td><b>Recommended by BOD and approved by shareholders</b>.</td> </tr> </tbody> </table>			BASIS FOR COMPARISON	INTERIM DIVIDEND	FINAL DIVIDEND	<b>Definition</b>	Interim dividend is declared and paid <b>during an accounting year</b> , i.e. before the finalization of accounts for the year.	Final dividend is the dividend recommended by the BOD, and approved by shareholders at the company's AGM, <b>after the close of FY</b> .	<b>Announcement</b>	Announced by <b>Board of Directors</b> .	<b>Recommended by BOD and approved by shareholders</b> .
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	<b>Revocation</b>	It can be revoked with the <b>consent of all shareholders.</b>	It <b>cannot</b> be revoked.
	<b>Provision in Articles of Association</b>	It is declared only when the <b>articles specifically permits</b> the declaration.	It does <b>not require</b> any specific provision in the articles.

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 Dividend (1 Mark) (MTP Sep. 22)

<b>Declaration of Dividend [Sec. 123]</b>	
<b>Sources of Dividend</b> [Sec. 123(1)]	<p><b>(a) Profits of the company</b></p> <ul style="list-style-type: none"> <li>(i) For the <b>current F.Y.</b>; or</li> <li>(ii) For <b>previous F.Y(s) and remaining undistributed (free reserve)</b> profits (follow Rule 3); or</li> <li><b>(iii) Both</b></li> </ul> <p><b>(b) Moneys provided by C.G. or S.G.</b> for the payment of dividend by the company <b>in pursuance of a guarantee</b> given by that Government.</p>
<b>Dividend only out of free reserves</b>	<p>Provided also that no dividend shall be declared or paid by a company from its reserves other than FREE Reserves.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p><b>Free reserves = General Reserve &amp; Dividend Equalization Reserve.</b></p> </div>
<b>Dividend in case of inadequacy or absence of profits</b> [Sec. 123 and Rule 3]	<p>If for any F.Y. <b>there is inadequacy or absence of profits</b> but a company intends to declare dividend <b>out of accumulated profits of previous FYs</b> which have been transferred to the free reserves, the company shall comply with the <b>Rules 3</b> prescribed by C.G.</p> <p><b>Condition I</b></p> <ul style="list-style-type: none"> <li><b>(i)</b> The <b>rate of dividend</b> declared shall <b>not exceed the average of the rates</b> at which dividend was declared by the company <b>in the immediately preceding 3 years.</b></li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Rate of Dividend <math>\leq (RD1 + RD2 + RD3)/3</math> Where, RD1, RD2, RD3 are rates at which dividend was declared by the company in the immediately preceding three years.</p> </div> <ul style="list-style-type: none"> <li><b>(ii)</b> However, this condition shall not apply if the company has not declared <b>any dividend in each of the three preceding financial year.</b></li> </ul> <p><b>Condition II</b></p> <ul style="list-style-type: none"> <li><b>(i)</b> The total <b>amount to be drawn</b> 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.</li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Total amount that can be drawn <math>\leq</math> 10% of (paid up share capital + free reserves)</p> </div>

**Condition III**

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

**Condition IV**

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

Free Reserves – Amount drawn for payment of dividend	$\geq$	15 % of paid up share capital
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**Note:**

- 1 It may be noted that **all the above 3 conditions have to be satisfied.**
- 2 The conditions prescribed by **Rule 3 are not applicable to a 100 % Government company**

1. 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 2022)

2. 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. (2 + 2 = 4 Marks) (Nov 2020)

#### Hint:

In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

#### According to the said rule, the required conditions are:

**Condition I:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

**Condition II:** The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Paid-up capital + Free reserves = ₹ (100+150) Lakhs (General reserves are free reserves) = ₹ 250 Lakhs

10% thereof = ₹ 25 Lakhs

**Condition III:** The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

The amount drawn as stated above	=	₹	25	Lakhs
Less: loss for the financial year 2019-2020	=	₹	20	Lakhs
Amount available	=	₹	5	Lakhs

Hence, the quantum of dividend is further restricted to ₹ 5 lakhs.

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

Accumulated Reserves	₹	150	Lakhs
Proposed withdrawal declaration of dividend	₹	5	Lakhs
Balance of Reserves	₹	145	Lakhs

This is more than 15% of paid-up capital (i.e. 15% of ₹ 100 Lakhs) i.e. ₹ 15 lakhs. Thus, the company can declare a dividend of ₹ 5 lakhs.

Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹ 5 Lakhs.

3. MNP Ltd. has a paid up share capital of ` 10 crore and free reserves of ` 50 crore, as on 31<sup>st</sup> March, 2019. The company made a loss of ` 40 lakh after providing for depreciation for the year ended 31<sup>st</sup> March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.(RTP MAY 2020)

**Hint –**

As per Second Proviso to Section 123 (1), 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 shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

(a) 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.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled

(b) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: ` 2 Crores (20% of ` 10 Crore i.e on paid up capital) 10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = 6 Crore.

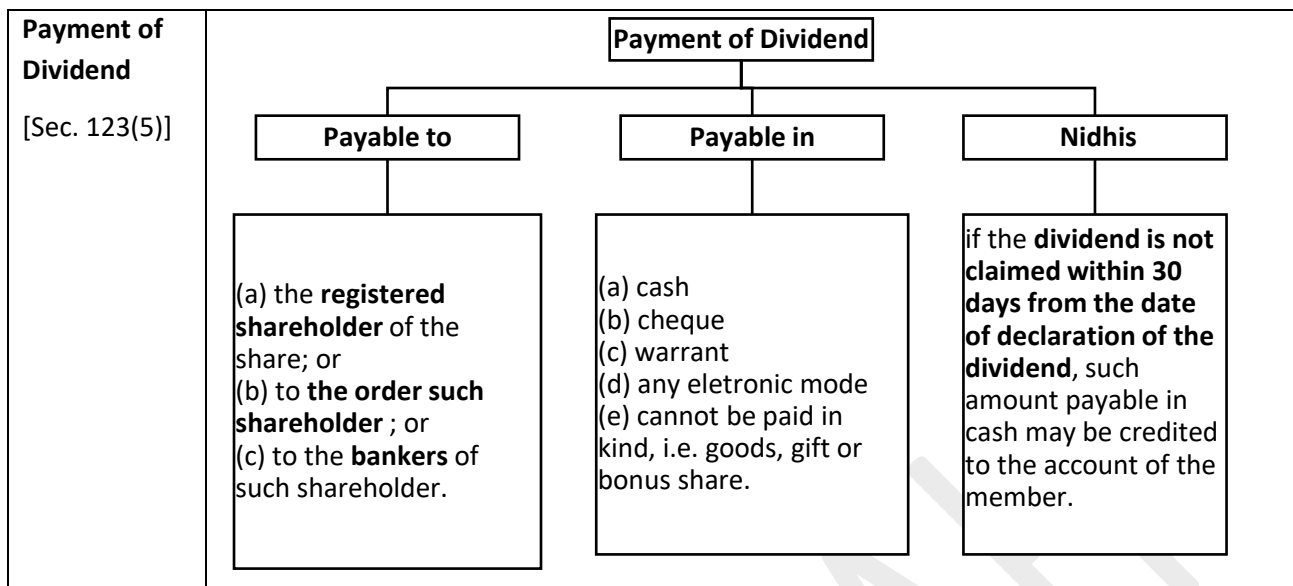
This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(c) 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.

Balance of reserves after payment of dividend: ` 48 crore (50 crore – 2 crore) 15% of paid up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

<b>Payment of dividend</b>	<ol style="list-style-type: none"> <li>1. The amount of the dividend (including interim dividend) shall be <b>deposited in a scheduled bank in a separate account within 5 days</b> of declaration of such dividend.</li> <li>2. Such amount shall be used only for the purpose of payment of dividend.</li> <li>3. However, it is not applicable to a <b>100% Government Companies</b></li> <li>4. Dividend should be paid <b>within 30 days of declaration</b></li> </ol>
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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 24<sup>th</sup> October 2018. The Directors declared the approved dividends. Mr. Binoy was the holder of 2000 equity of shares on 31<sup>st</sup> March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18<sup>th</sup> June, 2018. Who will be entitled to the above dividend ?(MAY 2019)

**Hint** - Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24<sup>th</sup> October, 2018 he will be entitled to the dividend

- |                         |  |
|-------------------------|--|
| <b>Other Imp points</b> | <ul style="list-style-type: none"> <li>• Before any dividend is declared, the <b>following shall be set off against the profits of the current year</b>:                             <ul style="list-style-type: none"> <li>○ <b>Losses of any previous FY</b> not provided for; and</li> <li>○ <b>Depreciation of any previous FY</b> not provided for.</li> </ul> </li> <li>• <b>Transfer to reserves</b> before payment of dividend is <b>not mandatory</b>. A company may transfer to reserves such percentage of its profits as it may deem fit.</li> <li>• <b>Depreciation</b> shall be provided in accordance with the provisions of <b>Schedule II</b></li> <li>• The company <b>shall not declare dividend</b> on equity shares, if the company has <b>not complied with Section 73 and Section 74</b> of the Act.</li> </ul> |
|-------------------------|--|

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 immediately preceding three years. In spite 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 NOV 2018) (MTP MAY 2019) (MTP MAY 2020) (5 Marks) (MTP M 21)

**Hint:** 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.

2. Alex limited is facing loss in business during the financial year 2018-2019. 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

**atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid ? (MAY 2019)**

Hint - According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. 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 2018-2019 is not valid.

**3. 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 MAY 2019) (MTP NOV 2020) (NOV 2018)**

Hint - 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 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.

4.

**(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.**

**(ii) Whether a Company can declare dividend for the financial year in which it incurred loss.(NOV 2019)**

Hint:-

(i) 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.**

(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.

<b>Interim Dividend</b> [Sec. 2(35) & 123 (3)]	<b>Meaning</b>	Dividend declared between two AGM's is called as interim dividend.
	<b>Who can declare?</b>	<ul style="list-style-type: none"> <li>▪ Board shall declared interim dividend.</li> <li>▪ BOD any declare interim dividend during any F.Y or at any time during the period from closure of F.Y. till the holding of AGM.</li> <li>▪ Even if articles of company do not contain provision of declaring interim dividend, Board can declare as it is authorized by the Companies Act, 2013.</li> </ul>

	<b>Sources</b>	(a) Surplus in P&L account. (b) Profits of F.Y for which such interim dividend is sought to be declared. (c) Profits generated in F.Y till the quarter preceding the date of declaration of interim dividend.
	<b>Restrictions of rate of interim dividend [Proviso to Sec. 123(3)]</b>	Where the company <b>has incurred loss during the current F.Y. upto the end of the quarter immediately preceding the date of declaration of interim dividend</b> ; such interim dividend shall <b>not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 F.Y.</b>
	<b>Other points</b>	(a) Interim dividend <b>shall be paid within 30 days</b> of its declaration. (b) Declaration of <b>interim dividend shall be ratified at the next occurring AGM</b> by the members. (c) <b>All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.</b>
<p><b>PET 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 immediately preceding three years. In spite 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 PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.(MAY 2018) (April 22)(5 Marks)</b></p> <p>In the instant case, Interim dividend by PET 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. <math>(12+15+18)/3 = 45/3 = 15\%</math>]. Therefore, decision of Board</p>		

1 The Board of Directors of Star Chemicals Limited is 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 dividends at the rate of 8%, 10%, 9%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring losses during the current financial year. **(Nov 23)**

- 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%.
- 2 Dividend can be declared or paid for a financial year by a company out of:
  - (i) Profits of that year after depreciation.
  - (ii) Profits of previous financial years after depreciation and remaining undistributed.
  - (iii) Money provided by Central or State Government in pursuance of a guarantee given by that government.
  - (iv) Capital contributed by Central or State Government in pursuance of an agreement.
    - a. (i) or (ii)
    - b. **(i) or (ii) or (iii)**
    - c. (i) or (ii) or (iv)
    - d. (i) or (iv)

3 A company can declare dividend for a financial

- year out of profits of that year after providing depreciation in accordance with the provisions of:
- Income Tax Act
  - Schedule II of Companies Act**
  - Either (a) or (b)
  - None of the above
- 4 A company cannot declare dividend for a financial year out of:
- Profits of that year after depreciation and free reserve
  - Profits of previous financial years after depreciation and remaining undistributed
  - Free reserve
  - Revaluation reserve**
- 5 The amount which a company is mandatorily required to transfer to its reserves before declaration of dividend is:  
**(April 22) (1 Mark)**
- 5%
  - 7%
  - 10%
  - None of the above**
- 6 Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to:
- Free reserves**
  - Capital reserves
  - Both (a) and (b)
  - None of the above
- 7 In case of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves provided rate of dividend declared does not exceed:
- Average of dividend amount in 3 immediately preceding years
  - Average of dividend amount in 5 immediately preceding years
  - Average of dividend rates in 3 immediately preceding years**
  - Either (a) or (c)
- 8 In case of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves provided total amount to be drawn from accumulated profits does not exceed:
- 5% of paid-up share capital and free reserves
  - 10% of paid-up share capital and free reserves**
  - 15% of paid-up share capital and free reserves
  - 20% of paid-up share capital and free reserves
- 9 In case of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves provided the balance of reserves after such withdrawal shall not fall below:
- 15% of paid-up share capital**
  - 15% of paid-up share capital and free reserves
  - 5% of paid-up share capital and free reserves
  - 10% of paid-up share capital and free reserves
- 10 'Free reserves' has been defined in Section 2(43) the Companies Act to mean such reserves which are available for distribution as dividend. The reserves for this purpose are taken as per:
- Average of balance in audited balance sheet of company for 3 preceding years.
  - Average of balance in audited balance sheet of company for 5 preceding years.
  - Latest audited balance sheet of company.**
  - Latest audited balance sheet of company including profit till the quarter preceding the date of declaration.
- 11 The Board of Directors of a company may declare interim dividend out of:
- The surplus in the profit and loss account
  - Profits of the financial year for which such interim dividend is sought to be declared
  - Profits generated in the financial year till the quarter preceding the date of declaration
  - Either or All of the above**

- 12 The profits of X Ltd. for financial year 2019-2020 are inadequate but the directors still want to recommend dividend. X Ltd. have paid dividend in earlier years as follows:  
 FY 2016-2017 @ 10%  
 FY 2017-18 — NIL  
 FY 2018-19 @ 5%
- Subject to compliance of other conditions, the maximum rate of dividend that can be paid by X Ltd. is:
- 7.5%
  - 5%**
  - 2.5%
  - At any rate recommended by Directors
- 13 The profits of X Ltd. for financial year 2019-2020 are inadequate but the directors still want to recommend dividend. X Ltd. have paid dividend in earlier years as follows:  
 FY 2016-2017 — NIL  
 FY 2017-2018 — NIL  
 FY 2018-2019 @ 12%
- Subject to compliance of other conditions, the maximum rate of dividend that can be paid by X Ltd. is:
- NIL
  - 4%**
  - 10%
  - 12%
- 14 The profits of X Ltd. for financial year 2019-2020 are inadequate but the directors still want to recommend dividend. X Ltd. have not declared dividend in any earlier years. Subject to compliance of other conditions, the maximum rate of dividend that can be paid by X Ltd. is:
- 7.5%
  - 5%
  - 2.5%
  - At any rate recommended by Directors**
- 15 The board of directors of ABC Ltd. declared an interim dividend of 7% on its equity shares in its meeting held on 13th April, 2020. The amount of dividend payable should be deposited in a separate bank within by:
- 12th May, 2020
  - 31st April, 2020
  - 18th April, 2020**
  - 15th April, 2020
- 16 A company declared dividend at its Annual General Meeting held on 30th September, 2019. The company can make payment of dividend out of:
- A separate account to be maintained with a scheduled bank**
  - A separate account to be maintained with Investor Education and Protection Fund
  - Normal current account of the company maintained with a scheduled bank
  - A separate account maintained of its Directors
- 17 The company can make payment of dividend to:
- Registered shareholder only
  - Registered shareholder or to anyone as per mandate given by shareholder**
  - Registered shareholder or anyone who has purchased shares from him
  - Registered shareholder in electronic mode only
- 18 In absence of any direction given to the company in case of joint shareholding, the dividend warrant should be sent to:
- First holder named in the register of members.**
  - Last holder named in the register of members.
  - Legal representative of joint-shareholders.
  - Any of the joint holders with intimation to other shareholders.
- 19 A company can make payment of dividend to its shareholders by:
- Cheque or electronic transfer**
  - Giving products manufactured by company of equal value
  - Issuing shares for equal amount
  - All of the above
- 20 A company declared dividend at its Annual General Meeting held on 31st May, 2020. It

should be paid within:

- a. 14 Days
- b. 21 Days
- c. **30 Days**
- d. 45 Days

21 A company declared dividend at its Annual General Meeting held on 13th August, 2020.

The amount of dividend payable needs to deposited in a separate bank account by:

- a. **18th August, 2020**
- b. 19th August, 2020 (considering National Holiday on 15th August)
- c. 31st August, 2020
- d. 12th September, 2020

Unpaid Dividend Account [Sec. 124]	
<p><b>Unpaid Dividend Account</b> [Sec. 124(1)]</p>	<ul style="list-style-type: none"> <li>▪ Dividend has been <b>declared</b> by a company ↓</li> <li>▪ But has <b>not been paid or claimed within 30 days</b> from the date of declaration. ↓</li> <li>▪ The company shall, <b>within 7 days from the expiry of such 30 days</b> ↓</li> </ul> <p style="text-align: center;"><b>Transfer</b> the total amount of unpaid or unclaimed dividend to a special account called '<b>Unpaid Dividend Account</b>'. This account shall be opened by the company in any scheduled bank.</p>
<p><b>Statement of unpaid dividend</b> [Sec. 124(2)]</p>	<ul style="list-style-type: none"> <li>▪ The company shall prepare a statement ↓</li> <li>▪ <b>Within 90 days</b> of transferring any amount to the unpaid dividend account. ↓</li> <li>▪ The statement shall contain the <b>names, last known addresses and the amount</b> of unpaid dividend to be paid to each person. ↓</li> <li>▪ The company shall place such statement on its <b>website</b>, if any, and also on any other website approved by the C.G.</li> </ul>
<p><b>RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15<sup>th</sup> 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 more than 2 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 2019)</b></p> <p><b>Hint –</b></p> <p>Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend within 90 days and so liable for the said noncompliance of section 124 of the Companies Act, 2013.</p>	
<p><b>Interest in case of default in transferring the amount</b></p>	<ul style="list-style-type: none"> <li>▪ The company shall pay, from the date of such default, interest at the rate of <b>12% p.a.</b> on the amount not so transferred to the said account.</li> </ul>



[Sec. 124(3)]	<ul style="list-style-type: none"> <li>Such interest amount shall be <b>available to the benefit of the members</b> of the company in proportion to the amount remaining unpaid to them.</li> </ul>		
<b>Transfer of Unclaimed Amount to IEPF</b> [Sec. 124(5)]	<ul style="list-style-type: none"> <li>Any amount transferred to the unpaid dividend account which remains <b>unpaid or unclaimed for 7 years</b> from the date of such transfer</li> <li>Shall be <b>transferred</b> by the company along with interest accrued on it to <b>the Investor Education &amp; Protection Fund</b>.</li> </ul>		
<b>Transfer of shares in the name of the Fund</b> [Sec. 124(6)]	All shares in respect of which <b>dividend has not been paid or claimed for 7 consecutive years or more</b> shall be transferred by the company in the name of IEPF.		
<b>Right of Owner to Reclaim</b> [Proviso to Sec. 124(6)]	<ul style="list-style-type: none"> <li>Any <b>claimant</b> of shares so transferred to IEPF shall be entitled to <b>reclaim the 'transferred shares'</b> from IEPF in accordance with the prescribed rules and on submission of the prescribed documents.</li> </ul>		
<b>Punishment for Contravention</b> [Sec. 124(7)]	<b>On Company</b>	<b>Minimum Penalty</b>	<b>1,00,000</b>
		<b>Continuing Penalty</b>	<b>500 per day</b>
		<b>Maximum Penalty</b>	<b>10,00,000</b>
	<b>On officer in default</b>	<b>Minimum Penalty</b>	<b>25,000</b>
		<b>Continuing Penalty</b>	<b>100 per day</b>
		<b>Maximum Penalty</b>	<b>2,00,000</b>

- A company declared dividend at its Annual General Meeting held on 13th August, 2020. The company deposited the dividend payable amount to a separate bank account. However, there is some balance still lying unclaimed. The company should transfer this balance to Unpaid Dividend Account by:
  - 12th September, 2020
  - 19th September, 2020**
  - 24th September, 2020
  - 30th September, 2020
- The amount of dividend which is not paid or claimed out of Unpaid Dividend Accounts should be transferred to IEPF after the expiry of:
  - 7 Years**
  - 9 Years
  - 5 Years
  - 3 Years
- On 18th September 2019 XYZ Ltd. transferred unpaid/unclaimed Dividend amounting to **10 Lakh** to the 'Unpaid Dividend Account'. After settlement of various dividend claims till 17th September 2026, 2 Lakh remains unpaid /unclaimed in the said account. The amount of 2 Lakh should be transferred to the Investor Education and Protection Fund (IEPF) by:
  - 17th September, 2026
  - 22nd September, 2026
  - 30th September, 2026
  - 17th October, 2026**

### Investor Education and Protection Fund (IEPF) [Sec. 125]

<b>Establishment and Purpose of Fund</b>	<ol style="list-style-type: none"> <li>1. The Investor Education and Protection Fund is established by the Central Government [Sec. 125(1)].</li> <li>2. It will be utilized for promotion of investor awareness and protection of investors.</li> </ol>
<b>Sources of fund</b> [Sec. 125(2)] [Rule 3 of IEPF Rules] <b>Mnemonic : A to I</b>	<p><b>A. Application Money not refunded</b></p> <p>The application money received by companies for allotment of any securities and due for refund provided such amount has remained <b>unclaimed and unpaid for 7 years</b> from the date it became due for payment.</p> <p><b>B. Being Money unpaid of matured deposit, debentures, preference shares and interest thereon</b></p> <p>Only if such amount or interest has remained unclaimed and unpaid for 7 years from the date it becomes due for payment</p> <p><b>C. Company's unclaimed dividend for 7 years.</b></p> <p><b>D. Donations / Disgorgement</b></p> <ol style="list-style-type: none"> <li>(i) Donations given by the <b>C.G, SG(s)</b>, companies or any other institution for the purposes of the Fund.</li> <li>(ii) The amount received u/s 38(4) i.e. amount received through <b>disgorgement or disposal of securities seized</b> from a person who has been convicted for personation for acquisition of securities as provided in Section 38(3).</li> </ol> <p><b>E. Earlier Act, 1956</b></p> <p><b>F. Fractional Shares</b></p> <p>Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years.</p> <p><b>G. Grants</b></p> <p>Grants received by C.G after due appropriation made by the Parliament.</p> <p><b>I. Income of Authority</b></p> <p>The interest or other income received out of investments made from the Fund.</p>
<b>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 MAY 2019)</b>	
<b>Utilisation of the Fund</b> [Sec. 125(3)]	<p>The Fund shall be utilized for-</p> <ol style="list-style-type: none"> <li>(a) the <b>refund</b> of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;</li> <li>(b) <b>promotion</b> of investor's education, awareness and protection;</li> <li>(c) <b>distribution of any disgorged</b> amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;</li> </ol>

	(d) <b>reimbursement of legal expenses</b> incurred in pursuing <b>class action</b> suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and (e) <b>any other purpose incidental thereto</b> in accordance with the rules framed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
<b>Constitution of Authority for administration of Fund</b> [Sec. 125(5)]	C.G shall constitute, by notification, an Authority for administration of the Fund consisting of- (i) a chairperson; (ii) such other members, not exceeding 7; and (iii) a chief executive officer.
<b>Provision of resources by C.G.</b> [Sec. 125(7)]	The C.G may provide to the Authority such offices, officers, employees and other resources in accordance with the IEPF Authority Rules, 2016.
<b>Administration of the Fund</b> [Sec. 125(8)]	1. The Authority shall- (a) Administer the Fund; and (b) Maintain separate accounts and records in relation to the Fund. 2. The accounts and records shall be maintained in the form prescribed by C.G after consultation with CAG.
<b>Audit of the Fund</b> [Sec. 125(10)]	The accounts of the Fund shall be <b>audited by the CAG of India</b> at such intervals as may be specified by him.

**Mr. Ambrish, holder of 1000 equity shares of ` 10 each of AB 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.(5 Marks) (MTP Sep. 23)**

**Hint –**

In the given question, Mr. Ambrish 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. Ambrish 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. Ambrish should be advised as under:

- (i) If Mr. Ambrish 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.

- 1 Which of the following amount is/are not required to be credited to IEPF?
  - a. Balance of Unpaid Dividend Account
  - b. Amount of matured deposits
  - c. Profit on sale of assets**
  - d. Amount of matured debentures
- 2 The Investor Education and Protection Fund (IEPF) shall be managed by authority consisting

of a chairperson and such other members, not exceeding:

- a. Seven and a Chief Executive Officer**
- b. Seven including a Chief Executive Officer
- c. Eight and a Chief Executive Officer
- d. *As the Central Government may fix as per approval of Parliament*

### Right to Dividend, Rights Shares & Bonus Shares to be held in abeyance [Section 126]

<b>Applicability of section 126</b>	Section 126 applies where- <b>(a) A transfer deed is delivered to the company for registration; but</b> <b>(b) The transfer of such shares is not registered by the company.</b>
<b>Effect of Section 126</b> [Sec. 126(a)]	<ol style="list-style-type: none"> <li><b>1. The dividend of such shares shall be transferred to the unpaid dividend account.</b></li> <li>2. However, the dividend shall not be transferred to such account, but shall be paid to the transferee, if the registered shareholder has authorised the company to pay the dividend to the transferee.</li> <li><b>3. Any offer of right share or bonus shares made by the company shall remain pending.</b></li> </ol>

1. The Directors of Silver tongue Solutions Limited proposed dividend at 18% on equity shares for the financial year 2018-2019. The same was approved in the Annual general body meeting held on 30<sup>th</sup> September 2019. The Directors declared the approved dividends. Mr. Jagan was the holder of 2000 equity of shares on 31<sup>st</sup> March, 2019, but he transferred the shares to Mr. Rajiv on 8<sup>th</sup> August 2019. Mr. Rajiv has sent the shares together with the instrument of transfer to the company for registration of the shares in

his favour only on 25<sup>th</sup> September 2019. The registration of the transfer of shares is pending on 30<sup>th</sup> September 2019. With respect to the dividend declared the correct action to be taken by the company is:

- (a) Pay the dividend to Mr. Jagan
- (b) Pay the dividend to Mr. Rajiv
- (c) Transfer the dividend in relation to such shares to the Unpaid Dividend Account**
- (d) Transfer the dividend in relation to such shares to the Investor Education and Protection Fund.

### Punishment for Failure to Distribute Dividends [Sec. 127]

<b>Time Limit</b>	The dividend shall be paid (i.e. dividend warrant shall be posted) <b>within 30 days</b> from the date of its declaration.
<b>Punishment</b>	(a) Punishment for every director, who is knowingly a party to the default:

	<p>(i) Imprisonment : <b>Maximum 2 years</b>; and</p> <p>(ii) Fine: <b>Minimum: Rs 1,000 per day</b> during which default continues.</p> <p>(b) Punishment for the company: Pay <b>simple interest at the rate of 18% p.a.</b> during the period for which such default continues.</p>
<b>Exceptions (No default)</b>	<p><b>5 cases when Delay is allowed without any consequences</b></p> <p><b>Provided that no offence under this section shall be deemed to have been committed:—</b></p> <p>(a) Where the dividend could not be paid by reason of the <b>operation of any law</b>; (Insolvency, Death &amp; Succession)</p> <p><b>(b) 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 been communicated to him;</b></p> <p>(c) Where there is a <b>dispute</b> regarding the right to receive the dividend; (dispute among legal heirs or Transfer of shares)</p> <p>(d) Where the dividend has been <b>lawfully adjusted</b> by the company against any sum due to it from the shareholder; (Set-off)</p> <p>(e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was <b>not due to any default on the part of the company.</b></p>
<b>Applicability of Section 127 to Nidhi's</b>	<p>If the dividend payable to a member in Nidhis is Rs. 100 or less; the declaration of the dividend by announcing in the local language in one local newspaper of wide circulation and the display of announcement on the notice board of the Nidhis for atleast 3 months.</p> <p style="text-align: center;">↓</p> <p>It shall be sufficient compliance of the provision of the Section 127.</p>
<p><b>1. The Director of Happy 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. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters: (RTP MAY 2018)</b></p> <p>(i) <b>Mr. A, holding equity shares of face value of 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?</b></p> <p>(ii) <b>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, 20-17. Who will be entitled to the above dividend?</b></p> <p><b>Hint:-</b></p> <p>(i) 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 <b>lawfully adjusted</b> towards call money due on his shares.</p> <p>(ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity</p>	

shares transferred the shares to Mr. R whose name has been registered on 20<sup>th</sup> May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20<sup>th</sup> September 2017, so, Mr. Raj will be entitled to the dividend.

2.

- (i) **Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.**
- (ii) **Kiara, holder of 5000 equity shares of ` 100 each of Kanpur Leather Shoes Limited did not pay final call of ` 10 per share. Kanpur Leather Shoes Limited declared dividend @ 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Kiara should receive.(RTP MAY 2021) (MTP MAY 2019) (NOV 2018) (MTP MAY 21)**

**Hint:-**

- (i) Hence, in the instant case, the proposed act of Bio safe Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not in accordance to the provisions of the Companies Act, 2013. As sec 8 company cannot declare dividend
- (ii) Thus, as per the given facts, Kanpur Leather Shoes Limited can adjust the unpaid call money of ` 50,000 against the declared dividend of 10%, i.e.  $5,00,000 \times 10/100 = 50,000$ . Hence, call money of ` 50,000 not paid by Kiara can be adjusted fully from the entitled dividend amount of ` 50,000 payable to her.
3. Richlook Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrant to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?( **3Marks) (MTP Oct. 23)**

**Hint -** In the given question, the dividend was declared on 31.07.2023 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd August, 2023). It is immaterial if Mr. A has received it on 5th September 2023 (i.e., post 30 days from 31.07.2023). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

4. **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. (MAY 2019) (MTP MAY 21) (MTP Oct. 22)**
- (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 NOV 2019)**

**Hint:-**

- (i) In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.
- (ii) 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.

**5. The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2019. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2019. 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 default period. 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 NOV 2019) (MTP Sep. 22)**

**Hint-** in the given case Mr Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

**6. 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: (4 Marks) (Nov 2020)**

- (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?

Hint –

- (i) 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:** Refer section 127

## Other Important Points

<b>Joint Shareholders</b>	If case of joint shareholders, the dividend may be <b>paid to one of the joint shareholders who is first named</b> in the Register of Members or to such address as the shareholder or the joint shareholders may in writing direct.
<b>Revocation of dividend</b>	<p><b>No revocation of dividend</b></p> <p>ordinarily a dividend once declared cannot be revoked.</p> <p><b>Exceptions</b></p> <ul style="list-style-type: none"> <li>▪ Where declaration of dividend is <b>ultra vires</b> (i.e, where dividend is declared although the company has not earned sufficient profits), the declared dividend can be revoked. However, if illegally declared dividend is paid, the directors shall be liable to indemnify the company, i.e, they shall be personally liable.</li> <li>▪ Where the company <b>ceases to be a going concern</b>, declared dividend may be revoked.</li> </ul>

- 1 If the dividend has not been paid within 30 days from the date of declaration, the company shall be liable to pay simple interest for the period for which such default continues at the rate of:
  - a. 6% p.a.
  - b. 12% p.a.
  - c. **18% p.a.**
  - d. 24% p.a.
- 2 ABC Ltd. declared a dividend of 5% on its equity shares in the Annual General Meeting held on 13th August, 2020. The company posted a dividend warrant to one of its shareholders on 10th September, 2020 at the address recorded in its register of members. However, the dividend warrant never reached the shareholder and was lost in post. The shareholder contends that company has committed a default in payment of dividend and it should pay interest thereon. What is the correct provision as per Companies Act?
  - a. The company is liable to pay interest @ 18% p.a. for the delay.
  - b. The directors of company are required to pay fine of 1,00,000.
  - c. The company is liable to pay fine of 1,000 per day for period of default.
  - d. **The company posted the dividend warrant within prescribed time limit and it is not responsible for loss of the same in postage.**
- 3 Mr. Anand, holding equity shares of face value of 10 Lakh, has not paid 50,000 towards call money due on these shares. The company has declared a dividend @12% on the equity shares. The amount payable to Mr. Anand shall be:
  - a. 1,20,000
  - b. **70,000**
  - c. 1,00,000
  - d. NIL until the shareholder pays his calls in arrear

**1. The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:**

Name of the Company	Dividend Declaration Date	Dividend Amount(₹)	Remarks
---------------------	---------------------------	--------------------	---------



Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value! 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits. In the context of aforesaid case-scenario, please answer to the following question(s):-

- What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?
- Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22? (RTP Nov 23)

### 1. According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the *Nidhis*, subject to the following modification:

In case the dividend payable to a member is ! 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

#### i. In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (₹)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (₹)
800	25.08.2022	$800 \times 18\% \times 29/365$	11

#### ii. In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was ` 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and

announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

## Chapter IX

# ACCOUNTS OF COMPANIES

Chapter IX of the Companies Act, 2013

Accounts of Companies

(Section 128 to 138)

The Companies (Accounts) Rules, 2014

Section	Title
128	Books of account, etc., to be kept by company
129	Financial statement
129A	Periodical financial results
130	Re-opening of accounts on court's or Tribunal's orders
131	Voluntary revision of financial statements or Board's report
132	Constitution of National financial Reporting Authority
133	CG to prescribe accounting standards
133	Financial statement, Board's report, etc.
135	Corporate Social Responsibility
136	Right of member to copies of audited financial statement
137	Copy of financial statement to be filed with Registrar
138	Internal audit

### Books of Account, etc, to be kept by Company [Sec.128]

<b>Definition of BOA</b> [Sec. 2(13)]	'Books of Account' includes records maintained in respect of: <b>(Menmonic - MASC)</b> <b>M</b> → All sums of <b>money</b> received and expended by the company; <b>A</b> → The <b>Assets</b> and liabilities of the company; <b>S</b> → All <b>Sales</b> and purchases of goods and services by the company; and <b>C</b> → The items of <b>Cost</b> as may be prescribed u/s 148.
<b>General requirement</b> [Sec. 128(1)]	1) give a <b>true and fair view</b> of the state of the affairs of the company. 2) on <b>accrual basis</b> and according to the 3) <b>double entry</b> system of accounting:

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?(4 Marks)(MPT M 21)

<p><b>'Books and Paper' and 'Book or Paper'</b> [Sec. 2(12)]</p>	<p>Include BOA, deeds, vouchers, writings, document, minutes and registers maintained on paper or in electronic form.</p>
<p><b>Place of keeping BOA</b></p>	<p>Sec. 128(1) requires every company to keep the BOA and other relevant books and papers and FS at <b>its registered office.</b></p> <p><b>Books be kept at Any Other Place in India</b></p> <p>2 conditions need to be satisfied:-</p> <ol style="list-style-type: none"> <li>1) <b>Board Resolution</b> needs to be passed</li> <li>2) The company shall, within <b>7 days of BR</b> file with the Registrar a notice in writing in <b>Form AOC-5</b> giving the full address of that other place.</li> </ol> <p><b>Branch Books be maintained at the Branch itself?</b></p> <p>2 conditions need to be satisfied:-</p> <ol style="list-style-type: none"> <li>1. If proper books of account relating to the transactions effected at the branch office are kept at that office and</li> <li>2. <b>Proper summarized returns periodically are sent by the branch office</b> to the company at its registered office.</li> </ol>

1. XYZ Ltd., a pharmaceutical company was having its manufacturing plant in Dehradun, Uttarakhand. 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 some time, the 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 Directors, it was decided that the books of accounts and other relevant papers

would be kept at the office situated in Dehradun. Within which time period the Registrar must be given notice about such decision of the Board'? **(Nov 23)**

- a. Within 30 days from the date of taking a decision by the board.
- b. Within 15 days from the date it starts maintaining its books of accounts at the office situated at Dehradun.
- c. Within 30 days from the date it starts maintaining its books of accounts at the office situated at Dehradun.
- d. Within 7 days from the date of taking such decision by the board.**

<p><b>Inspection of BOA</b> [Sec. 128(3) &amp; Rule 4]</p>	<p>1. The BOA, other books and papers maintained in India shall be open for inspection <b>by any director-</b></p> <ol style="list-style-type: none"> <li>(i) <b>at registered office</b> of the company; or</li> <li>(ii) at such <b>other place in India</b> where the books have been kept;</li> <li>(iii) open during <b>business hours.</b></li> </ol>
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	<p>2. Financial information maintained <b>outside India</b> may be inspected by directors in accordance with Rule 4:</p> <ul style="list-style-type: none"> <li>(i) The summarized returns of the BOA kept outside India shall be sent to the registered office in India <b>at quarterly intervals</b>. Such returns shall be kept at registered office and be open for inspection to directors.</li> <li>(ii) The director shall furnish a <b>request to the company</b> giving details of the financial information required and period for such information.</li> <li>(iii) The <b>company shall produce</b> such financial information to the director <b>within 15 days</b> of the receipt of the written request.</li> <li>(iv) The information required shall be sought for by the director <b>personally</b> and not <b>by/through his power of attorney holder or agent or representative</b>.</li> </ul> <p>3. The inspection of BOA of any <b>subsidiary company</b> shall be done only by the <b>person authorised by a resolution of the BOD</b>.</p>
<p><b>Members Right (Table F)</b></p>	<p>1) Ordinarily, members do not have the right to inspect books of accounts.</p> <p>2) Members can inspect A/cs only when authorized by :-</p> <ul style="list-style-type: none"> <li>(i) Law/Articles of Association.</li> <li>(ii) Board of Directors.</li> <li>(iii) Company in GM by passing Ordinary Resolution.</li> </ul>
<p><b>Preservation of BOA</b> [Sec. 128(5)]</p>	<p>Every company shall preserve in goods order the BOA along with the relevant vouchers for a period of:</p> <ul style="list-style-type: none"> <li>(i) <b>not less than 8 FYs immediately preceding the relevant FY</b>; or</li> <li>(ii) if the company has been in existence for less than 8 FYs, then, for the entire period of its existence.</li> <li>(iii) Where an investigation of the company is ordered, <b>CG may direct</b> that the books of account shall be kept <b>for such longer period</b> as may be directed by CG.</li> </ul>
<p><b>Persons responsible to maintain proper BOA and its Punishment</b> [Sec. 128(6)]</p>	<p>1. Person responsible are :</p> <ul style="list-style-type: none"> <li>(i) The Managing Director; or</li> <li>(ii) The Whole Time Director in charge of finance, or</li> <li>(iii) The Chief Financial Officer; or</li> <li>(iv) Any other person of a company authorised by the Board.</li> </ul> <p>2. If the person who is made responsible for maintaining BOA fails, he shall be punishable with – Fine of at least Rs. 50,000 but maximum of Rs. 5 lakh.</p>
<p><b>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:</b></p> <p><b>(i) Inspection of books of account and other books and papers of the company.</b></p> <p><b>(ii) Period of preservation of books of accounts(April 22)(6 Marks)</b></p>	

<p><b>Manner of BOA to be kept in electronic mode [Rule 3 ]</b></p>	<p>A company has an option of keeping BOA or other relevant papers in electronic mode. Rule 3 lays down the manner of books of account to be kept in electronic mode:</p> <ol style="list-style-type: none"> <li>1. It shall remain <b>accessible in India at all time</b></li> <li>2. The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, or in such format presenting accurate information and the information contained in the electronic records shall remain complete and unaltered.</li> <li>3. The information received from branch offices shall not be altered and shall be kept in a manner depicting what was originally received from the branches.</li> <li>4. The information in the electronic record of the document shall be capable of being displayed in a legible form.</li> <li>5. 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.</li> <li><del>6.</del> The back-up of the BOA 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 <del>periodic basis.</del> <b>Daily basis</b></li> <li>7. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement following information related to service provider—       <ol style="list-style-type: none"> <li>a) the name of the service provider;</li> <li>b) the internet protocol (IP) address of service provider;</li> <li>c) the location of the service provider (wherever applicable);</li> <li>d) where the BOA and other books and papers are maintained on cloud, such address as provided by the service provider.</li> </ol> </li> </ol> <p><b>Note: For the FY commencing on or after 1<sup>st</sup> April, 2023(amendment), every company which uses accounting software for maintaining its BOA, shall use only such accounting software which has a feature of:</b></p> <ol style="list-style-type: none"> <li>(a) Recording <b>audit trail</b> of every transaction,</li> <li>(b) Creating an <b>edit log</b> of each change made in BOA along with the date when such changes were made and</li> <li>(c) Ensure that the <b>audit trail cannot be disabled.</b></li> </ol>
<p><b>Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?</b></p> <ol style="list-style-type: none"> <li>(i) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. (MTP M 21) (RTP Nov. 22)</li> <li>(ii) Whether a Company can keep books of Accounts in electronic mode accessible only outside India.(NOV 2019)</li> </ol> <p><b>Hint –</b></p> <p>(i) Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.</p>	

(ii) Persons responsible to maintain books – refer Above

(iii) a company cannot keep books of Account in electronic mode accessible only outside India.

- 1 Ganesh Company Ltd, a public company incorporated under the Companies Act, 2013 has Mr. Jay- Director, Mr. Sagar – Independent Director, Mr. Abhishek – Nominee Director and Mr. Yash – Whole time director. Mr. Abhishek wants to inspect the books of account of Shankar Company Limited, the subsidiary of Ganesh Company Limited. You are required to state whether Mr. Abhishek is eligible to inspect the books of accounts of Ganesh Company Limited?
  - a. Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization of the public financial institution on whose behalf he has been so appointed in the board of the Ganesh Company Ltd.
  - b. No. Mr. Abhishek being a nominee director can only inspect the books of account of Ganesh Company Ltd and not its subsidiary company.
  - c. **Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the board of directors.**
  - d. Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the members holding not less than 25% of the paid up share capital of the company.
- 2 A company can prepare its books of account on:
  - a. **Accrual basis and according to Double Entry system**
  - b. Cash basis and according to Double Entry system
  - c. Accrual basis and according to Single Entry system
  - d. Cash basis and according to Single Entry system
- 3 The registered office of ABC Ltd. is situated in a classified backward area of Maharashtra. The company has its corporate office in Mumbai which is conveniently located. The company can maintain its books of account at:
  - a. Corporate Office
  - b. Registered Office
  - c. **Any place in India as the Board of Directors may decide**
  - d. Any place in world as the Board of Directors may decide
- 4 The Board of Directors of ABC Ltd. resolve to maintain its books of account at a place other than its registered office. It shall file a notice with the Registrar in Form No. \_\_\_\_\_ within of decision of the Board.
  - a. **AOC-5, 7 Days**
  - b. AOC-3, 15 Days
  - c. AOC-1, 7 Days
  - d. AOC-4, 30 Days
- 5 Where a company is maintaining its books in electronic mode, it shall intimate to Registrar the details of service provider on:
  - a. **Annual basis at filing of financial statements**
  - b. Quarterly basis
  - c. Monthly basis
  - d. Fortnightly basis
- 6 Mr. D is director of XYZ Ltd. and wants to inspect the books of account of the company through his agent. Decide the correct option from below:
  - a. Mr. D has absolute right to inspect the books of account of company either personally or through his agent.
  - b. **Mr. D can inspect through agent only if the company has no objection to the person chosen as agent.**
  - c. Mr. D can inspect the books of account only himself and he cannot do so through his agent.
  - d. Mr. D can inspect the books of account

through his agent only if Court permits him to do so.

7 Mr. D is director of XYZ Ltd. and wants to inspect the books of account of the company for its branch office situated in London. Decide the correct option from below:

- a. The company shall provide summarized quarterly returns of the books of account of London branch, maintained at the registered office of the company.
- b. Any other financial information maintained outside the country shall be provided by the company within 15 days of receipt of request from director.
- c. The company shall provide above information for inspection only if the director himself makes the requisition and not through any agent or attorney.

**d. All of the above.**

8 Mr. D is director of XYZ Ltd. and wants to inspect the books of account of ABC Ltd., a subsidiary company of XYZ Ltd., although Mr. D is not a director on the Board of ABC Ltd. Decide the correct option from below:

- a. The inspection of books of account of ABC Ltd. shall be allowed only if the Board of ABC Ltd. authorises such inspection.
- b. The inspection of books of account of ABC Ltd. shall be allowed only if the Board of XYZ Ltd. authorises such inspection.**
- c. The inspection of books of account of ABC Ltd. cannot be allowed since Mr. D is not a director in the same company.
- d. The inspection of books of account of ABC Ltd. cannot be allowed since there is no

provision in law for inspection of books of subsidiary.

9 Superb Limited is a company which has no specific regulation in its Articles of Association regarding inspection of books by its members. Mr. M, a member of the company wants to inspect the books of account of Superb Limited. Which of the following statement(s) is correct?

- a. Mr. M can inspect the books of account in the manner determined by the Board.
- b. Mr. M can inspect the books of account if authorised by the Board or by the company in general meeting.
- c. Both (a) and (b)
- d. None of the above. A member of the company has no right of inspection of company's books of account.**

10 The books of account of every company together with the vouchers relevant to any entry in such books of account, shall be kept in good order:

- a. Relating to a period of not less than 8 financial years immediately preceding a financial year.**
- b. Relating to a period of not less than 8 financial years including the current financial year.
- c. Relating to a period of not less than 8 financial years immediately preceding the previous financial year.
- d. Relating to a period of not less than 8 calendar years immediately preceding a financial year.

### Financial Statement [Sec.129]

<b>Definition of F.S</b> [Sec. 2(40)]	Financial statement includes - <ol style="list-style-type: none"> <li>(i) Balance Sheet</li> <li>(ii) P&amp;L Account (For Section 8 Companies Income and Expenditure account)</li> <li>(iii) Cash Flow Statement</li> <li>(iv) Notes to Accounts.</li> <li>(v) Statement of changes in equity, if applicable.</li> </ol>
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	<p>However, F.S. may <b>not include cash flow statement</b> in case of:</p> <p>(a) OPC ; or  (b) Small Company; or  (c) Dormant Company; or  (d) Start-up Private Company (which has not committed any default in filing F.S u/s 137 or annual return u/s 92 with the Registrar.</p>
<p><b>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.</b></p> <p><b>In the context of aforesaid case-scenario, please answer to the following question(s):</b></p> <p><b>Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?</b></p> <p><b>Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:</b></p> <p><b>(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.(RTP Mar 23)</b></p> <p><b>Hint - 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:</b></p> <p><b>The information extracted from the audited Financial Statement of Pacific Solutions Private Limited as on 31st March, 2023 is as below:</b></p> <ol style="list-style-type: none"> <li><b>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.</b></li> <li><b>2) The turnover is ` 2,00,00,000.</b></li> </ol> <p><b>It is further understood that Smart Software Limited is holding 2,00,000 equity shares, fully paid-up, of Pacific Solutions Private Limited. Pacific Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2023-24. The ROC has issued a notice to Pacific Solutions Private Limited as it has failed to file the Cash Flow Statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:</b></p> <ol style="list-style-type: none"> <li><b>(i) Whether Pacific Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?</b></li> <li><b>(ii) Whether Pacific Solutions Private Limited has defaulted in filing its financial statement?</b></li> </ol> <p style="text-align: right;"><b>(6 Marks) (MTP Oct. 23)</b></p> <p><b>Hint -</b></p>	

<p>(i) In the given question, Smart Software Limited (a public company) holds 2,00,000 equity shares of Pacific Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ S 10 totalling S 50 lakh). Hence, Pacific Solutions Private Limited is not a subsidiary of Smart Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (S 50 lakh) and turnover (S 2 crore) is within the limit as prescribed under section 2(85), hence, Pacific Solutions Private Limited can be categorised as a small company.</p> <p>(ii) Pacific Solutions Private Limited being a small company is exempted from filing a cash flow statement as a part of its financial statements. Thus, Pacific Solutions Private Limited has not defaulted in filing its financial statements with Registrar of Companies.</p>	
<p><b>Definition of Financial Year</b> [Sec. 2(41)]</p>	<p>(i) F.Y in relation to any company or body corporate, means the period <b>ending on the 31<sup>st</sup> March</b> every year.</p> <p>(ii) In case a company is incorporated <b>on or after 1<sup>st</sup> January of a year</b>, the period ending on the <b>31<sup>st</sup> March of the next year</b>, shall be the F.Y of the F.S. of such shall company or body corporate.</p> <p>(iii) In case a holding or subsidiary or associate company of a company <b>incorporated outside India is required to follow a different F.Y</b> for consolidation of its accounts outside India, the company or body corporate shall <b>apply to C.G</b>; the C.G may allow any period as its F.Y, <b>whether or not that period is year</b>.</p> <p>(vi) Application for change in FY to <b>Regional Director</b></p>
<p><b>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.(NOV 2019)</b></p>	
<p><b>Basic requirements</b> [Sec. 129(1)]</p>	<p>(i) The FS shall give a <b>true and fair view</b> of the state of affairs of the company.</p> <p>(ii) The FS shall <b>comply with the AS</b> notified u/s 133 However, where the FS do not comply with the AS, the company shall disclose in its FS – [Sec. 129(5)] (a) deviation from the AS; (b) reasons for such deviation; and (c) financial effects of such deviation.</p> <p>(iii) The FS shall be in the form as may be provided for different class of companies in <b>schedule III</b>.</p> <p>(iv) The F.S. shall be prepared as per requirements of AS and IND AS (Rule 4A).</p>
<p><b>Non applicability of Sec. 129(1)</b> [Proviso to Sec. 129(1)]</p>	<p>Section 129(1) <b>shall not apply to any:</b></p> <p>(i) Insurance company; or (ii) Banking company; or (iii) Company engaged in the generation or supply of electricity; or (iv) Other class of company for which a form of FS has been specified in the Act governing such class of company.</p>
<p><b>Laying of F.S</b> [Sec. 129(2)]</p>	<p>At every AGM, the BOD shall lay the following documents.</p> <p>(i) <b>Standalone FS</b> of the Company; and (ii) <b>Consolidate FS</b> of the Company and of <b>all the subsidiaries and associate companies</b>, if any.</p>

<b>Consolidated Financial Statement (CFS)</b>	<p>(i) Where a company has one or more subsidiaries or associate companies, it shall also <b>prepare CFS of the company and of all the subsidiaries and associate companies.</b></p> <p>(ii) The provisions relating to the preparation, adoption and audit of the FS of a holding company shall, mutatis mutandis, apply to the CFS. [Sec.129(4)]</p> <p>(iii) The company shall also <b>attach</b> along with its FS, a separate statement containing the <b>salient features of the FS of its subsidiaries and associate companies</b> in <b>Form No AOC - 1</b>, as per Rule 5.</p> <p>(iv) Preparation of <b>CFS by a company is not required</b> if it meets the following conditions:</p> <ul style="list-style-type: none"> <li>• it is a <b>wholly or partially-owned subsidiary of another company</b> and <b>all its other members</b>, including those not entitled to vote, <b>intimate in writing</b> and the proof of delivery of such intimation is available with the company;</li> <li>• it is a company whose securities <b>are not listed</b> or are not in the process of listing on any stock exchange, whether in or outside India; and</li> <li>• <b>its ultimate or any intermediate holding company files CFS</b> with the Registrar which are in compliance with the applicable AS.</li> </ul> <p>a) A company which does not have any subsidiary but has one or more associate companies or joint ventures or both, or one or more subsidiaries <b>incorporated outside India</b>, is <b>not required to prepare CFS</b> in respect of associate companies or joint ventures or both, or subsidiaries incorporated outside India for the FY 2014-2015.</p>		
<b>Exemption</b> [Sec. 129(6)]	<p>The CG may exempt any class of companies from complying with this section or rules made under, if it is necessary for public interest.</p> <p>The CG may grant such exemption either-</p> <p>(i) suo-moto (on its own); or</p> <p>(ii) on an application by a class/classes of companies. Such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.</p>		
<b>Punishments</b> [Sec. 129(7)]	<p style="text-align: center;"><b>If a Company Contravenes the provisions of section 129</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"><b>Punishment u/s 129</b></td> <td style="width: 50%; padding: 5px;">           Imprisonment &lt; 1 year   <p style="text-align: center;"><b>OR</b></p>           50,000 ≤ Fine ≤ 5 lacs   <p style="text-align: center;"><b>OR</b></p>           Both         </td> </tr> </table>	<b>Punishment u/s 129</b>	Imprisonment < 1 year  <p style="text-align: center;"><b>OR</b></p> 50,000 ≤ Fine ≤ 5 lacs  <p style="text-align: center;"><b>OR</b></p> Both
<b>Punishment u/s 129</b>	Imprisonment < 1 year  <p style="text-align: center;"><b>OR</b></p> 50,000 ≤ Fine ≤ 5 lacs  <p style="text-align: center;"><b>OR</b></p> Both		

<b>Exception</b>	In case of a <b>Government company, section 129 shall not apply to the extent of application of AS 17</b> (Segment Reporting) to the companies engaged in defence production.
<b>Clarification</b>	For the purpose of sec. 129, any reference to the FS shall include any notes annexed to such FS.

- 1 Kanya Ltd. is incorporated on 3rd January, 2021. As per the Companies Act, 2013, what will be the financial year for the company:(Mar. 22)(2 Marks)
  - a. 31st March, 2021
  - b. 31st December, 2021
  - c. 31st March, 2022**
  - d. 30th September, 2022
- 2 Which of the following is not part of financial statements of a company?
  - (i) A balance sheet as at the end of the financial year.
  - (ii) A profit and loss account or 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.
  - (v) Any explanatory note annexed to, or forming part of (i) to (iv) above.
  - (vi) Report of the Auditor.
  - (vii) Report of the Board of Directors.
    - a. (i) to (v)
    - b. (i) to (iv)
    - c. (iv) to (vii)
    - d. (vi) to (vii)**
- 3 A cash flow statement need not be prepared as part of the financial statements of following company/ companies:
  - a. One Person Company
  - b. Small Company
  - c. Dormant Company
  - d. All of the above**
- 4 Which of the following company/companies need not prepare its financial statements according to Schedule III:
  - a. Insurance, Banking and Electricity companies
  - b. Company incorporate under special Act where form of financial statement is prescribed under that Act.
  - c. Both (a) and (b)**
  - d. None of the above. All companies are required to follow Schedule III.
- 5 Avon Software Limited is a public listed company. The financial statements of the company do not comply with the accounting standards prescribed under Section 133. You as the CFO of the company should advise which of the following disclosures in the financial statements of the company?
  - a. Reasons and financial effects (if any) of such non-compliance**
  - b. Date of such non-compliance
  - c. The person authorising such non-compliance
  - d. Management discussion of such non-compliance

<b>Periodical Financial Results [Sec.129A]</b>	
<b>Applicability of Sec. 129A</b>	Applicable to class or classes of <b>unlisted companies</b> , as may be prescribed by the CG.
<b>Legal Requirements</b>	Such prescribed class of companies shall:

	<p>(a) prepare the financial results of the company <b>on such periodical basis and in such form as may be prescribed</b> ;</p> <p>(b) obtain approval of the BOD and <b>complete audit or limited review</b> of such periodical financial results in such manner as may be prescribed; and</p> <p>(c) <b>file a copy with the Registrar within 30 days</b> of completion of the relevant period with fee as may be prescribed.</p>
<p><b>Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.(RTP Mar 23)</b></p> <p><b>Hint –</b></p> <p>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.</p>	

Points	130 - Reopening of Accts.	131— Voluntary Revision of FS/BR
<b>1) Who applies</b>	<ul style="list-style-type: none"> <li>CG,</li> <li>Income Tax dept,</li> <li>SEB1,</li> <li>Regulators,</li> <li>Any other person.</li> </ul>	Directors pass Board Resolution and apply to NCLT.
<b>2) Application to</b>	Court /Tribunal (NCLT- 9)	Application to NCLT in <b>NCLT-1</b> .
<b>3) Grounds</b>	<ul style="list-style-type: none"> <li>A/cs were prepared <b>fraudulently</b>. or,</li> <li>Company was <b>mismanaged</b> during that period.</li> </ul>	<ul style="list-style-type: none"> <li>FS was not prepared as per <b>Sec 129</b> or,</li> <li>BR (Board Report) was not prepared as per <b>sec 134</b></li> </ul>
<b>4) Documents</b>	Accounts & ES.	FS or Board Report.
<b>5) Period</b>	<ul style="list-style-type: none"> <li>Upto previous 8 years or,</li> <li>Longer period as specified by C.G</li> </ul>	Upto Previous 3 Years Note- F.S or B.R revised only once a year

**Common Points u/s 130 & 131:-**

- The accounts so revised or re-cast u/s shall be final.
- NCLT seeks REPRESENTATION from CG and Income Tax department before granting approval.

- The directors of Ninu 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.(MTP MAY 2018) (RTP NOV 2018)**
- The Income Tax Authorities in the current financial year 2019-20 observed, during the 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.(MAY 2019)(MTP NOV 2020) (RTP MAY 2021)

**Hint** - 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

- 1 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? (April 22)(2 Marks)
  - a. 2016-2017
  - b. 2014-2015
  - c. 2011-2012
  - d. 2012-2013**
- 2 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 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. (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. (2 Marks) (MTP Oct. 22)
- 3 A company shall not reopen its books of account and not recast its financial statements, unless an application in this regard is made by:
  - a. Central Government or Income tax authorities or SEBI or any other statutory regulatory body**
  - b. Court or Tribunal
  - c. Both (a) and (b)
  - d. Either (a) or (b)
- 4 The Court or Tribunal can make order under Section 130 for revision/recast in respect of Books of account of a company. Relating to which period such order can be made?
  - a. Within 8 financial years immediately preceding the current financial year.
  - b. Earlier than 8 financial years immediately preceding the current financial year, if a direction has been issued by the Central Government under Section 128(5) for keeping of books of account for a period longer than 8 years.
  - c. Both (a) and (b)**
  - d. None of the above
- 5 A company may voluntarily revise its financial statements or the Board's Report under

Section 131 of the Companies Act, 2013.  
Relating to which year such revision can be made?

- a. Any **3 financial years immediately preceding the current financial year.**
- b. Any 8 financial years immediately preceding the current financial year.

- c. Any financial year earlier than 8 financial years immediately preceding the current financial year, if a direction has been issued by the Central Government under Section 128(5) for keeping of books of account for a period longer than 8 years.
- d. None of the above

<b>Constitution of National Financial Reporting Authority [Sec.132]</b>	
<b>Constitution of NFRA by CG</b> [Sec. 132(1)]	CG may, by notification, constitute a NFRA to provide for matters relating to <b>accounting and auditing standards</b> under this Act
<b>Composition of NFRA</b> [Sec. 132(3)]	<p>(a) NFRA shall consist of –</p> <ol style="list-style-type: none"> <li>(i) <b>a chairperson;</b> and</li> <li>(ii) such other <b>part-time and full-time members, not exceeding 15</b>, as may be prescribed.</li> </ol> <p>(b) The chairperson shall be a person of eminence and having expertise in accountancy, auditing, finance or law.</p> <p>(c) The chairperson shall be appointed by CG,</p>
<b>Disqualification</b>	<p>The chairperson and members, who are in full-time employment with NFRA <b>shall not be associated with any audit firm</b> (including related consultancy firms):</p> <ol style="list-style-type: none"> <li>(a) during the course of their appointment; and</li> <li>(b) <b>2 years</b> after ceasing to hold such appointment.</li> </ol>
<b>Divisions of NFRA</b>	<p>(a) NFRA shall perform its functions through such divisions as may be prescribed [Sec. 132(1A)].</p> <p>(b) Each division of NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson [Sec 132(3A)].</p> <p>(c) There shall be an executive body of NFRA consisting of the Chairperson and full-time Members of NFRA for efficient discharge of its function [Sec 132 (3B)].</p>
<b>Functions of NFRA</b> [Sec. 132(2) ]	<p>The NFRA shall -</p> <ol style="list-style-type: none"> <li>(a) make recommendations to CG on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors, as the case may be;</li> <li>(b) monitor and enforce the compliance with AS and SA;</li> <li>(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</li> <li>(d) perform such other functions as may be prescribed.</li> </ol>
<b>Classes of Companies and</b>	<ol style="list-style-type: none"> <li>(a) Listed Companies;</li> <li>(b) Unlisted Public Companies having –</li> </ol>

<p><b>body corporate governed by NFRA</b> [Rule 3 of NFRA Rules, 2018]</p>	<ul style="list-style-type: none"> <li>(i) Paid-up capital <math>\geq</math> Rs 500 crore ; or</li> <li>(ii) Annual turnover <math>\geq</math> Rs 1000 crore; or</li> <li>(iii) Outstanding loans, debentures, deposits <math>\geq</math> Rs 500 crore (in aggregate) as on 31st March of immediately preceding FY.</li> </ul> <p>(c) <b>Insurance companies, banking companies, companies engaged in the generation of supply of electricity.</b> companies governed by any special Act or body corporate incorporated under any special Act;</p> <p>(d) Any body corporate or company or person, on a reference made to the NFRA by the CG in public interest; and</p> <p>(e) a body corporate incorporated or registered <b>outside India</b>, which is a <b>subsidiary or associate company</b> of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, <b>if the income or networth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated networth</b> of such company or the body corporate, as the case may be.</p> <ul style="list-style-type: none"> <li>• Every existing body corporate (other than those mentioned above), shall inform the particulars of the auditor as on the date of commencement of these rules, to the NFRA within 30 days or the commencement of NFRA Rules, in Form NFRA-1.</li> <li>• Companies governed by NFRA shall continue to be governed <b>for 3 years</b> after it ceases to be governed as per above conditions.</li> </ul>
<p><b>Powers of NFRA</b> [Sec. 132(4)]</p>	<ol style="list-style-type: none"> <li>1. NFRA shall have the power to <b>investigate</b> into the matters of professional or other misconduct committed by any member or firm of chartered accountants. <ul style="list-style-type: none"> <li>(i) NFRA is empowered to conduct such investigation either suo motu or on a reference made to it by CG.</li> <li>(ii) Where NFRA has initiated an investigation, no other institute or body shall initiate or continue any proceedings in such matters of misconduct.</li> </ul> </li> <li>2. NFRA shall have the <b>same powers as are vested in a civil court</b> under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters: <ul style="list-style-type: none"> <li>(i) Discovery and production of BOA and other documents, at such place and at such time as may be specified by NFRA;</li> <li>(ii) Summoning and enforcing the attendance of persons and examining them on oath;</li> <li>(iii) Inspection of any books, registers and other documents at any place;</li> <li>(iv) Issuing commissions for examination of witnesses or documents.</li> </ul> </li> <li>3. Where professional or other misconduct is proved, NFRA shall have the power to make order for <ol style="list-style-type: none"> <li>A. <b>imposing penalty</b> of – <ul style="list-style-type: none"> <li>(i) at least Rs. 1 lakh, but which may extend to 5 times of the fees received, in case of individuals; and</li> <li>(ii) at least Rs 5 lakh, but which in case of firms, may extend to 10 times of the fees received, in case of firms.</li> </ul> </li> <li>B. <b>debaring the member or the firm</b> from –</li> </ol> </li> </ol>



	<p>(i) being appointed as an auditor or internal auditor or undertaking any audit in respect of FS or internal audit of the functions and activities of any company or body corporate, or</p> <p>(ii) performing any valuation as provided u/s 247, for a <b>minimum period of 6 months</b> or such higher period <b>not exceeding 10 years</b> as may be determined by NFRA.</p>
<b>Appeal against NFRA</b> [Sec. 132(5)]	Any person aggrieved by any order of NFRA may prefer an appeal before the <b>Appellate Tribunal</b> in such manner and on payment of such fee as may be prescribed.
<b>Meetings of NFRA</b> [Sec. 132(10)]	The NFRA shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
<b>Secretary &amp; Other Employees</b> [Sec. 132(11)]	<p>(i) The CG may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the NFRA under this Act.</p> <p>(ii) The terms and conditions of service of the secretary and employees shall be such as may be prescribed.</p>
<b>Head office of NFRA</b> [Sec. 132(12)]	<p>(i) The head office of NFRA shall be <b>at New Delhi</b>.</p> <p>(ii) NFRA may meet at such other places in India as it may deem fit.</p>

### CG to Prescribe AS [Sec. 133]

<b>Power with whom?</b>	The CG have the power to prescribe the AS.
<b>Recommended by Whom?</b>	The ICAI shall recommend the Standards of Accounting to the CG.
<b>Issue of AS</b>	The CG, after recommendation by ICAI, shall issue the AS after <b>consultation with NFRA</b> and after examination of the recommendations made by the NFRA.

### Financial Statement, Board's Report, etc. [Sec.134]

<b>Signing of the financial statements/consolidated financial statements</b>	<b>Approved by</b>	<b>Board of Directors.</b>
	<b>Signed by</b>	<p>FS &amp; CFS is SIGNED on behalf of the Board of Directors by:-</p> <ol style="list-style-type: none"> <li><b>Chairperson</b> of the company where he is authorised by the Board or <b>2 directors</b> out of which one shall be <b>Managing Director</b>, if any.</li> </ol> <p><b>AND</b></p> <ol style="list-style-type: none"> <li>the CEO, the CFO and the CS of the company, <b>wherever they are appointed</b>.</li> </ol>

		In the case of OPC, it is signed only by 1 director, for submission to the auditor for his report thereon.
<p><b>Altar 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. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures. (RTP MAY 2018) (MTP MAY 2020) (RTP MAY 2020) (RTP MAY 2018)</b></p> <p><b>Referring to the provisions of the Companies Act, 2013:</b></p> <p><b>(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit &amp; Loss and the Board's Report.</b></p> <p><b>(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 &amp; Loss and the Board's Report?</b></p> <p><b>Hint –</b></p> <p>(i) In the given case, the Balance Sheet and Profit &amp; 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, he should also sign the Balance Sheet and Profit &amp; Loss Account. Therefore, authentication done by two directors is not valid.</p> <p>(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.</p>		
<b>Signing of Board Report</b>	<p>The Board's report shall be signed by</p> <p><b>(a) its Chairperson</b> of the company if he is authorised by the Board <b>or,</b></p> <p><b>(b) where he is not so authorised, shall be signed by at least 2 directors, one of whom shall be a Managing Director.</b></p> <p>In case of OPC, Board Report shall be signed by the director where there is only 1 director (OPC).</p>	
<b>Directors' Responsibility Statement</b>	<b>Contents</b>	<b>Contents of the DRS in detail</b>
	<b>(a) Accounting Standards</b>	In the preparation of the annual accounts, the applicable accounting standards had been followed
	<b>(b) Accounting Policies</b>	The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent
	<b>(c) Accounting Records</b>	The directors had taken proper and sufficient care for the for maintenance of adequate <b>ACCOUNTING</b> records in accordance with the provisions of this Act
	<b>(d) Going Concern Basis</b>	The directors had prepared the annual accounts on a going concern basis

	(e)	<b>Internal Financial Controls</b>	The directors, in the case of a <b>LISTED COMPANY</b> , had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
	(f)	<b>Compliance with all Laws</b>	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
<p><b>The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement.(MTP NOV 2018).(MAY 2018) (MTP Oct. 22) (MTP Oct. 23)</b></p>			

- 1 The financial statements of the company needs to be authenticated by:
- Chairperson of the company, if he is authorised by the Board
  - Any 2 directors out of which one shall be Managing Director, if any
  - Chief Executive Officer, wherever he is appointed
  - Chief Financial Officer, wherever he is appointed
  - Company Secretary, wherever he is appointed
- (i) or (ii), (iii), (iv) and (v)**
  - (i), (iii), (iv), (v)
  - (ii), (iii), (iv), (v)
  - (i) to (v)
- 2 Which of the following statements/documents
- is/are required to be attached to the financial statements when circulated to company's members?
- Notes annexed to or forming part of such financial statements
  - The Auditor's Report
  - The Board's Report
  - All of the above**
- 3 The Board's Report and any Annexure thereto under Section 134(3) shall be signed by:
- Chairperson of the company, if he is authorised by the Board
  - At least two directors, one of whom shall be a Managing Director
  - Both (a) and (b)
  - Either (a) or (b)**

Right of Members to Copies of Audited F.S [Sec.136]							
<b>Persons entitled to receive copy of F.S</b>	The FS and other documents shall be sent to the following persons: (a) Every member of the company, (b) Every debenture trustee, (c) All other persons entitled to receive such copies.						
<b>Documents to be circulated</b>	The copy of following documents is required to be sent by the company: (a) FS, (b) Consolidated FS, if any, (c) Auditor's Report, (d) All other documents which are required to be annexed or attached to FS.						
<b>Time period for circulation</b>	(i) The copies of FS and other documents shall be sent <b>at least 21 days before the date of the meeting.</b> (ii) The copies of the documents may be sent <b>less than 21 days</b> before the meeting (a) In case of company <b>having share capital</b> , by members holding <b>at least 95% of paid-up share capital</b> of the company and is entitled to vote at the meeting; or (b) In case of company <b>not having share capital</b> , by members who are entitled to exercise at <b>least 95 % of the total voting power</b> at the meeting. (iii) In case of a <b>Section 8 Company</b> which has not committed any default in filing FS u/s 137 or annual return u/s 92 with the Registrar, the copies of documents shall be sent <b>at least 14 days</b> before the date of AGM.						
<b>Circulation of copies of documents in case of a listed company</b>	The provision of Sec. 136(1) shall be deemed to be complied with: (i) If the copies of documents are made available for <b>inspection</b> at its registered office during working hours for a period of <b>21 days before the date of AGM; and</b> (ii) A statement containing the salient features of such documents is sent in <b>Form AOC-3</b> ; or in Form AOC-3A, in case of companies required to comply with Companies (Indian Accounting Standards) Rules, 2015 However, if the shareholders ask for full FS, then company shall provide the same.						
<b>Manner of circulation of FS by email</b> [Rule 11]	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"><b>Applicability</b></th> <th>Rule 11 is applicable to:</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>All listed companies; and</td> </tr> <tr> <td>(ii)</td> <td><b>Public companies</b> having,                (a) net worth &gt; Rs 1 crore; and                (b) turnover &gt; Rs 10 crore.</td> </tr> </tbody> </table>	<b>Applicability</b>	Rule 11 is applicable to:	(i)	All listed companies; and	(ii)	<b>Public companies</b> having, (a) net worth > Rs 1 crore; and (b) turnover > Rs 10 crore.
<b>Applicability</b>	Rule 11 is applicable to:						
(i)	All listed companies; and						
(ii)	<b>Public companies</b> having, (a) net worth > Rs 1 crore; and (b) turnover > Rs 10 crore.						

	<b>Manner of circulation</b>	<p>(i) <b>by electronic mode</b>, in following cases:</p> <p>a. Members whose shareholding is in <b>dematerialized format</b> and whose email IDs are registered with Depository for communication purposes.</p> <p>b. Members whose shareholding is <b>not in dematerialized</b> format, but who have positively <b>consented in writing</b> for receiving such documents by electronic mode.</p> <p>(ii) <b>by dispatch of physical copies</b> through any recognised mode of delivery as specified u/s 20, in <b>all other cases</b>.</p>
<b>Placement of FS at the website by listed companies</b>	Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.	
<b>Inspection</b> [Sec. 136(2)]	<p>(a) Every company shall allow <b>every member and debenture trustee</b> to inspect the FS and other documents at its registered office during <b>business hours</b>.</p> <p>(b) Every company having a subsidiary shall provide a copy of separate audited or unaudited FS, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.</p>	
<b>Manner of circulation in case of Nidhi Companies</b>	<p>(i) Nidhi Company <b>is not required to send notice</b> to members holding :</p> <p>a) <b>Shares of not more than Rs 1000 in face value</b>; or</p> <p>b) holds not more than <b>1% of paid up capital</b>; <b>whichever is less,</b></p> <p>if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated.</p>	
<b>Punishment</b> [Sec. 136(3)]	<p>If any default is made in complying with this section :</p> <p>Company: Penalty of Rs 25,000; and</p> <p>Every officer-in-default: Penalty of Rs 5,000.</p>	

### Copy of FS to be filed with Registrar [Sec.137]

<b>Where AGM is held</b> [Sec. 137(1) & Rule 12]	<b>Where FS are adopted at AGM</b>	<p>(i) A copy of following documents shall be filed with the Registrar <b>within 30 days of the date of AGM</b>:</p> <p>a. FS;</p> <p>b. Consolidated FS, if any;</p> <p>c. All other documents required to be attached to the FS.</p> <p>(ii) The documents shall be filed in Form No. <b>AOC-4 and CFS, if any, in Form AOC-4 CFS</b>.</p> <p>(iii) Every NBFC that is required to comply with Ind AS, shall file the FS with the Registrar together with form</p>
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		AOC-4 NBFC (Ind AS) and the CFS, if any, with Form AOC-4 CFS NBFC (Ind AS).
	<b>Where FS are not adopted at the AGM or adjourned AGM</b>	<p>(i) Where the FS are not adopted at the AGM or adjourned AGM, <b>such unadopted FS and other documents shall be filed with the Registrar within 30 days of the date of AGM.</b></p> <p>(ii) The Registrar shall take the unadopted FS and other documents in his records <b>as provisional</b> till the FS are filed with him after their adoption in the adjourned AGM for that purpose.</p> <p>(iii) <b>The FS and other documents adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM.</b></p>
<b>Where AGM is not held [Sec. 137(2)]</b>	<p>A Copy of following documents shall be <b>filed with the Registrar within 30 days</b> of the last date upto which the AGM should have been held:</p> <p>(a) The FS and other documents,  (b) Statement of facts and reasons for not holding the AGM.</p>	
<p><b>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 31<sup>st</sup> 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 15<sup>th</sup> 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 12<sup>th</sup> 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?(MAY 2019)</b></p> <p><b>Hint –</b></p> <p>In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15<sup>th</sup> October, 2018 and filing of financial statements with Registrar was done on 12<sup>th</sup> November, 2018 i.e. within 30 days of the date of adjourned AGM. 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.</p>		
<b>Filing by OPC [Sec. 137(1)]</b>	A OPC shall file copy of the FS duly adopted by its member, along with all the documents which are required to be attached to such FS, <b>within 180 days from the closure of the FY.</b>	
<b>Company having subsidiaries [Sec. 137(1)]</b>	<p>(i) If the foreign subsidiary has not established their place of business in India, the company shall, along with its FS, attach the accounts of its foreign subsidiary while filing with Registrar.</p> <p>(ii) If the foreign subsidiary is not required to get its FS audited under any law of country of its incorporation and does not get FS audited; the holding Indian company shall:</p> <p>a. File such unaudited FS along with a declaration;</p>	

	<p>b. If FS is in language other than English, a translated copy of the FS in English shall also be filed.</p> <p>(iii) The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed along with such accounts.</p>
<p><b>Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws. Advise, how would Dhiman Limited deal with the consolidation of such financial statements. (RTP Nov. 22)</b></p> <p><b>Hint</b></p> <p>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. If impracticable, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.</p>	

- 1 Rema formed and occupied the office of director in Rem Stationers (OPC) Private Limited which deals in manufacturing and trading of various items of stationery. Rema noticed a changed provision which mandates that from the Financial Year 2020-21 onwards, an OPC shall file its Annual Return in MGT - 7A. Rema is also one of the directors in another company which too is required to file its Annual Return in MGT - 7A. Which is that 'other company' where Rema also occupies the office of director in addition to OPC.
  - a. **That other company is a 'small company' where Rema also occupies the office of director in addition to OPC.**
  - b. That other company is an 'associate company' where Rema also occupies the office of director in addition to OPC.
  - c. That other company is a 'subsidiary company' where Rema also occupies the office of director in addition to OPC.
  - d. That other company is a 'dormant company' where Rema also occupies the office of director in addition to OPC.
- 2 A copy of the audited financial statements, including CFS, along with any notes, Auditor's Report etc. is required to be circulated to the members not less than \_\_\_\_\_ before the date of the meeting in which the financial statements are to be laid.
  - a. **21 days**
  - b. 15 days
  - c. 14 days
  - d. 30 days
- 3 In case of Section 8 Company, the financial statements etc. are required to be circulated to the members not less than \_\_\_\_\_ before the

date of the meeting in which the financial statements are to be laid.

- a. 21 days
  - b. 15 days
  - c. **14 days**
  - d. 30 days
- 4 A company can circulate its financial statements to its members at a shorter notice if:
- a. Majority of members in number, who are entitled to vote agree
  - b. Members having not less than 95% of paid

up capital which gives right to vote at the meeting agree

- c. Either (a) or (b)
  - d. **Both (a) and (b)**
- 5 Which of the following companies can circulate its financial statements by electronic mode?
- a. All listed companies
  - b. Public companies having a Net Worth of more than 1 Crore and Turnover of more than 10 Crore
  - c. **Both (a) and (b)**
  - d. None of the above

**Internal Audit [Sec.138]**

<b>Applicability</b> [Sec. 138(1) & Rule 13]	<b>1. Every Listed Company</b>	No Monetary Limit
	<b>2. Every Unlisted Public Company having-</b>	a) PUSC > <b>50</b> crores; or b) Turnover <b>200</b> crores; or c) O/S Borrowings from Banks or PFI > <b>100</b> crores; or d) O/S Deposits of <b>25</b> crores;
	<b>3. 3) Every Private Company having-</b>	a) Turnover <b>200</b> crore; or b) O/S Borrowings from Banks or PFI > > <b>100</b> crores

1. PQR Private Limited operates as a manufacturing company, generating a turnover of 150 crores and holds an outstanding loan of 75 crores from a public financial institution solely in the previous financial year (with a total loan availed of 110 crores, but 35 crores were repaid during the same year). The company's Board has delegated the authority to CEO to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Secretary of the company Mr. A as an internal auditor ?6 Marks (Nov 23)



<p><b>2. New Limited is a listed company having a paid-up share capital of ` 25 crore as at 31st March, 2023 and turnover of ` 100 crore during the financial year 2022-23. The Company Secretary has advised the Board of Directors that New Limited 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. (5 Marks) (MTP Sep. 23)</b></p>	
<p><b>Who can be appointed?</b> [Sec. 138(1) &amp; Rule 13]</p>	<p>(i) An internal auditor shall be either: (a) A Chartered Accountant; or (b) A Cost Accountant ; or (c) Other professional as may be decided by the Board.</p> <p>(ii) The internal auditor <b>may or not may be an employee</b> of the company.</p> <p>(iii) The CA or Cost Accountant may or <b>may not be engaged in practice</b>.</p>
<p><b>Manner and interval of Internal Audit</b></p>	<p>(a) CG may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board [Sec 138(2)].</p> <p>(b) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit. [Rule 13 (2)]</p>
<p><b>Duty of Internal Auditor</b></p>	<p>The Internal auditor shall conduct the internal audit of the functions and activities of the Company [Sec. 138(1)]</p>
<p><b>Transitional Period</b></p>	<p>An existing company covered under the criteria laid down under Rule 13, shall comply with the requirements of section 138 and this rule within 6 months of commencement of such section.</p>
<p><b>Role of Audit Committee/BOD</b></p>	<p>The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.</p>
<p><b>Other basic points to know</b></p>	<ol style="list-style-type: none"> <li>The objective of Internal Audit is :- <ul style="list-style-type: none"> <li>To remove deficiencies in systems.</li> <li>To improve the System.</li> <li>To help the management.</li> </ul> </li> <li>Statutory Auditor cannot be appointed as the Internal Auditor of the company.</li> <li>Internal Audit Report is not circulated to the members. It is not filed with ROC.</li> <li>ICAI has issued SIA [Standards on Internal Audit].</li> </ol>

1. 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. (4 Marks) (MTP Sep. 22)
2. 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. (Mar.22)(6 Marks)

**Hint:**

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.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1 Which of the following persons cannot be appointed as an internal auditor of the company?                     <ol style="list-style-type: none"> <li>a. A Chartered Accountant</li> <li>b. A Cost Accountant</li> <li>c. A Company Secretary</li> <li><b>d. None of the above</b></li> </ol> </li> <li>2 Which of the following persons cannot be appointed as an internal auditor of the company?                     <ol style="list-style-type: none"> <li><b>a. Statutory Auditor of the company</b></li> <li>b. Cost accountant who is not engaged in practice</li> <li>c. Chartered Accountant holding a part-time certificate of practice</li> <li>d. All of the above</li> </ol> </li> <li>3 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:                     <ol style="list-style-type: none"> <li>a. Every listed company.</li> </ol> </li> </ol> | <ol style="list-style-type: none"> <li>b. Every unlisted public company having paid up capital of '50 Crore or more or Turnover of 200 Crore or more during the preceding financial year.</li> <li>c. Every unlisted public company having outstanding loans from banks or public financial institutions exceeding 100 Crore or more or outstanding deposits of 25 Crore or more at any point of time during the preceding financial year.</li> <li><b>d. All of the above</b></li> </ol> <ol style="list-style-type: none"> <li>4 A private company does not require to appoint an internal auditor provided:                     <ol style="list-style-type: none"> <li>a. The turnover of the company is below 200 Crores during the preceding financial year.</li> <li>b. Outstanding loans or borrowings from banks or public financial institutions does not exceed 100 Crore at any point of time during the preceding financial year.</li> <li>c. Either (a) or (b)</li> <li><b>d. Both (a) and (b)</b></li> </ol> </li> </ol> |
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**Corporate Social Responsibility (CSR) [Sec.135]**

<b>Which company is covered under Section 135</b>	Every Company having <ol style="list-style-type: none"> <li>a) Net Worth of 500 Crores, or</li> <li>b) turnover of 1000 Crore, or</li> <li>c) a net profit of 5 Crore</li> </ol>
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	<p>during the <b>immediately preceding financial year</b>, shall constitute a <b>Corporate Social Responsibility Committee</b>.</p> <p><b>Note - Net</b> profit = Profit Before Tax (PBT) only for the purpose of checking whether the Company is required to follow CSR u/s 135(1).</p>		
CSR Committee consists of :-	<ul style="list-style-type: none"> <li>3 or more directors,</li> <li>out of which at least 1 director <b>shall be an</b> independent director. (if required to appoint u/s 149(4))</li> </ul> <p>Note –</p> <p>(i) a company covered under section 135(1) which is not required to appoint an independent director pursuant to section 149(4) of the Act, shall have its CSR Committee without such director ;</p> <p>(ii) <b>a private company</b> having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors;</p>		
<p><b>Explain the following in brief with reference to Companies Act 2013:</b></p> <p>i. <b>National Financial Reporting Authority (NFRA)</b></p> <p>ii. <b>Corporate Social Responsibility (CSR) Committee(3 + 3 = 6 Marks)(Nov 2020)</b></p>			
<b>Role of CSR Committee</b>	<p>(a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII.</p> <p>(b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and</p> <p>(c) Monitor the Corporate Social Responsibility Policy of the company from time to time.</p>		
<b>Amount to be spent on CSR</b>	<p>At least <b>2% of the average net profits</b> of the Company made during the <b>3 immediately preceding financial years</b>.</p> <p><b>Note:</b></p> <ol style="list-style-type: none"> <li>Where the company has not completed 3 financial years since its incorporation, then <b>average net profits</b> shall be computed during such immediately preceding financial years.</li> <li>Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for <b>3 succeeding financial years</b> by passing <b>Board Resolution</b> to that effect.</li> </ol>		
<p><b>1. The balances extracted from the financial statement of Swastik Limited are as below:</b></p>			
<b>Sr. No.</b>	<b>Particulars</b>	<b>Balances as on 31-03-2023 as per Audited Financial Statement ( ` in crore)</b>	<b>Balances as on 30-09-2023 (Provisional ` in crore)</b>
	<b>Net Worth</b>	<b>100.00</b>	<b>100.00</b>

Turnover	500.00	1000.00
Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether Swastik Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2023-24.(3 Marks) (MTP Oct. 23)

**Hint** - In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2022 to 31.3.2023). Hence, Swastik Limited is not required to constitute Corporate Social Responsibility Committee in the financial year 2023-24.

2. 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 (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 2018)

1. Compute the minimum amount the company (ABC Limited) is required to spend on account of Corporate Social Responsibility in financial year 2022-23 if during the financial years 2019-20, 2020-21 and 2021-22 net profits are 20

crores, 25 crores and 30 crores respectively.  
(Nov 23)

- a. 1.25 crores
- b. 75 lakhs
- c. 50 lakhs
- d. 25 lakhs

<p><b>Net profit</b></p>	<p>"Net profit" means the net profit of a company as per its financial statement prepared <b>in accordance with Section 198</b>, but shall <b>NOT</b> include the following, namely: -</p> <ul style="list-style-type: none"> <li>(i) any profit arising from any <b>OVERSEAS (Foreign) branch</b> or branches of the company, whether operated as a separate company or otherwise; and</li> <li>(ii) any <b>DIVIDEND received from OTHER</b> companies in India, which are covered under and <b>COMPLYING</b> with the provisions of section 135 of the Act:</li> </ul>
<p><b>Where to spend</b></p>	<p><b>Schedule VII activity</b></p>
<p><b>Following not CSR activity</b></p>	<ul style="list-style-type: none"> <li>(i) activities undertaken in pursuance of <b>NORMAL</b> course of business of the company;</li> <li>(ii) any activity undertaken by the company <b>OUTSIDE</b> India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;</li> <li>(iii) contribution of any amount directly or indirectly to any <b>POLITICAL PARTY</b> u/s 182 of the Act;</li> <li>(iv) activities benefitting <b>EMPLOYEES</b> of the company as defined in section 2(k) of the Code on Wages, 2019;</li> <li>(v) activities supported by the companies on <b>SPONSORSHIP</b> basis for deriving <b>MARKETING BENEFITS</b> for its products or services;</li> <li>(vi) activities carried out for fulfilment of any other <b>STATUTORY</b> obligations under any law in force in India;</li> </ul>
<p><b>Unspent CSR</b></p>	<div style="text-align: center;"> <p><b>If unspent CSR till end of year</b></p> <pre> graph TD     A[If unspent CSR till end of year] --&gt; B[Normally]     A --&gt; C[Ongoing Project]     B --&gt; D[Within 6 months]     D --&gt; E[Transfer the amount to]     E --&gt; F[Fund specified in Scd VII]     C --&gt; G[Within 30 days (From end of F.Y)]     G --&gt; H[Transfer to unspent CSR a/c in Scd Bank]     H --&gt; I[Spend such amount within 3 years from date of transfer]     I --&gt; J[If still unspent]     J --&gt; K[Within 30 days]     K --&gt; L[Transfer amount to fund specified in Scd VII]                     </pre> </div>

	<p><b>Note - "Ongoing Project"</b> means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding 3 years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.</p>
<b>Other Imp points</b>	<ul style="list-style-type: none"> <li>• For the purposes of this section "net profit" shall be calculated in accordance with the provisions of <b>Section 198</b>.</li> <li>• company shall give <b>preference to the local area</b> and areas around it where it operates</li> <li>• Where the amount to be spent by a company does not exceed 50 Lakhs, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable</li> <li>• The board shall ensure that the <b>administrative overheads shall not exceed 5% of total CSR expenditure</b> of the company for the financial year.</li> <li>• <del>Every company which CEASES to be a company covered under section 135(1) of the Act for 3 consecutive financial years shall not be required to</del></li> <li>• <del>constitute a CSR Committee; and</del></li> <li>• <del>comply with the provisions contained in sub-section (2) to (6) of the said section, till such time it meets the criteria specified in section 135(1).-(amended)</del></li> </ul>
<b>CSR Implementation</b>	<ol style="list-style-type: none"> <li>1) The Board shall ensure that the CSR activities are undertaken by the company itself or through —Section 8 company, or a registered public trust or a registered society, registered u/s 12A and 80G of the Income Tax Act, 1961,</li> <li>2) <b>ESTABLISHED by the COMPANY / CG or SG /ESTABLISHED under an Act of Parliament or a State legislature; ,/ registered u/s 12A and 80G ,10(23C) of the Income Tax Act, 1961</b>, and having an <b>established track record of at least 3 years</b> in undertaking similar activities.</li> </ol>
<b>Amendments</b>	<ul style="list-style-type: none"> <li>• it is clarified that spending of CSR funds for the activities related to this 'Har Ghar Tiranga'campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities</li> </ul>
<b>Impact Assessment</b>	<ol style="list-style-type: none"> <li>a) Every company having <b>average CSR obligation of 10 crores</b> in pursuance of section 135(5) of the Act, in the 3 immediately preceding financial years, shall undertake IMPACT assessment, through an INDEPENDENT agency, of their CSR projects having <b>outlays of 1 crore</b>, and which have been completed not less than 1 year before undertaking the impact study.</li> <li>b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.</li> <li>c) <b>A Company undertaking impact assessment may book the impact assessment expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed LOWER Higher of :-</b> <ol style="list-style-type: none"> <li>(i) <del>5%</del> <b>2 % of the total CSR expenditure for that financial year or</b></li> <li>(ii) <b>50 lakhs.</b></li> </ol> </li> </ol>

**1. Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ` 100 crore, net profit ` 3 crore, accumulated loss of ` 50 crore and securities premium ` 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,(MAY 2018)**

**Hint:** In the present case,turnover of Rera Ltd. is ` 100 crore,net profit of ` 3 crore and -net worth of ` 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 be 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].

**2. Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:**

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	` 5.00 crore	` 3.75 crore
2021-22	` 7.00 crore	` 5.25 crore

**The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advise the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.(RTP Mar 23)**

Hint -

In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ` 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ` 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: ( $\text{` 5 crore} + \text{` 7 crore}$ )/ 2 = ` 6 crore

Minimum contribution towards CSR will be: 2% of ` 6 crore = ` 0.12 crore or ` 12 Lacs.

1 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: (Mar. 22) (1 Mark)

- 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
- 2 CSR Committee of the Board of shall consist of:
- a. Directors forming 1/3rd of the total no of directors.
- b. At least 2 directors out of which one shall be independent director.
- c. 3 or more directors out of which one shall be managing director.
- d. 3 or more directors, out of which at least 1 director shall be an independent director.**
- 3 Provisions of CSR are applicable to:
- a. Companies with net worth of ` 250 crore or more but less than 500 crore.
- b. Companies with turnover of ` 1000 crore or more.**
- c. Companies with net profit of ` 1 crore or more but less than ` 5 crore in any financial year
- d. Companies having aggregate outstanding loans and deposits Exceeding ` 50 crore or more in any financial year.
- 4 Ayush Power Limited has reported a net profit of ` 6 crore, ` 7.5 crore and ` 3 crore for the financial year(s) ended on March 2017, March 2018 and March 2019 respectively. The board's report of the company for the year ended March 2020 did not disclose the composition of the CSR Committee on the grounds that company is not required to constitute CSR committee as net profit during the immediately preceding financial year is less than the statutory requirements laid down in section 135. You are required to examine in the given scenario whether the act of non-composition and non- disclosure of the composition of CSR committee in the Board's Report is valid in law?
- a. No, the act of the company is not valid in law as every company is required to constitute a CSR committee and disclose the constitution of same in the board's report in every financial year irrespective of the profits earned by the company.
- b. Yes, the act of the company is valid in law as the net profit of the company is less than ` 5 crore in the immediately preceding financial year.**
- c. No, the act of the company is not valid in law as composition and disclosure of composition of CSR Committee will be required only if the profits of the company are not less than ` 5 crore for a consecutive period of 3 financial years.
- d. The act of the company is valid only to the extent of nondisclosure of the composition of CSR committee as the net profit of the company is less than ` 5 crore in the immediately preceding financial year.
- 5 The activities which may be included by companies in their Corporate Social Responsibility Policies are provided in:
- a. Schedule III to Companies Act, 2013
- b. Schedule VII to Companies Act, 2013**
- c. Annexure-1 to Companies (CSR Policy) Rules, 2014
- d. As notified by Ministry of Company Affairs from time to time
- 6 It is mandatory for a company to constitute a CSR Committee of the Board if during any financial year, it is having:
- a. Net Worth of 500 Crore or more
- b. Turnover of 1,000 Crore or more
- c. Net Profit of 5 Crore or more
- d. Any one of above**
- 7 The turnover of KLM Private Limited has been on the declining trend and it has been making losses for last 5 years. For the financial year 2017-2018, 2018-2019 and 2019-2020, its turnover was 1,200 Crores, 1,050 Crores and



700 Crores, respectively. The company is of the opinion that for the financial year 2020-2021, it does not require the CSR Committee. Which of the following statements given below is correct?

- a. The company need not constitute CSR Committee since its turnover in the preceding financial year is below 1,000 Crores.
- b. The company need not constitute CSR Committee since its average turnover in the preceding 3 financial years is below 1,000 Crores.
- c. **The turnover in financial year 2017-18 and 2018-19 exceed 1,000 Crores and therefore CSR committee constituted earlier would be required to continue till the company ceases to be covered under Section 135(1) for 3 consecutive financial years.**
- d. None of the above. The requirement of CSR committee is not applicable to Private

Companies.

- 8 Which of the following company/companies is/are not required to constitute CSR Committee?
  - a. **A company which ceases to be a company covered under Section 135(1) of the Act for 3 consecutive financial years.**
  - b. A foreign company defined under Section 2(42) of the Act having its branch office or project office in India.
  - c. A Private Limited Company
  - d. All of the above
- 9 Which of the following amounts shall not qualify as CSR Expenditure?
  - a. Salaries and wages paid to employees and workers during the National lockdown declared during COVID-19 pandemic
  - b. Expenditure incurred for eradication of poverty and slum rehabilitation in Syria
  - c. Amount contributed to the ruling political party at Centre
  - d. **All of the above**

### Scenario based Questions Practise

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. 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:

1. 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.
2. 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**
3. 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
4. The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of atleast:
- (a) ` 0.04 crore**
- (b) ` 0.12 crore
- (c) ` 0.18 crore
- (d) ` 0.06 crore

(RTP MAY 2020)

5. G Ltd. (a company having CSR Committee as per the provision of Section 135 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 members of employees of G 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 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 2020)

**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 21<sup>st</sup> AGM of DCL is convened on 1<sup>st</sup> 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 31<sup>st</sup> August 2020 on the occasion of the 25<sup>th</sup> anniversary of the company. PSL deposited the amount of said dividend in a separate bank account with a NBFC on 4<sup>th</sup> 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. (RTP MAY 2021)

1. Which of the following statements is correct, with reference to the requirement for financial Statements of ‘New Deal Limited’ (One Person Company)
  - (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
2. 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 MAY 2019)
3. From the following information in respect of BMR Consultants Pvt. Ltd., compute the amount company is required to contribute on account of CSR:

Financial Year	Net Profit (in Lacs)
2015-16	15
2016-17	50

<b>2017-18</b>	<b>70</b>
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(a) Nil. If in any of the three financial years company has incurred losses, then company is not required to spend amount towards CSR but

explain the reason for not spending the amount.

(b) Rs. 2.4 Lacs

(c) **Rs. 80,000/-**

(d) Rs. 2.1 Lacs (MTP MAY 2019)

Vishal Crockery Limited was incorporated on 24<sup>th</sup> 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, it could easily be ascertained that the company had reached the new heights of success. The directors of the company numbered eight including CMD of which two were the independent directors.

The turnover of the company for the Financial Year 2018-2019 was Rs. 750.00crores – a whopping rise of more than 20% from the previous year and net profit stood at a prestigious figure of Rs. 6.60crores – also increased by Rs. 1.80 crores as compared to the net profit of 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 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 2019-20, a CSR Committee was formed with four directors as members of which one was the independent member. The Committee was, among others, given the responsibility to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous to shift its registered office to Mumbai from the present one at Jaipur which will help the company in easing out the new business. Another strategically important segment which the company tapped earlier and now wishes to engage itself on a large scale relates to manufacturing of stationery items.

The company hopes that with the shifting of registered office to Mumbai, it shall be able to target international markets to export its quality products. As on date, the export turnover of the company is not that much significant. The directors, Janardan Mittal (Finance) and Ratish Jain (Marketing), however, have in-depth knowledge of export markets, particularly those existing in UK and Singapore, where they can place their products successfully and achieve laurels for the company in terms of wealth maximisation.

During the current Financial Year 2019-20, the company under the CSR activities provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana. Not only this, 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 spendable amount and it is hoped that as the current Financial Year 2019-20 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure.

**Multiple Choice Questions (2 Marks each \* 3= Total 6 Marks)**

1. Which of the following criterion prompted Vishal Crockery Limited to mandatorily form a

Corporate Social Responsibility (CSR) Committee for the current financial year?

a. **The net profit had increased to Rs.**

- 6.60crores 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 increased by 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.
2. What is the minimum amount (in percentage form) that Vishal Crockery Limited is required to spend during the Financial Year 2019-20 on the CSR activities after it formed a Corporate Social Responsibility Committee.
    - a. Minimum 2% of the average net profits made during the two immediately preceding financial years.
    - b. Minimum 2% of the average net profits made during the three immediately preceding financial years.**
    - c. Minimum 2.5% of the average net profits made during the two immediately preceding financial years.
    - d. Minimum 2.5% of the average net profits made during the three immediately preceding financial years.
  3. (C) In the given case scenario, Vishal Crockery Limited decided to undertake CSR activities at 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 Vishal 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 Vishal Crockery Limited wants it to accomplish?
    - a. Track record of minimum one year
    - b. Track record of minimum two years
    - c. Track record of minimum three years**
    - d. None of the above **(MTP MAY 2020)**
  4. CSR Committee of the Board shall consist of:
    - a. Directors forming  $1/3^{\text{rd}}$  of the total no of directors.
    - b. At least 2 directors out of which one shall be independent director.
    - c. or more directors out of which one shall be managing director.
    - d. or more directors, out of which at least 1 director shall be an independent director.**
  5. Provisions of CSR are applicable to:
    - a. Companies with net worth of ` 250 crore or more but less than 500 crore.
    - b. Companies with turnover of ` 1000 crore or more.**
    - c. Companies with net profit of ` 1 crore or more but less than ` 5 crore in any financial year
    - d. Companies having aggregate outstanding loans and deposits exceeding ` 50 crore or more in any financial year.
  6. 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.
  7. Ayush Power Limited has reported a net profit of ` 6 crore, ` 7.5 crore and ` 3 crore for the financial year(s) ended on March 2017, March 2018 and March 2019 respectively. The board's report of the company for the year ended March 2020 did not disclose the composition of the CSR Committee on the grounds that company is not required to constitute CSR committee as net profit during the immediately preceding financial year is less than the statutory requirements laid down in section 135. You are required to examine in the given scenario whether the act

of non-composition and non-disclosure of the composition of CSR committee in the Board's Report is valid in law?

- a. No, the act of the company is not valid in law as every company is required to constitute a CSR committee and disclose the same in the board's report in every financial year irrespective of the profits earned by the company.
- b. Yes, the act of the company is valid in law as the net profit of the company is less than ` 5 crore in the immediately preceding financial year.
- c. **No, the act of the company is not valid in law as non-composition and non-disclosure of composition of CSR Committee will attract only if the profits of the company are less than 5 crore for a consecutive period of 3 financial years.**
- d. The act of the company is valid only to the extent of non-disclosure of the composition of CSR committee as the net profit of the company is less than ` 5 crore in the immediately preceding financial year.

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
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](MTP Sep. 22)

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.
2. For the purpose of section 135 of the Companies Act, 2013, the net worth has to be calculated as defined under section 2(57) of the Act. In this context, which of the following statements is correct with reference to the above case –
  - a. **The net worth of Sai Ram Limited during the financial year 2021-22 was RS. 520 crore.**
  - b. The net worth of Sai Ram Limited during the financial year 2021-22 was Rs. 530 crore.
  - c. The net worth of Sai Ram Limited during the financial year 2021-22 was Rs. 555 crore.
  - d. The net worth of Sai Ram Limited during the financial year 2021-22 was Rs. 620 crore.
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**

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorised share capital of 300 crores divided into 30 crore equity shares of 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines medical instruments ,sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was 200 crores divided into 20 crore equity shares of 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures –

Particulars	Amount (₹) crores
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Free reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during the financial year 2022-23 was 700 crores and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was 4 crores.

The Board of Directors of the company consists of the following directors :

CA 'TLC Goel' as the Managing Director , 'Rudra Mittal' and 'Tragya' as independent directors . 'Varun', 'Trabodh', 'Dish&' and 'Reshma' as executive directors . Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 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, 2023 a CSR Committee was formed consisting of the following members :CA 'RC Goer', 'Varun', 'Trabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average netprofits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under :

- I. The CSR projects for the benefit of employees of the company and their families only.
- II. A contribution of 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.
- III. A contribution to the PM CARES Fund during Covid pandemic.
- IV. Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of Companies Act, 2013 and the applicable Rules therein answer the following questions :

- (i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only 700 crores ?
- (ii) Advise the company, how many members are eligible to be part of Committee and what is the criterion ? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014 ?

Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014 ?6 Marks (Nov 23)



## Chapter X

### AUDIT AND AUDITORS

SECTIONS OF COMPANIES ACT, 2013 WHICH DEAL WITH PROVISIONS RELATING TO AUDIT OF COMPANIES	
SEC 139	APPOINTMENT OF AUDITORS
SEC 140	REMOVAL, RESIGNATION OF AUDITOR & GIVING OF SPECIAL NOTICE
SEC 141	ELIGIBILITY, QUALIFICATIONS & DISQUALIFICATIONS OF AUDITORS
SEC 142	REMUNERATION OF AUDITORS
SEC 143	POWERS & DUTIES OF AUDITORS & AUDITING STANDARDS
SEC 144	AUDITOR NOT TO RENDER CERTAIN SERVICES
SEC 145	AUDITOR TO SIGN AUDIT REPORTS, ETC.
SEC 146	AUDITORS TO ATTEND GENERAL MEETING
SEC 147	PUNISHMENT FOR NON-COMPLIANCE
SEC 148 •	COST AUDIT

Eligibility, Qualification & Disqualification of Auditors					
<b>QUALIFICATIONS 141(1) &amp; (2)</b>	<ol style="list-style-type: none"> <li>1) A person shall be eligible for appointment as an auditor of a company only if he is a <b>Practising Chartered Accountant</b>.</li> <li>2) It may be noted that a firm whereof majority of partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.</li> <li>3) Where a firm including a Limited Liability Partnership is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorized to act &amp; sign on behalf of the firm.</li> </ol>				
<b>DISQUALIFICATIONS 141(3)</b>	<p><b>The following persons shall not be eligible for appointment as an auditor of a company, namely: -</b></p> <table border="1"> <tbody> <tr> <td>(a)</td> <td><b>a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</b></td> </tr> <tr> <td>(b)</td> <td> <b>an officer or employee of the company;</b>  <b>According to Section 2(59) of the Companies Act, 2013, the term 'Officer' includes:</b> <ol style="list-style-type: none"> <li>i. Director</li> <li>ii. Manager</li> <li>iii. Key Managerial Personnel</li> <li>iv. Shadow Directors</li> </ol> </td> </tr> </tbody> </table>	(a)	<b>a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</b>	(b)	<b>an officer or employee of the company;</b> <b>According to Section 2(59) of the Companies Act, 2013, the term 'Officer' includes:</b> <ol style="list-style-type: none"> <li>i. Director</li> <li>ii. Manager</li> <li>iii. Key Managerial Personnel</li> <li>iv. Shadow Directors</li> </ol>
(a)	<b>a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</b>				
(b)	<b>an officer or employee of the company;</b> <b>According to Section 2(59) of the Companies Act, 2013, the term 'Officer' includes:</b> <ol style="list-style-type: none"> <li>i. Director</li> <li>ii. Manager</li> <li>iii. Key Managerial Personnel</li> <li>iv. Shadow Directors</li> </ol>				

	(c)	<b>a person who is a partner, or who is in the employment, of an officer or employee of the company;</b>
	(d)	<p><b>A person who, or his relative or partner —</b></p> <p><b>i. 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.</b></p> <ul style="list-style-type: none"> <li>✓ It may be noted that the relative may hold security or interest in the company of face value not exceeding 1 lakh.</li> <li>✓ It may be noted that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.</li> <li>✓ The value of shares of 1,00,000 that can be held by relative is the face value not the market value.</li> <li>✓ The limit of Z. 1,00,000 would be applicable where the securities are held by the relative of an auditor &amp; not where the securities are held by an auditor himself or his partner. In case of an auditor or his partner, securities of even small value shall be a disqualification.</li> <li>✓ The term "relative", as defined under the Companies Act, 2013, means anyone who is related to another as member of a Hindu Undivided Family; husband &amp; wife; Father (including step-father), Mother (including step-mother), Son (including step-son), Son's wife, Daughter, Daughter's husband, Brother (including step-brother), Sister (including step-sister).</li> </ul> <p><b>ii. Is indebted to the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of Rs 5 lakh; or</b></p> <p><b>iii. Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of '1 lakh.</b></p>
	(e)	<p><b>a person or a firm who, whether directly or indirectly has business relationship with the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company or associate company, of such nature as may be prescribed;</b></p> <p><b>The term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except —</b></p> <p><b>i. Commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under</b></p>

		<p>the Act &amp; the CA Act, 1949 &amp; the rules or the regulations made under those Acts;</p> <p>ii. 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 auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications. airlines, hospitals, hotels &amp; such other similar businesses.</p>
	(f)	<p>person whose <b>relative</b> is a :-</p> <ul style="list-style-type: none"> <li>• Director (Non-Executive Director) or</li> <li>• is in the employment of the company as a Director (Executive Director) or</li> </ul> <p>Key Managerial Personnel [KMP].</p>
	(g)	<p><b>Person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies; other than one person companies, dormant companies, small companies &amp; private companies] having paid-up share capital less than r100 crores;</b></p> <p><b>Note –</b></p> <p>1) The Limit is only for "<b>Company</b>" client. There is no Limit for audit of other forms of business enterprises like Trust, Society, Co-operative Society, HUF, LLP, Partnership, Proprietorship, etc.</p> <p>2) The Limit is only for "Statutory <b>audit</b> of FS". There is no Limit for other types of services rendered by CA like Internal audit, Taxation, Advisory Services, etc.</p> <p>3) Limit on Tax Audits = <b>60</b> Assesseees.</p> <p>4) <b>Branch Audit</b></p> <ul style="list-style-type: none"> <li>• Branch Audit (whether 1 branch or many branches) of a Company even though not doing audit of main company is counted as <b>1 Audit</b> in the ceiling limit of <b>20</b>.</li> <li>• Principal Audit (including branch audit) of a Company is counted only as <b>1 Audit</b> in the limit of <b>20</b>.</li> </ul>
	(h)	<b>A person who has been convicted by a Court of an offence involving fraud &amp; a period of 10 years has not elapsed from the date of such conviction;</b>
	(i)	<b>a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.</b>

<b>AUDITOR NOT TO RENDER CERTAIN SERVICES [SEC 144] (ACADEMIC)</b>	<p><b>Section 144 of the Companies Act, 2013</b> prescribes certain services not to be rendered by the auditor. 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 which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:</p> <ol style="list-style-type: none"> <li>1) Accounting &amp; book keeping services;</li> <li>2) Carrying out of outsourced financial services</li> <li>3) Actuarial services*;</li> <li>4) Design &amp; implementation of any financial information system;</li> <li>5) Engaged in Investment advisory services or Investment banking services</li> <li>6) Internal audit;</li> <li>7) <b>Management</b> services; &amp;</li> <li>8) <b>Any other kind of services as may be prescribed.</b></li> </ol>
<b>141(4)</b>	<p><b>Where a person appointed as an auditor of a company incurs any of the above disqualifications after his appointment, he shall vacate his office as such auditor &amp; such vacation shall be deemed to be a casual vacancy in the office of the auditor</b></p>
<p>Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013 :</p> <ol style="list-style-type: none"> <li>(i) "Ms. Rekha," a practicing Chartered Accountant, and "Mr. Alok," who happens to be a spouse of "Ms. Rekha," holds securities of "Charcoal Ltd." valued at a face amount of 85,000 (with a market value of 75,000/-). The directors of Charcoal Ltd. are considering the appointment of Ms. Rekha as an auditor for the company.</li> <li>(ii) Mr. Pun, a practicing Chartered Accountant, has a debt of 7 lakhs owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of Mr. Puri as an auditor for the company.</li> <li>(iii) Ms. Komal, the real sister of Mr. Sharad, a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of Mr. Sharad as an auditor for the company. <b>6 Marks (Nov 23)</b></li> </ol>	
<p><b>1. Under sub-section (3) of section 141 of the Companies Act, 2013 along with Rule 10 of the Companies (Audit &amp; Auditors) Rules, 2014, state the persons who shall not be eligible for appointment as an auditor of a company. (RTP May 2019)</b></p> <p><b>Hint –</b></p> <p><b>2. Mr. A, a chartered accountant, has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September, 2016, which assignment he accepted. Subsequently in January, 2017 he joined Mr. B, another chartered accountant, who is the Manager Finance of Laxman Ltd., as partner. Analyse &amp; explain. (RTP May 2019)</b></p> <p><b>Hint –</b></p>	

3. Ram & Hanuman Associates, Chartered Accountants in practice have been appointed as Statutory Auditor of Krishna Ltd. for the accounting year 2017-2018. Mr. Hanuman holds 100 equity shares of Shiva Ltd., a subsidiary company of Krishna Ltd. Comment.

Hint –

4. RGS & Co. a firm of Chartered Accountants has three partners, namely, R, G & S. The firm is allotted the audit of BY Ltd. R, partner in the firm subsequently holds 100 shares in BY Ltd. Comment. (RTP May 2019)

Hint –

5. M/s RM & Co. is an audit firm having partners CA. R & CA. M. The firm has been offered the appointment as an auditor of Enn Ltd. for the Financial Year 2016-17. Mr. Bee, the relative of CA. R, is holding 5,000 shares (face value of ₹10 each) in Enn Ltd. having market value of ₹1,50,000. Whether M/s RM & Co. is disqualified to be appointed as auditors of Enn Ltd. ? Advise. (RTP May 2018)

Hint –

6. M/s. ABC & Co. is an Audit firm, having partners CA. A, CA. B & CA. C. The firm has been offered the appointment as an Auditor of XYZ Ltd. for the Financial Year 2019-20. Mr. D, the relative of CA. A, is holding 25,000 shares (face value of ₹10 each) in XYZ Ltd. having market value of ₹90,000. Are M/s. ABC & Co. qualified to be appointed as Auditors of XYZ Ltd.? (5 Marks May 2018) (RTP Nov 2020)

Hint –

7. Sri & Company, a firm of Chartered Accountants was appointed as statutory auditors of Aaradhana Company Ltd. Aaradhana Company Ltd. holds 51% shares in Sarang Company Ltd. Mr. Sri, one of the partners of Sri & Company, owed ₹1,500 as on the date of appointment to Sarang Company Ltd. For goods purchased in normal course of business. Comment. (RTP Nov 2016/15)

Hint –

8. CA X was indebted to ABC (P) Limited for a sum of ₹6,00,000 as on April 1, 2019. However, CA X having come to know that he might be appointed as auditor of the company, he repaid ₹1,00,000 on August 10, 2019. Later on, he was appointed as auditor of the company for the year ended March 31, 2020 at the Annual General Meeting held on August 11, 2019. Subsequently, one of the shareholders complains that the appointment of CA X as an auditor is invalid because he incurred disqualification u/s 141 of the Companies Act, 2013. Discuss. (4 Marks May 2021)

Hint –

9. An auditor purchased goods worth ₹501,500 on credit from a company being audited by him. The company allowed him one month's credit, which it normally allowed to all known customers. Comment. (RTP May 2015)

Hint –

10. Under the provisions of Section 141(3) of Companies Act, 2013 along with relevant rules, a person or a firm who has "business relationship" with a company is not eligible to be appointed as an auditor of that company. In this context, discuss meaning of term "business relationship". (RTP Nov 2021)

Hint –

11. "ABC & Co." is an Audit Firm having partners "Mr. A", "Mr. B" & "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" & "Mr. C" are holding appointment as an Auditor in 4, 6 & 10 Companies respectively.
- i. Provide the maximum number of Audits remaining in the name of "ABC & Co."
  - ii. Provide the maximum number of Audits remaining in the name of individual partner i.e. Mr. A, Mr. B & Mr. C.
  - iii. Can ABC & Co. accept the appointment as an auditor in 60 private companies having paid-up share capital less than ₹ 100 crore, 2 small companies & 1 dormant company?
  - iv. Would your answer be different, if out of those 60 private companies, 45 companies are having paid-up share capital of ₹110 crore each?
12. Companies Act, 2013 prescribes that a person shall not be eligible for appointment as an auditor of a company if such person is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies. Explain stating the relevant provisions.

Hint –

13. M/s ASD & Associates, a firm of Chartered Accountants, has three partners Mr. A, Mr. S & Ms. D. The firm is already having audit of 45 companies. The firm is offered 20 public company audits. Advise whether M/s ASD & Associates will exceed the ceiling prescribed u/s 141(3) (g) of the Companies Act, 2013 by accepting the above audit assignments assuming none of the partners hold any audits in their personal capacity or as partners of other firms. (RTP Nov 2015)

Hint –

14. In exercise of the powers conferred by the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he holds at any time appointment of more than the "specified number of audit assignments of the companies u/s 141 (3)(g) of the Companies Act, 2013). Explain the provisions prescribed under Companies Act, 2013 in respect of ceiling on number of audits in a company to be accepted by an auditor.

OR

What are the provisions prescribed under Companies Act, 2013 in respect of ceiling on number of audits in a company to be accepted by an auditor? (4 Marks May 2018) (RTP May 2021)

15. Harry Limited appointed a CA Lakshman as an auditor of the company for a term of 5 years. Further, the company offered him the services of actuarial which were also approved by the board of

directors. As an auditor, how would you deal with such situation? (3 Marks Nov 2020)

Hint –

16. CA. Poshin is providing the services of investment banking to C Ltd. Later on, he was also offered to be appointed as an auditor of the company for the current financial year. Advise. (RTP May 2018)

Hint –

17. CA. NM who is rendering management consultancy service to LA Ltd. wants to accept offer letter for appointment as an auditor of the LA Ltd. for the next financial year." Discuss with reference to the provision of the Companies Act, 2013. (5 Marks Nov 2018)

Hint –

18. ABC Ltd. appointed CA Prem as an auditor of the company for the current financial year. Further the company offered him the services of investment banking, rendering of outsourced financial services & management services which was also approved by the Board of Directors. State the services which the auditor is restrained from rendering & then advise accordingly. (RTP Nov 2015)

Hint –

19. What are the prohibited services for auditor as per Companies Act, 2013 ? OR

A person shall not be eligible for appointment as an auditor of a company where subsidiary or associate company or any other form of entity is engaged as on the date of appointment in consulting & specialized services as provided in Sec.144. Explain. (3/6 Marks Nov 2020/17/16)

20. Harry Limited appointed CA Lakshman as an auditor of the company for a term of 5 years. Further, the company offered him the services of actuarial which were also approved by the board of directors. As an auditor, how would you deal with such situation? (RTP May 2022)

Hint –

21. "The Companies Act, 2013 has enacted specific provisions to give concrete shape to concept of Auditor's Independence". Explain. (RTP Nov 2019)

Hint –

1. Which of the following is qualified to be appointed as auditor of the company?

- a. A person whose relative is holding security of the company of face value exceeding 1 Lac

b. A person whose relative is holding security of the company of market value exceeding 1 Lac

c. A person whose relative is holding security of the company of face value not exceeding 1 Lac

- d. A person whose relative is holding security of the company of market value not exceeding 1 Lac
2. A person is disqualified to be appointed as auditor of the company if he himself or his relative or partner is indebted to the company for an amount exceeding \_\_\_\_\_
- a. One Lac
  - b. Two Lacs
  - c. Five Lacs**
  - d. Ten Lacs
3. A person is disqualified to be appointed as auditor of the company if he himself or his relative or partner has given any guarantee in connection with the indebtedness of any third person to the company for an amount exceeding \_\_\_\_\_
- a. One Lac**
  - b. Two Lacs
- c. Five Lacs
- d. Ten Lacs
4. A person is disqualified to be appointed as auditor of a company if he has been convicted by a court of an offence involving fraud and a period of \_\_\_\_\_ years has not elapsed from the date of such conviction
- a. 2 Years
  - b. 5 Years
  - c. 7 Years
  - d. 10 Years**
5. A person is disqualified to be appointed as auditor of a company if such person as at date of such appointment holding appointment of more than \_\_\_\_\_ companies
- a. 10
  - b. 15
  - c. 20**
  - d. 30



<b>APPOINTMENT OF AUDITOR (SEC 139)</b>	
<b>APPOINTMENT OF SUBSEQUENT AUDITORS IN CASE OF NON GOVERNMENT COMPANIES</b> <b>SEC 139 (1)</b>	<p><b>Step 1:</b> After considering the following parameters, Audit Committee/Board of Directors shall recommend the name of the proposed Auditor before the shareholders for appointment in AGM by passing Ordinary Resolution:</p> <ol style="list-style-type: none"> <li>1) Qualification</li> <li>2) Experience</li> <li>3) Disciplinary proceedings, if any, pending against the auditor.</li> </ol> <p><b>Step 2: Obtaining a certificate from proposed auditor before appointment.</b></p> <p>The auditor appointed shall submit a certificate before his appointment that -</p> <ol style="list-style-type: none"> <li>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;</li> <li>b) The proposed appointment is as per the terms provided under the Act;</li> <li>c) The proposed appointment is within the limits laid down by or under the authority of the Act {20 Companies u/s 141(3)(g)};</li> <li>d) The list of proceedings against the auditor or audit firm or any partner of the audit firm <b>pending</b> with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.</li> </ol> <p><b>Step 3:</b> The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the 6th AGM, with the meeting wherein such appointment has been made being counted as the 1st meeting.</p> <p><b>Step 4: Intimation to Auditor and ROC in Form ADT-1</b></p> <p>The company shall inform the auditor of its appointment, and also file a notice of such appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed.</p>
<b>APPOINTMENT OF SUBSEQUENT AUDITORS IN CASE OF GOVERNMENT COMPANIES</b> <b>SEC 139 (5)</b>	<p>➤ in the case of a Government company the C &amp;AG shall, in respect of a F.Y., appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of 180 days from the commencement of the F.Y., who shall hold office till the conclusion of the AGM.</p>
<b>APPOINTMENT OF FIRST AUDITORS IN THE CASE OF A COMPANY, OTHER THAN A GOVERNMENT COMPANY</b>	<p>➤ As per Section 139(6), 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. In the case of failure of the Board to appoint the auditor, it shall inform the members of the company.</p> <p>➤ The members of the company shall within 90 days at an extraordinary general meeting appoint the auditor.</p> <p>➤ Appointed auditor shall hold office till the conclusion of the first AGM.</p>

<b>APPOINTMENT OF FIRST AUDITORS IN THE CASE OF GOVERNMENT COMPANY</b>	<ul style="list-style-type: none"> <li>➤ Section 139(7) provides that in the case of a Government company , the first auditor shall be appointed by the CAG of India within 60 days from the date of registration of the company..</li> <li>➤ In case the C&amp;AG does not appoint such auditor within the above said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.</li> <li>➤ Further, in the case of failure of the Board to appoint such auditor within next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an EGM.</li> <li>➤ * Auditors shall hold office till the conclusion of the first AGM.</li> </ul>
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### APPOINTMENT OF AUDITOR IN CASE OF CASUAL VACANCY [SEC 139(8)]

<b>APPOINTMENT OF FIRST AUDITORS IN THE CASE OF A COMPANY, OTHER THAN A GOVERNMENT COMPANY</b>	<p><b>Case 1: Casual Vacancy caused due to Death, Dissolution, Incapacity or any reason other than Resignation.</b></p> <p>Any casual vacancy in the office of an auditor shall be filled by the BOD within 30 days.</p> <p><b>Case 2: Casual Vacancy caused due to Resignation.</b></p> <p>Any casual vacancy in the office of an auditor shall be filled by the BOD within 30 days. <b>Tenure of the Auditor so appointed to fill Casual vacancy either in Case 1 or 2:</b> He shall hold the office till the conclusion of the next annual general meeting.</p> <p>Such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board..</p>
<b>FOR GOVERNMENT COMPANY</b>	<ul style="list-style-type: none"> <li>➤ In the case of a company whose accounts are subject to audit by an auditor appointed by the C &amp; A G, be filled by the C &amp; A G within 30 days.</li> <li>➤ It may be noted that in case the C &amp; A G does not fill the vacancy within the said period the Board of Directors shall fill the vacancy within next 30 days.</li> </ul>
<b>REAPPOINTMENT OF RETIRING AUDITOR [SEC 139(9) &amp; (10)]</b>	<ul style="list-style-type: none"> <li>➤ <b>A retiring auditor may be re-appointed at an AGM, if-</b> <ol style="list-style-type: none"> <li>a) He is not disqualified for re-appointment;</li> <li>b) He has not given the company a notice in writing of his unwillingness to be reappointed; &amp;</li> <li>c) A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.</li> </ol> </li> <li>➤ Where at any AGM, no auditor is appointed and re-appointed and retiring auditor can be reappointed [not disqualified u/s 139(9)] the existing auditor shall continue to be the auditor of the company.</li> </ul>

ROTATION OF AUDITOR [SEC 139(2)(3)(4)]		
Applicability	Type of Company	Threshold
	Listed Company	NO limit.
	All unlisted Public Companies having	PUSC $\geq$ 10 crores
	All Private Limited Companies having	PUSC $\geq$ 50 crores
	All companies having PUSC below 10/50 but having public borrowings from financial institutions, banks or public deposits	Borrowings from H, Banks or Public Deposits $\geq$ 50 crores
<p><b>S Private Limited has a paid-up share capital of ` 49 Crores and borrowings from bank of ` 99 Crores. The audit firm P &amp; Company was appointed as statutory auditors of the Company for one term of six consecutive years. Is the provision of rotation of auditors applicable to the company? Comment.(RTP Mar 23)</b></p> <p><b>Hint –</b></p>		
<b>Rules</b>	<p>a) An individual as auditor for more than one term of 5 consecutive years; &amp;</p> <p>b) An audit firm as auditor for more than two terms of 5 consecutive years.</p> <p><b>Cooling Period</b> - Such individual auditor or An audit firm which has completed its term , shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such term.</p>	
<b>Who cannot be appointed as Auditor in cooling period</b>	<p><b>Common Partner</b></p> <p>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 5 years:</p> <p><b>Same Network of Firms</b></p> <p>The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.</p> <p>For the purposes of these rules the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.</p> <p><b>Signing Partner Resigns &amp; Joins another Firm</b></p> <p>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</p>	

	<p>accountants, such other firm shall also be ineligible to be appointed for a period of 5 years.</p> <p><b>Note - Joint Audit</b></p> <p>Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.</p>
<b>Section 139(3)</b>	<p><b>Rotation of Audit Partner, Audit Team</b></p> <p>Members of a company <b>MAY</b> resolve to provide that in the audit firm appointed by it, the <b>Auditing Partner</b> and his <b>Team</b> shall be rotated at such intervals as may be resolved by members; or</p>

1. Auditor appointed at AGM shall hold the office from the conclusion of that AGM till the conclusion of \_\_\_\_\_
  - a. **Sixth AGM**
  - b. Next AGM
  - c. Fifth AGM
  - d. Tenth AGM
2. An Individual auditor of a Listed company who has completed his term shall not be eligible for re-appointment as auditor in the same company for \_\_\_\_\_ years from the conclusion of his term
  - a. 2
  - b. 3
  - c. **5**
  - d. 10
3. Which of the following company shall not appoint an audit firm as auditor for more than two terms of five consecutive years:
  - a. Unlisted Public company having Turnover of Z 10 Cr. or more
  - b. Unlisted Public company having Turnover of Z 20 Cr. or more
  - c. **Unlisted Public company having Paid up share capital of Z 10 Cr. or more**
  - d. Unlisted Public company having Paid up share Capital of Z 20 Cr. or more
4. Subsequent auditor in case of Government Company shall be appointed within \_\_\_\_\_ from the commencement of the financial year
  - a. 30 days
  - b. 90 days
  - c. 120 days
  - d. **180 days**
5. First auditor shall hold office till conclusion of
  - a. **First AGM**
  - b. Sixth AGM
  - c. Next AGM
  - d. Second AGM
6. Casual vacancy in the office of an auditor, shall be filled by the Board of Directors within \_\_\_\_\_
  - a. **30 days**
  - b. 60 days
  - c. 90 days
  - d. 120 days
7. Which of the following statement is correct?
  - a. Casual Vacancy in case of resignation of auditor shall be filled by Board of Directors within 90 days
  - b. Casual Vacancy in case of Government company shall be filled by Central Govt. within 90 days
  - c. Casual Vacancy means a vacancy arises after completion of the tenure
  - d. **None of the Above**

**REMOVAL OF AUDITOR [SEC 140]**

**REMOVAL OF AUDITOR BEFORE EXPIRY OF HIS TERM[SEC 140(1)]**

- The auditor appointed u/s 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 CG in that behalf as per Rule 7 of Companies (Audit & Auditors) Rule, 2014:
    - 1) The application to the CG for removal of auditor shall be made in Form ADT-2 &
    - 2) The application shall be made to the CG within 30 days of the resolution passed by the Board
    - 3) The company shall hold the general meeting within 60 days of receipt of approval of the CG for passing the special resolution.
- Note - The CG shall give the auditor a reasonable opportunity of being heard before taking any action as above.

**XYZ Ltd. removed its statutory auditor by passing a resolution in the meeting of Board of Directors for his removal without obtaining prior approval of the Central Government. Such removal of the auditor was made before the expiry of term of the auditors. Give your comments in this regard.(RTP Mar 23) (4 Marks) (MTP Oct. 23)**

**Hint –** Not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

1. For the removal of an auditor before the expiry of his term, which of the following sequence of events is correct (Nov 23)
  - a. Board meeting - General meeting for passing a special resolution Application to Central Government - Grant of approval by Central Government
  - b. Application to Central Government - Grant of approval by Central Government - Board

- meeting - General meeting for passing a special resolution
- c. General meeting for passing a special resolution - Board meeting Application to Central Government - Grant of approval by Central Government
- d. Board meeting - Application to Central Government - Grant of approval by Central Government - General meeting for passing a special resolution**

**RESIGNATION BY AUDITOR [SEC 140 (2) & (3)].**

- As per section 140(2) of the Act, the auditor who has resigned from the company shall file within a period of 30 days from the date of resignation, a statement in the prescribed Form ADT-3 (as per Rule 8 of CAAR) with the company & the Registrar.
- In case of the companies referred to in section 139(5) i.e. Government company, the auditor shall also file such statement with the CAG along with the company & the Registrar.

		<ul style="list-style-type: none"> <li>➤ In case of failure, the auditor shall be liable to a penalty of ₹ 50,000 or the remuneration of the auditor, whichever is less, &amp; in case of continuing failure, with further penalty ₹ 500 for each of day after the first during which such failure continues, subject to a maximum of ₹ 200,000 as per section 140(3).</li> </ul>
<b>APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR [SEC 140(4)]</b>	<b>Special Notice</b>	<ul style="list-style-type: none"> <li>➤ Special notice shall be required for a resolution at an AGM appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of 5 years or, as the case may be, 10 years.</li> </ul>
	<b>Copy of Special Notice</b>	<ul style="list-style-type: none"> <li>➤ On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.</li> </ul>
	<b>Representation</b>	<ul style="list-style-type: none"> <li>➤ Retiring Auditor has power to represent</li> <li>➤ Company shall send copy of representation to all members and in case of failure to do so, auditor can ask it to read out in G.M</li> <li>➤ Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.</li> <li>➤ Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent &amp; the representation need not be read out at the meeting.</li> </ul>
	<b>In AGM</b>	<ul style="list-style-type: none"> <li>➤ Pass O.R to appoint new Auditor</li> <li>➤ Pass O.R to remove retiring Auditor</li> </ul>
<b>REMOVAL OF AUDITOR BY TRIBUNAL &amp; CG</b>	<ul style="list-style-type: none"> <li>➤ Tribunal either suo moto or on an application made to it by the CG or by any person concerned,</li> <li>➤ if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in <b>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.</b></li> <li>➤ it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor &amp; the CG may appoint another auditor in his place.</li> <li>➤ whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of</li> </ul>	

	the order & the auditor shall also be liable for action u/s 447.
<p>1. Board of Directors of "XYZ Ltd." Found the auditors of the Company acted in a fraudulent manner, &amp; decided to remove the auditors in board's meeting. Comment on the action of Board of Directors &amp; describe correct procedure to be followed for removal of auditors before expiry of their term.(4 Marks May 2019)</p> <p>2. XYZ Company Ltd. Removed its auditor appointed u/s 139 of the Companies Act, 2013 before the expiry of his term Without obtaining prior approval of the Central Government. Explain the procedure to be followed for removing auditor before the expiry of his term. OR Comment on "Removal of auditor before expiry of term". (5 Marks Nov 2011) (RTP Nov 2015)</p> <p>3. The auditor CA Z appointed u/s 139 was removed from his office before the expiry of his term by an ordinary resolution of the company. Comment explaining clearly the procedure of removal of auditor before expiry of term. (RTP May 2019)</p> <p>4. Why Central Government permission is required, when the auditors are to be removed before expiry of their term, but the same is not needed when the auditors are changed after expiry of their term?(RTP Nov 2018)</p> <p>5. PQR Company Ltd. Removed their first auditor by passing a resolution in the meeting of the Board of Directors for his removal without obtaining prior approval from the Central Government. Offer your comments in this regard.</p> <p>6. ABC Company Ltd. Removed its First Auditor before the expiry of his term without obtaining approval of the Central Government. Comment.</p> <p>7. P, the first auditor of XYZ Ltd. Resigned as auditors of the Co. Board of Directors appointed Mr. Q as statutory auditors in their place. Comment. (4/6 Marks May 2009/Nov 2010) (RTP Nov 2016)</p> <p>8. CA G was appointed as the auditor of Raj Ltd. at the remuneration of INR 35000. He resigned after 7 months on health grounds but failed to file the required statement with the Registrar of Companies. What are the responsibilities of CA G as per section 140(2) of the Companies Act, 2013 ? As per section 140(3) of the Companies Act, 2013, how much fine will be levied on CA G for non-compliance of Sec 140(2) of the Companies Act 2013 ? (4 Marks Nov 2021) (RTP May 2019)</p> <p>9. CA Raj, an auditor was removed by PQR Ltd. before the expiry of his term. Discuss the procedure to be taken by PQR Ltd to appoint an auditor other than retiring auditor under Sec. 140(4) of the Companies Act, 2013. (4 Marks Nov 2020)</p> <p>10. CA B, an auditor of DBF Limited engaged in the manufacturing &amp; trading of hardware products, while auditing got aware of some secrets of the company. The auditor acted in an unlawful way in order to deceive or gain an advantage over others &amp; also he encouraged &amp; assisted directors to do something wrong, in particular to commit crime. Now company has requested you to guide it as to how such acts are covered under Companies Act, 2013 &amp; what consequences auditor may face ? (4 Marks May 2022)</p>	

1. Which of the following statement is correct?  
a. Where at any AGM, no auditor is appointed or re-appointed, it amounts to casual

vacancy and will be filled by Board of Directors

- b. Where at any AGM, no auditor is appointed or re-appointed, it amounts to casual vacancy and will be filled by Central Government
  - c. Where at any AGM, no auditor is appointed or re-appointed, it amounts to casual vacancy and will be filled by members in EGM
  - d. None of the above**
2. The Auditor appointed under section 139 of Companies Act, 2013 may be removed from his office before the expiry of his term by \_\_\_\_
    - a. Ordinary Resolution
    - b. Special Resolution**
    - c. Board Resolution
    - d. None of the Above
  3. The application for removal of auditor before expiry of his term shall be made to Central Govt. within 30 days of \_\_\_\_\_
    - a. Ordinary Resolution
    - b. Special Resolution
    - c. Board Resolution**
    - d. None of the Above

4. In case of removal of auditor before expiry of his term, the company shall hold the \_\_\_\_\_ within 60 days of receipt of approval of the Central Government for passing the \_\_\_\_\_
  - a. General Meeting, Ordinary Resolution
  - b. Board Meeting, Special Resolution
  - c. General Meeting, Special Resolution**
  - d. Board Meeting, Board Resolution
5. The auditor who has resigned from the company shall file within a period of \_\_\_\_\_ from the date of resignation, a statement in the Form \_\_\_\_\_
  - a. 30 days, ADT-1
  - b. 30 Days, ADT-3**
  - c. 60 days, ADT-1
  - d. 60 days, ADT-3
6. To appoint as auditor, a person other than a retiring auditor, who is eligible for reappointment, \_\_\_\_\_ is required
  - a. Approval of Central Government
  - b. Special Notice**
  - c. Approval of CAG
  - d. Ordinary Resolution

AUDITOR'S REMUNERATION [SEC 142]	
[SEC 142(1)]	<ul style="list-style-type: none"> <li>➤ those who appoint auditor fixes his remuneration except In case of a Government company,</li> <li>➤ Auditor is appointed by C&amp;AG but remuneration is fixed by shareholders.</li> </ul>
[SEC 142(2)]	<p><b>Items includible and excludible in "Auditor's remuneration"</b></p> <p>Auditor's remuneration includes "Out of Pocket Expenses" but does <b>NOT</b> include any remuneration paid to him for any other service rendered by him at the request of the company.</p>
<p><b>1. As per section 142 of Companies Act, 2013, the remuneration to the auditor shall also include any facility provided to him. (May 23)</b></p> <p><b>2. 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)</b></p>	



**Hint** - 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.

1. The remuneration of first auditor appointed by members of the company shall be fixed by \_\_\_\_
  - a. **Company**
  - b. Board of Directors
  - c. Central Government
  - d. CAG
2. Which of the following is correct?
  - a. Remuneration of auditor shall in addition to the fees payable include expenses, if any incurred by the auditor in connection with the audit of the company
  - b. Remuneration does not include any remuneration paid to auditor for any other service rendered by him at the request of the company
  - c. **Both of the Above**
  - d. None of the Above

### POWERS & RIGHTS OF AUDITORS [SEC 143]

<b>RIGHT OF ACCESS TO BOOKS OF ACCOUNT, ETC.</b>	<ul style="list-style-type: none"> <li>➤ The auditor of a company, at all times, shall have a right of access to the books of account &amp; vouchers of the company, whether kept at the <b>registered office of the company or at any other place.</b></li> <li>➤ The auditor of a holding company shall also have the right of access to the records of all its subsidiaries &amp; associate companies in so far as it relates to the consolidation of its FS.</li> </ul>
<b>RIGHT TO OBTAIN INFORMATION EXPLANATION FROM OFFICERS</b>	<ul style="list-style-type: none"> <li>➤ This right of the auditor allows him to obtain from the officers of the company such information &amp; explanations <b>as he may think necessary</b> for the performance of his duties as auditor is a wide &amp; important power.</li> </ul>
<b>RIGHT TO RECEIVE NOTICE &amp; ATTEND GENERAL MEETING (SEC 146)</b>	<ul style="list-style-type: none"> <li>➤ All notices of, &amp; other communications relating to, any general meeting shall be forwarded to the auditor of the company, &amp; the auditor shall, unless otherwise exempted by the company, <b>attend either by himself or through his authorized representative</b>, who shall also be qualified to be an auditor, any general meeting &amp; shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.</li> </ul>
<b>RIGHT TO REPORT TO THE MEMBERS OF THE COMPANY ON THE ACCOUNTS EXAMINED BY HIM and sign Audit report (sec 145 )</b>	<ul style="list-style-type: none"> <li>➤ The auditor shall make a report to the members of the company on the accounts examined by him &amp; on every FS which are required by or under this Act to be laid before the company in general meeting.</li> <li>➤ The person [<b>Signing Partner</b>] appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company.</li> <li>➤ The qualifications, observations or comments on financial transactions or matters, which have any <b>adverse effect on the functioning of the company</b> mentioned in the auditor's report shall be <b>READ</b> before the company in general meeting and shall be open to inspection by any member of the</li> </ul>

	company.
<b>RIGHT TO LIEN</b>	<ul style="list-style-type: none"> <li>➤ In terms of the general principles of law, any person having the lawful possession of somebody else's property, on which he has worked, may retain the property for nonpayment of his dues on account of the work done on the property.</li> <li>➤ On this premise, auditor can exercise lien on books &amp; documents placed at his possession by the client for nonpayment of fees, for work done on the books &amp; documents.</li> <li>➤ <b>following conditions:</b> <ul style="list-style-type: none"> <li>✓ Documents retained must belong to the client who owes the money.</li> <li>✓ Documents must have come into possession of the auditor on the authority of the client. They must not have been received through irregular or illegal means. In case of a company client, they must be received on the authority of the Board of Directors.</li> <li>✓ The auditor can retain the documents only if he has done work on the documents assigned to him.</li> <li>✓ Such of the documents can be retained which are connected with the work on <b>which</b> fees have not <b>been</b> paid and some work has been done</li> </ul> </li> </ul>
<p><b>1. The auditor shall make a report to the members of the company on the accounts examined by him. Explain with reference to relevant provisions of the Companies Act, 2013.</b></p> <p style="text-align: center;"><b>OR</b></p> <p><b>2. Explain Auditor's right to-</b></p> <p style="padding-left: 20px;"><b>(a) Report to the members of the company on the accounts examined by him.</b></p> <p style="padding-left: 20px;"><b>(b) Obtain information &amp; explanation from officers (RTP Nov 2019/18)</b></p> <p><b>3. During the audit of PQR Ltd. you as an auditor requested officers of the company to have access to secretarial records &amp; correspondence which they refused to provide. Comment. (5 Marks May 2018) (RTP May 2021/Nov 2020)</b></p> <p><b>4. Discuss significance of a company auditor's right/power to obtain information &amp; explanation from officers of the company. (RTP Nov 2021)</b></p> <p><b>5. According to Companies Act, 2013, the person appointed as an auditor of the company shall sign the auditor's report in accordance with the relevant provisions of the Act. Explain clearly the relevant provisions relating to signing of report. (RTP Nov 2019)</b></p> <p><b>6. Auditors have right to attend only those general meetings at which the accounts audited by them are to be discussed. Comment. (4 Marks May 2019)</b></p> <p><b>7. Though legally auditor may exercise right of Lien in case of companies, it is mostly impracticable for legal &amp; practicable constraints. Do you agree? (3 Marks May 2019)</b></p>	

<b>DUTIES OF AUDITORS [SEC 143.]</b>	
<b>DUTY OF AUDITOR TO INQUIRE ON CERTAIN MATTERS [SEC 143(1)]</b>	
➤ amongst other matters inquire into the following matters, namely: —	
<b>Security</b>	a) Whether loans & advances made by the company on the basis of security have been properly secured & whether the terms on which they have been made are prejudicial to the interests of the company or its members;
<b>Book Entries</b>	b) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
<b>Sale of Securities below cost</b>	c) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures & other securities have been sold at a price less than that at which they were purchased by the company;
<b>Deposits</b>	d) Whether loans & advances made by the company have been shown as deposits;
<b>Personal Expenses</b>	e) Whether personal expenses have been charged to revenue account;
<b>Shares Allotted for Cash &amp; Balance Sheet Position</b>	f) Where it is stated in the books & documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, & if no cash has actually been so received, whether the position as stated in the account books & the balance sheet is correct, regular & not misleading.
<p>1. Explain the duties of Auditor to inquire u/s 143(1) of the Companies Act, 2013.</p> <p style="text-align: center;"><b>OR</b></p> <p>2. The auditor has to make inquires on certain matters u/s 143(1) of Companies Act, 2013. Discuss these matters. (4 Marks Nov 2016) (RTP Nov 2018)</p> <p>3. RJ Limited is in the business of trading of cycles having Head Office at Delhi &amp; branch at Mumbai. Statutory audit of Head Office was to be done by CA D &amp; statutory audit of branch at Mumbai was to be done by CA M. During the course of audit by CA D at head office, CA D Wanted to visit branch at Mumbai &amp; verify the inventory records at Mumbai. The management of RJ Limited did not allow CA 0 to visit Mumbai office &amp; verify the inventory records as the branch audit of Mumbai was already being undertaken by another CA M. In the above situation, discuss the rights available with CA D in terms of the Companies Act, 2013. (3 Marks Nov 2020)</p>	

**FOR SECTION 143(1) IT COULD BE SAID THAT THE AUDITOR SHOULD MAKE A REPORT TO THE MEMBERS IN CASE HE FINDS ANSWER TO ANY OF THESE MATTERS IN ADVERSE.**

**DUTY TO AUDIT REPORT [SEC 143(3)]**

The auditor's report shall also state —

<b>Information &amp; Explanations</b>	a) Whether he has sought & obtained all the information & explanations which to the best of his knowledge & belief were necessary for the purpose of his audit & if not, the details thereof & the effect of such information on the FS;
<b>Proper Books of Account</b>	b) Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books & proper returns adequate for the purposes of his audit have been received from branches not visited by him;
<b>Branch Auditor's Report</b>	c) Whether the report on the accounts of any branch office of the company audited u/s 143(8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section & the manner in which he has dealt with it in preparing his report;
<b>Agreement with Books of Account</b>	d) Whether the company's balance sheet & profit & loss account dealt with in the report are in agreement with the books of account & returns;
<b>Accounting Standards</b>	e) Whether, in his opinion, the FS comply with the accounting standards;
<b>Adverse effect</b>	f) <b>The observations</b> or comments of the <b>auditors</b> on financial transactions or matters <b>which have any adverse effect on the functioning of the company;</b>
<b>Director's Disqualification</b>	g) Whether any director is disqualified from being appointed as a director u/s 164(2);
<b>Maintenance of accounts</b>	h) Any qualification, <b>reservation</b> or adverse <b>remark</b> relating to the <b>maintenance of accounts &amp; other matters connected therewith;</b>
<b>internal Financial Controls</b>	i) Whether the company has adequate <b>internal</b> financial controls with reference to FS in <b>place &amp; the operating effectiveness of such controls;</b>
	<p><b>Section 143(3)(i), shall not apply to a private company: - which is a</b></p> <p>a) <b>one</b> person company or a small company; or</p> <p>b) which has turnover less than Rs 50 crores as per latest audited FS &amp; which has aggregate <b>borrowings</b> from banks or financial institutions or anybody corporate at any <b>point of time during</b> the F.Y less than Z 25 crores."</p> <p><b>The</b> above exemption shall be applicable to a private company which has not committed a <b>default in</b> filing its FS or annual return with the Registrar.</p>
<b>Other matters.</b>	<p><b>Such other matters as may be prescribed-</b></p> <p>a) <b>Whether</b> the company has disclosed the impact, if any, of pending litigations on its <b>financial position in its</b> financial statement;</p>

	<p>b) <b>Whether the company has made provision, as required under any law or AS, for material foreseeable losses, if any, on long term contracts including derivative contracts;</b></p> <p>c) <b>Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education &amp; Protection Fund by the company,</b></p> <p>d) <b>*clause omitted</b></p> <p>e)</p> <ol style="list-style-type: none"> <li>i. Whether the management has represented that, to the best of its knowledge &amp; belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities (Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;</li> <li>ii. Whether the management has represented, that, to the best of its knowledge &amp; belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; &amp;</li> <li>iii. Based on such audit procedures that the auditor has considered reasonable &amp; appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) &amp; (ii) contain any material misstatement.</li> </ol> <p>f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.</p> <p>g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility &amp; the same has, been operated throughout the year for all transactions recorded in the software &amp; the audit trail feature has not been tampered with &amp; the audit trail has been preserved by the company as per the statutory requirements for record retention.</p>
<b>Managerial Remuneration</b>	The auditor of the company shall, in his report u/s 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with

	<p>the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section &amp; give such other details as may be prescribed" (as per section 197(16) of the Companies Act, 2013)</p> <p>u- The aforesaid reporting requirement for auditors of public companies needs to be covered in auditor's report under the Section "<b>Report on Other Legal &amp; Regulatory Requirements</b>".</p>
<ol style="list-style-type: none"> <li>1. State the matters to be specified in Auditor's Report in terms of provisions of section 143(3) of the Companies Act, 2013.(RTP Nov 2015)</li> <li>2. You are the auditor of XYZ Ltd. for the year ended 31st March, 2019 in which Mr. X is the Executive Director. Mr. X is also one of the Directors in PQR Ltd. which has not filed its financial statements &amp; Annual Return for the previous financial years from 2014-15 to 2017-18. Is there any reporting responsibility cast on you as an auditor as per Companies Act, 2013? (3 Marks May 2019)</li> <li>3. Auditor's reporting on internal financial controls is a requirement specified in the Act &amp;, therefore, will apply only in case of reporting on financial statements prepared under the Act &amp; reported u/s 143 Explain in detail quoting specifically the Law in the above context covering each &amp; every aspect.</li> </ol> <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> <li>4. Auditor's reporting on internal financial controls is a requirement specified in the Act &amp;, therefore, will apply only in case of reporting on financial statements prepared under the Act &amp; reported under Section 143. Explain stating clearly the auditor's responsibility for reporting on internal financial controls owe'financial reporting. (RTP Nov 2021/18)</li> <li>5. As required u/s-143(3)(i) of the Companies Act, 2013 an auditor is required to report in the auditor's report whether the company has adequate internal financial controls with reference to financial statements in place &amp; the operating effectiveness of such controls. State the Private companies to which the above provision is not applicable. (3 Marks Nov 2019)</li> <li>6. As per Sec 143(3)(j) of the Companies Act, 2013, the auditor's report shall also include such other matters as may be prescribed by Rule 11 of the Companies (Audit &amp; Auditors) Rule, 2014. Discuss those matters on which views &amp; comments of the auditor are required. (3 Marks Nov 2021)</li> </ol>	
Section 143(4)	<p><b>Reasons for Modification</b></p> <p>Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.</p>
Section 143(5)	<p><b>Audit of Government Company</b></p> <p>The auditor appointed by C &amp; AG shall submit a copy of the audit report to the Comptroller and Auditor-General of India which shall include the directions, if any, issued by the C &amp; AG, the action taken thereon and its impact on the accounts and financial statement of the company.</p>
Section 143(6)	<p><b>Rights of C &amp; AG to conduct supplementary audit and comment upon Audit report</b></p> <p>The C &amp; AG shall within 60 days from the date of receipt of the audit report have a right to—</p> <ol style="list-style-type: none"> <li>a. Conduct a <b>supplementary audit</b> of the financial statement of the company by</li> </ol>

	<p>such person or persons as he may authorize in this behalf; and</p> <p>b. <b>Comment</b> upon or supplement such audit report:</p> <p>Any comments given by the C &amp; AG upon the audit report shall be sent by the company to every person entitled to copies of audited financial statements and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.</p>
<b>Section 143(7)</b>	<p>Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause <b>test audit</b> to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.</p>
<b>Section 143(8)</b>	<p><b>Branch Audit</b></p> <p>Where a company has a branch office, the accounts of that office shall be audited by:-</p> <ol style="list-style-type: none"> <li>1) The auditor appointed for the company (company's auditor) or</li> <li>2) Any other person qualified for appointment as an auditor of the company and appointed as such under section 139, or</li> <li>3) Where the branch office is situated in a country outside India, the accounts of the branch office shall be audited by <ol style="list-style-type: none"> <li>a. The company's auditor or</li> <li>b. An accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.</li> </ol> </li> <li>4) Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.</li> </ol>
	<p>1. ABC Ltd is a company incorporated in India. It has branches within &amp; outside India. Explain who can be appointed as an auditor of these branches within &amp; outside India. Also explain to whom branch auditor is required to report. (RTP May 2020)</p> <p>2. RJ Limited is in the business of trading of cycles having Head Office at Delhi &amp; branch at Mumbai. Statutory audit of Head Office was to be done by CA D &amp; statutory audit of branch at Mumbai was to be done by CA M. During the course of audit by CA D at head office, CA D Wanted to visit branch at Mumbai &amp; verify the inventory records at Mumbai. The management of RJ Limited did not allow CA D to visit Mumbai office &amp; verify the inventory records as the branch audit of Mumbai was already being undertaken by another CA M. In the above situation, discuss the rights available with CA D in terms of the Companies Act, 2013.(3 Marks Nov 2020)</p>
<b>Section 143(9)(10)</b>	<p><b>Duty of Auditor to follow Auditing Standards</b></p> <p>Every auditor shall comply with the auditing standards.</p>

	<p>The CG may prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.</p> <p>Until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.</p>
<b>Section 143(11)</b>	<p><b>CARO 2020</b></p> <p>CARO 2020 is a part of the Audit REPORT Chapter in Audit Subject. It is not a part of LAW Subject.</p>
<b>Section 143(12) and rules</b>	<p><b>Duty of the Auditor to Report Fraud to CG</b></p> <p><b>Reporting of frauds by auditor and other matters:</b></p> <p>1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an Amount of 1 crore or more, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the CG.</p> <div style="border: 1px solid black; background-color: #f0f0f0; padding: 5px; margin: 10px 0;"> <p><b>Note:</b></p> <p>If Auditor himself discovers the fraud, then he has a duty to report to CG.</p> <p>If the management informs the Auditor about the fraud, then there is no duty to report to CG.</p> </div> <p>2) The auditor shall report the matter to the CG as under:</p> <ol style="list-style-type: none"> <li>a) The auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;</li> <li>b) On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the CG within 15 days from the date of receipt of such reply or observations;</li> <li>c) In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the CG along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;</li> <li>d) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;</li> <li>e) The report shall be in the form of a statement as specified in Form ADT-4.</li> </ol> <p>3) The following details of each of the fraud reported to the Audit Committee or</p>



	<p>the Board above during the year shall be disclosed in the Board's Report:</p> <ol style="list-style-type: none"> <li>a) Nature of Fraud with description;</li> <li>b) Approximate Amount involved;</li> <li>c) Parties involved, if remedial action not taken; and</li> <li>d) Remedial actions taken.</li> </ol> <p>The provision of Section 143(12) shall also apply, mutatis mutandis, to a Cost Accountant and a Company secretary in Practice during the performance of his duties under section 148 and section 204 respectively.</p>
<ol style="list-style-type: none"> <li>1. During the course of audit of PQR Ltd., the statutory auditor CA G came across payments made to various creditors aggregating to ` 75 lakhs. On verifying the same it is found that the accounts manager had accounted for fake invoices of credit purchases for ` 25 lakhs in the books of account in the name of one bogus creditor Mr. X. Discuss the duties of auditor with reference to the provisions of Companies Act, 2013 and also the disclosure requirements in the Board's Report. (May 23)</li> <li>2. CA Dev of D R Sanduja &amp; Co., statutory auditor of company, Girija Fabs Ltd, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud to the tune of Rs 1.25 Crores has been committed in the company by its employees. CA Dev, the auditor wanted to report the matter to the Central Government as per Law. He refers to Rule 13 of the Companies (Audit &amp; Auditors) Rules, 2014. Sub-rule (1) of the said rule states that if an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of ' 1 crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government. In the above context, explain the manner of reporting the matter to the Central Government.</li> </ol> <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> <li>3. Mr. A is appointed as statutory auditor of a company for the Financial Year ended 31st March, 2018. During the course of audit, it was found that few doubtful transactions had been committed by finance manager who retired in March, 2018. The fraud was going on since last 2-3 years &amp; the total amount misappropriated exceeding X100 lakhs. As a statutory auditor, what would be reporting responsibilities of Mr. A? (3/5 Marks May 2021/18) (RTP May 2022/20/15/Nov 2020)</li> <li>4. CA R is the statutory auditor &amp; Mr. P is the cost auditor of DEF Ltd., a company engaged in the production of tyres. Mr. P noticed a fraud of INR 1.25 crores done by the senior manager of the company &amp; immediately informed the audit committee even before CA R was aware of the fraud. State the duty of CA R under section 143(12) of the Companies Act on reporting on frauds already detected &amp; reported. OR Mr. A is an auditor of a company. During the performance of audit, he found that an offence involving fraud has been committed against the company by an officer of the company. What procedure should be followed by Mr. A to report the matter to the Central Government? (4 Marks Nov 2021)</li> </ol>	

1. Every auditor of a company shall have a right of access at all times to \_\_\_\_\_ of the company whether kept at the registered office of the company or at any other place
  - a. Books and Account
  - b. Books and Papers
  - c. Books of Account and Vouchers**
  - d. Statutory registers
2. Auditor is required to inquire which of the following matters under Section 143(1):
  - a. Sale of Shares and debentures at a price less than purchase amount by a banking company
  - b. Sale of Shares and debentures at a price less than purchase amount by an investment company
  - c. Sale of Fixed Assets and Inventory at a price less than purchase amount by a non-banking company
  - d. Sale of Shares and debentures at a price less than purchase amount by a non-banking company**
3. Auditor is required to inquire which of the following matters under Section 143(1):
  - a. Charging of personal expenses to revenue account**
  - b. Charging of capital expenses to revenue account
  - c. Charging of Provisions to revenue account
  - d. Charging of Depreciation to revenue account
4. Which of the following statements is correct?
  - a. Reporting on propriety matters u/s 143(1) is required if the auditor finds answer to any of the matters in positive
  - b. Reporting on propriety matters u/s 143(1) is required if the auditor finds answer to any of the matters in negative**
  - c. Reporting on propriety matters u/s 143(1) is required in every case irrespective of auditor's observations
  - d. Reporting on propriety matters u/s 143(1) is not the duty of auditor, it is the duty of management
5. Under Section 143(2) auditor is required to, make a report to the members of the, company on the following:
  - a. Accounts Examined by him
  - b. Financial statement laid before the company in general Meeting
  - c. Both of the above**
  - d. None of the Above
6. Under Section 143(3), auditor is required to report on following
  1. Whether loans and advances made by the company have been shown as deposits
  2. Whether transactions represented by book entries are prejudicial
  3. Whether any director is disqualified from being appointed as director u/s 164(2)
  4. Whether financial statements comply with the accounting Standards

Correct answer is:

  - a. 1 & 2
  - b. 3 & 4
  - c. 1 & 3
  - d. 1, 2, 3 & 4**
7. CAG shall within \_\_\_\_\_ from the date of receipt of the audit report have a right to conduct a supplementary audit
  - a. 30 days
  - b. 45 days
  - c. 60 days**
  - d. 90 days
8. As per Sec. 143(9) of Companies Act, 2013, every auditor shall comply with \_\_\_\_\_
  - a. Accounting Standards
  - b. Auditing Standards**
  - c. Engagement Standards
  - d. Accounting and Auditing Standards
9. Under Section 143(12) of Companies Act, 2013, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the \_\_\_\_\_ he shall immediately report the matter to the \_\_\_\_\_
  - a. company by officers or employees of the company; Registrar of Companies

- b. officers or employees of the company by directors; Central Government  
**c. company by officers or employees of the company; Central Government**  
 d. officers or employees of the company by directors; Registrar of Companies
10. If the auditor does not report u/s 143(2) with respect to fraud, he shall be punishable with fine ranging from:  
 a. 1 Lac to 10 Lacs  
**b. 1 Lac to 25 Lacs**  
 c. 5 Lacs to 10 Lacs  
 d. 5 Lacs to 25 Lacs
11. Report u/s 143(12) with respect to fraud shall be sent to  
 a. Registrar of Companies  
 b. National Company Law Tribunal  
 c. Secretary, Ministry of Home affairs  
**d. None of the above**
12. The Audit Committee or the Board of Directors, are required to give their reply over the report of auditor in relation to fraud noticed by the auditor, within \_\_\_\_\_  
 a. 15 days  
 b. 30 days  
**c. 45 days**  
 d. 60 days
13. Report u/s 143(12) shall be in the form of a statement as specified in \_\_\_\_\_  
 a. ADT-1  
 b. ADT-2  
 c. ADT-3  
**d. ADT-4**
14. An auditor appointed under Companies Act, 2013, shall provide only such other services as are approved by \_\_\_\_\_  
 a. Board of Directors  
 b. Central Government  
**c. Board of Directors or the Audit Committee**  
 d. Registrar of Companies
15. Auditor appointed under Companies Act, 2013 cannot render which of the following services:  
**a. Actuarial Services**  
 b. Tax Audit  
 c. Review of Interim Financial Statements  
 d. Examination of Prospective Financial Statements
16. Which of the following statement is correct?  
 a. Communication relating to General meeting need not be forwarded to the auditor of the company  
 b. Auditor has discretion to attend the general meeting  
**c. Auditor shall have a right to be heard at general meeting**  
 d. None of the above
17. The auditor shall attend \_\_\_\_\_ any general meeting  
 a. himself  
 b. through his authorised representative  
**c. either by himself or through his authorised representative**  
 d. at his discretion
18. Right of Lien refers to \_\_\_\_\_  
**a. Right for lawful possession of somebody's else property**  
 b. Right of access to records of the company  
 c. Right to obtain necessary information and explanation  
 d. Right of access to records of subsidiary companies
19. Right of Lien can be exercised for  
 a. Non-payment of statutory dues  
**b. Non-payment of fees by the client**  
 c. Both of the above  
 d. None of the above

<b>PUNISHMENT FOR NON-COMPLIANCE [SEC 147]</b>	
<b>Section 147 of the Companies Act, 2013 prescribes following punishments for contravention:</b>	
<b>Contravention Company</b>	<b>By</b> ➤ If any of the provisions of sec 139 to 146 (both inclusive) is contravened, the <b>company shall be punishable with fine</b> which shall not be less than 25,000 but which may extend to 5 lakhs & <b>every officer of the company who is in default shall be punishable with fine</b> which shall not be less than Z 10,000 but which may extend to 1 lakh.
<b>Contravention Auditor</b>	<b>By</b> ➤ <b>If an auditor of a company contravenes any of the provisions of sec 139, sec 144 or sec 145</b> , the auditor shall be punishable with <b>fine</b> which shall not be less than Z 25,000 but which may extend to Z 5 lakhs [or 4 times the remuneration of the auditor, whichever is less] ➤ <b>Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive</b> the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to 1 year & [with fine which shall not be less than Z 50,000 but which may extend to Z 25 lakhs or 8 times the remuneration of the auditor, whichever is less] ➤ <b>Where an auditor has been convicted under sub-section (2), he shall be liable to—</b> i. refund the remuneration received by him to the company; & ii. pay for damages to the company, statutory bodies or authorities [or to members or creditors of the company] for loss arising out of incorrect or misleading statements of particulars made in his audit report.

- As per Sec 147 of the Companies Act, 2013, if any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than \_\_\_\_\_ but which may extend to  
 a. **25,000; 5 Lacs**  
 b. 10,000; 1 Lac  
 c. 50,000; 25 Lacs  
 d. 25,000; 1 Lac
- As per Sec. 147 of the Companies Act, 2013, if any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to \_\_\_\_\_ or with fine which shall not be less than \_\_\_\_\_ but which may extend to \_\_\_\_\_ or with both  
 a. 1 year; 25,000; 5 Lacs  
 b. **1 year; 10,000; 1 Lac**  
 c. 3 years; 25,000; 5 Lacs  
 d. 3 years; 10,000; 1 Lac
- As per Sec. 147 of the Companies Act, 2013, if an auditor of a company contravenes any of the provisions of Sec. 139, Sec. 143, Sec. 144 or Sec. 145, the auditor shall be punishable with fine which shall not be less than \_\_\_\_\_ but which may extend to \_\_\_\_\_  
 a. 25,000; 5 Lacs or five times the remuneration of auditor whichever is less  
 b. 25,000; 5 Lacs or five times the remuneration of auditor whichever is more  
 c. **25,000; 5 Lacs or four times the remuneration of auditor whichever is less**  
 d. 25,000; 5 Lacs or four times the remuneration of auditor whichever is more

<b>COST AUDIT [SEC 148]</b>	
<b>APPLICABILITY FOR MAINTENANCE OF COST RECORDS</b>	<ul style="list-style-type: none"> <li>➤ Rule 3 of the Companies (Cost Records &amp; Audit) Rules, 2014 provides the classes of companies, engaged in the production of goods or providing services, having an overall turnover from all its products &amp; services of ' 35 crore or more during the immediately preceding financial year, required to include cost records in their books of account..</li> <li>➤ These companies include Foreign Companies defined in sub-section (42) of section 2 of the Act, but exclude a company classified as a Micro enterprise or a Small enterprise including as per the turnover criteria</li> </ul>
<b>MAINTENANCE OF COST RECORDS</b>	<ul style="list-style-type: none"> <li>➤ in Form CRA-1,</li> </ul>
<b>APPLICABILITY OF COST AUDIT</b>	<ul style="list-style-type: none"> <li>➤ Rule 4 of the Companies (Cost Records &amp; 'Audit) Rules, 2014states the provisions related to the applicability of cost audit depending on the turnover of the company as follows-               <ol style="list-style-type: none"> <li><b>1) TABLE-A:- Regulated Sector (6 Industries)</b> <ol style="list-style-type: none"> <li>a) Petroleum</li> <li>b) Pharmaceutical</li> <li>c) Telecom</li> <li>d) Electricity</li> <li>e) Fertilizer</li> <li>f) Sugar &amp; Industrial Alcohol</li> </ol> </li> <li><b>2) TABLE-B:- Non-Regulated Sector (33 Industries)</b> <ol style="list-style-type: none"> <li>a) Paper</li> <li>b) Milk &amp; Milk Powder</li> <li>c) Iron &amp; Steel</li> <li>d) Military Tanks, etc</li> </ol> </li> </ol> </li> <li>➤ Classes of companies specified under item (A) "Regulated Sectors" are required to get its cost records audited if the overall annual turnover of the company from all its products &amp; services during the immediately preceding financial year is 50 crore or more &amp; the aggregate during of the individual product(s) or service(s) for which cost records are required to be maintained under rule 3 is 25 crore or more.</li> <li>➤ Classes of companies specified under item (B) "Non-Regulated Sectors" are required to get its cost records audited if the overall annual turnover of the company from all its products &amp; services during the immediately preceding financial year is 100 crore or more &amp; the aggregate turnover of the individual product(s) or service(s) for which cost records are required to be maintained under rule 3 is 35 crore or more.</li> </ul>

<b>EXEMPTION FROM COST AUDIT</b>	<ul style="list-style-type: none"> <li>➤ The requirement for cost audit under these rules shall not be applicable to a company which is covered under rule 3, and, <ul style="list-style-type: none"> <li>i. whose revenue from exports, in foreign exchange, exceeds 75% of its total revenue; or</li> <li>ii. which is operating from a special economic zone.</li> <li>iii. which is engaged in generation of electricity for captive consumption through Captive Generating Plant.</li> </ul> </li> </ul>
<b>WHO CAN BE COST AUDITOR?</b>	<ul style="list-style-type: none"> <li>➤ by a Cost Accountant who shall be appointed by the Board of such remuneration as may be determined by the members in such manner as may be prescribed.</li> <li>➤ It may also be noted that the auditor conducting the cost audit shall comply with the cost auditing standards.</li> </ul>
<b>Dis-QUALIFICATIONS , APPOINTMENT &amp; REMUNERATION OF COST AUDITOR</b>	<p><b>Rule 6 of the Companies (Cost Records &amp; Audit) Rules, 2014 -</b></p> <ul style="list-style-type: none"> <li>➤ Requires the companies prescribed under the said Rules to appoint an Auditor within 180 days of the commencement of every F.Y.</li> <li>➤ It may be noted that the Form CRA-2 to be filed with the Central Government for intimating appointment</li> <li>➤ The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor</li> </ul>
<b>REMOVAL OF COST AUDITOR</b>	<ul style="list-style-type: none"> <li>➤ The cost auditor may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the cost auditor &amp; recording the reasons for such removal in writing.</li> </ul>
<b>CASUAL VACANCY IN THE OFFICE OF A COST AUDITOR</b>	<ul style="list-style-type: none"> <li>➤ Any casual vacancy in the office of a Cost Auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within 30 days of occurrence of such vacancy &amp; the company shall inform the central government in Form CRA-2 within 30 days of such appointment of cost auditor.</li> </ul>
<b>SUBMISSION OF COST AUDIT REPORT</b>	<ul style="list-style-type: none"> <li>➤ To the-Board of Directors of the Company- The cost auditor shall submit the cost audit report along with his reservations or qualifications or observations or suggestions, if any, in Form CRA-3.within a period of 180 days from the closure of the financial year</li> <li>➤ To the Central Government- The company shall within 30 days from the date of receipt of a copy of the cost audit report prepared (in pursuance of a direction issued by Central Government) furnish the Central Government with such report along with full information &amp; explanation on every reservation or qualification contained therein in Form CRA-4 in Extensible Business Reporting Language (XBRL) format</li> <li>➤ If, after considering the cost audit report &amp; the, information &amp; explanation furnished by the company as above, the Central Government is of the opinion, that any further information or explanation is necessary, it may call for such further information &amp; explanation &amp; the company shall furnish the same within</li> </ul>

	such time as may be specified by that Government.
<b>DUTY TO REPORT ON FRAUD</b>	➤ The provisions of section 143(12) of the Companies Act, 2013 & the relevant rules on duty to report on fraud shall apply mutatis mutandis to a cost auditor during performance of his functions u/s 148 of the Act & these rules.
<p>1. You have been approached by HK Ltd. to be appointed as Cost Auditor for the F.Y. 2019-20. Company has requested you to provide a certificate confirming your eligibility as per the provisions of Companies Act, 2013. List down the matters to be included in the certificate.</p> <p style="text-align: center;"><b>OR</b></p> <p>2. "Mr. A is offered by ABC Ltd. for appointment as cost auditor &amp; asked to certify certain requirements before such appointment." Discuss those requirements with reference to the provisions of the Companies Act, 2013. (4 Marks Nov 2019/18)</p> <p>3. Write short note on: Applicability of Cost Audit (4 Marks Nov 2018)</p> <p>4. Shine Industries is an electricity generating company engaged in generation of electricity for captive consumption. Its gross turnover was 1NR 68 crores during the immediately preceding financial year. Management of shine industries has not maintained any cost records as they felt that there is no requirement for them to maintain any cost records or conduct any cost audit. Comment. (4 Marks May 2021)</p>	

- |   |  |
|---|--|
| <p>1. The turnover criteria for applicability of Companies (Cost Records and Audit) Rules, 2014 is</p> <p><b>a. at the end of immediately preceding financial year</b></p> <p>b. at the end of the financial year</p> <p>c. average of 3 preceding financial year</p> | <p>d. when the company achieves the turnover during the current financial year</p> <p>2. A cost auditor submits his report to</p> <p>a. Government</p> <p>b. Shareholders</p> <p>c. Statutory Auditor</p> <p><b>d. Board of Director</b></p> |
|---|--|

Form	Purpose
CRA-1	The manner in which cost records to be maintained
CRA-2	For intimation of appointment of cost auditor by company to the Central Government
CRA-3	Cost Audit Report
CRA-4	Filing of the cost audit report with the Central Government

### 3. Example module

Case	Turnover (Figures in Crore)					Applicability of Cost Records
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	
1	10	10	20	10	30	No
2	10	10	20	20	40	Yes
3	0	10	10	30	40	Yes
4	10	0	10	30	40	Yes
5	20	20	40	0	40	Yes
6	0*	0*	0	40	40	No

4. \* Not-engaged in the production of the goods or providing services, specified in the Table A (6 Regulated Sectors) and/or Table B (33 Non-Regulated Sector)

Example							
Case	Turnover (Figures in Crore)					Applicability of	
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	Cost Records	Cost Audit
1	10	10	20	10	30	No	No
2	10	10	20	20	40	Yes	No
3	20	20	40	0	40	Yes	No
4	10	20	30	10	40	Yes	No
5	10	20	30	20	50	Yes	Yes, but only for table A
6	0	20	20	20	40	Yes	No
7	20	10	30	80	110	Yes	Only Table A Product
8	20	20	40	70	110	Yes	Both Tables A & B Products



9	10	10	20	80	100	Yes	No
10	15	15	30	10	40	Yes	No
11	20	20	40	8	48	Yes	No

### Other MCQ For Practise

- CA. X is a partner in M/s AB & Associates and M/s MN & Associates simultaneously. M/s AB & Associates has completed its tenure of 10 years as an auditor in XYZ Ltd. immediately preceding the current financial year. It may be noted that the provisions for applicability of rotation of auditors are applicable to XYZ Ltd. Now, the company wants to appoint M/s MN & Associates as auditor for 5 years.
  - M/S MN & Associates cannot be appointed as auditor being not eligible u/s 141(3) of Companies Act, 2013
  - M/S MN & Associates cannot be appointed as auditor being not eligible as per Rule 6 of Companies (Audit & Auditor's) Rules, 2014
  - M/S MN & Associates cannot be appointed as auditor being not eligible as per proviso to Sec. 139(2) of Companies Act, 2013**
  - M/S MN & Associates cannot be appointed as auditor being not eligible u/s 141(1) of Companies Act, 2013
- ABC Pvt. Ltd., a new company, incorporated on 01.07.2018 is engaged in the manufacturing business. On 30.07.2018, the Managing Director of ABC Pvt. Ltd. himself appointed CA Mohan, as the first auditor of the company.
  - Appointment of Mr. Mohan is invalid as first auditor of a company can be appointed by members of the company as per Sec.139(6) of Companies Act, 2013
  - Appointment of Mr. Mohan is invalid as first auditor of a company can be appointed by Board of Directors as per Sec. 139(6) of Companies Act, 2013**
  - Appointment of Mr. Mohan is invalid as first auditor of a company can be appointed by members of the company as per Sec. 139(1) of Companies Act, 2013
- members of the company as per Sec. 139(1) of Companies Act, 2013
  - Appointment of Mr. Mohan is invalid as first auditor of a company can be appointed by Board of Directors as per Sec. 139(1) of Companies Act, 2013
- KM Pvt. Ltd., engaged in the manufacturing business of Silk Shirts, is a newly incorporated company dated 01.09.2018. On 28.09.2018, the members of KM Pvt. Ltd. themselves appointed CA Raj, a renowned practitioner, as the first auditor of the company opposing that Board is not authorised to appoint the auditor.
  - Appointment of CA. Raj is valid as first auditor of a company can be appointed by members of the company as per Sec. 139(6) of Companies Act, 2013
  - Appointment of CA. Raj is invalid as first auditor of a company within 30 days of incorporation of company can be appointed by CAG as per Sec. 139(6) of Companies Act, 2013
  - Appointment of CA. Raj is valid as first auditor of a company can be appointed by members of the company as per Sec. 139(1) of Companies Act, 2013
  - Appointment of CA. Raj is invalid as first auditor of a company within 30 days of incorporation of company can be appointed by Board of Directors as per Sec. 139(6) of Companies Act, 2013**
- KM Ltd., a Government company is incorporated on 01.09.2018. On 28.09.2018, the Board of Directors themselves appointed CA Raj, a renowned practitioner, as the first auditor of the company.

- a. Appointment of CA. Raj is invalid as first auditor of a government company within 30 days of incorporation of company can be appointed by Central Government as per Sec. 139(7) of Companies Act, 2013.
- b. Appointment of CA. Raj is invalid as first auditor of a government company within 60 days of incorporation of company can be appointed by Central Government as per Sec. 139(7) of Companies Act, 2013.
- c. Appointment of CA. Raj is invalid as first auditor of a government company within 30 days of incorporation of company can be appointed by CAG as per Sec. 139(7) of Companies Act, 2013.
- d. Appointment of CA. Raj is invalid as first auditor of a government company within 60 days of incorporation of company can be appointed by CAG as per Sec. 139(7) of Companies Act, 2013,**
5. PQR Company Ltd. removed their first auditor by passing a resolution in the meeting of the Board of Directors for his removal without obtaining prior approval from the Central Government.
- a. Removal is valid as approval of Central Government is not required in case of first auditor.
- b. Removal is not valid as approval of Central Government is not obtained.**
- c. Removal is not valid as first auditor of a company cannot be removed.
- d. Removal is not valid as first auditor can be removed by Audit Committee.
6. "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of 90000. XYZ Ltd. wants to appoint Mr. B, partner of Mr. A as its auditor. Mr. B does not hold any securities in the company.
- a. Mr. B is not eligible for appointment as an Auditor of "XYZ Ltd" as his partner holds securities of the company.**
- b. Mr. B is eligible for appointment as an Auditor of "XYZ Ltd" as the value of securities hold by his partner is less than 1 Lac.
- c. Mr. B is eligible for appointment as an Auditor of "XYZ Ltd" as he do not hold any securities of the company.
- d. Mr. B not eligible for appointment as an Auditor of "XYZ Ltd." as his partner holds securities of the company exceeding 1,000.
7. Mr. B, a partner of Mr. A held shares of face value of Z 1,05,000 in DEF Ltd., the holding company of ABC Ltd. Mr. B has sold the securities after a period of 45 days from the date of appointment of Mr. A as an auditor of ABC Ltd.
- a. Appointment of Mr. A in ABC Ltd. as auditor is valid as his partner Mr. B sold the securities within 60 days of appointment of Mr. A.
- b. Appointment of Mn A in ABC Ltd. as auditor is valid as shareholding of Mr. B in the holding company of ABC Ltd. is of no relevance.
- c. Appointment of Mr. A in ABC Ltd. as auditor is invalid as his partner Mr. B hold shares in the holding company of ABC Ltd. at the time of appointment.**
- d. Appointment of Mr. A in ABC Ltd. as auditor is invalid as his partner Mr. B hold shares in the holding company of ABC Ltd. in excess of Z 1 Lac.
8. Mrs. A, wife of Mr. A had given a financial guarantee for the principal amount of a debt owed by Mr. X to ABC Ltd. for 6 lakhs. Mr. X has repaid Z 5 lakhs to ABC Ltd. 2 days before the date of appointment of Mr. A as an auditor of the company.
- a. Appointment of Mr. A in ABC Ltd. is not valid as his wife has given guarantee to ABC Ltd. for an amount in excess of Z 1 Lac.
- b. Appointment of Mr. A in ABC Ltd. is not valid as his wife has given guarantee to ABC Ltd. for an amount in excess of Z 5 Lac.
- c. Appointment of Mr. A in ABC Ltd. is valid as the outstanding amount of guarantee given**

**by his wife at the time of appointment does not exceed 1 Lac.**

- d. Appointment of Mr. A in ABC Ltd. is valid as guarantee given by the relative of the auditor is of no relevance.
9. As per Sec. 141(3) (g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty (20) Companies, other than one-person company, dormant companies, small companies and private companies having paid up capital \_\_\_\_\_
- a. 100 Crores, which has not committed default in filing its financial statements under section 137 or annual return under section 92 of the Companies Act with the Registrar.
- b. less than 100 Crores, which has not committed default in filing its financial statements under section 137 or annual return under section 92 of the Companies Act with the Registrar.**
- c. less than 100 Crores, which has not committed default in filing its financial statements under section 92 or annual return under section 137 of the Companies Act with the Registrar.
- d. 100 Crores, which has not committed default in filing its financial statements under section 92 or annual return under section 137 of the Companies Act with the Registrar.
10. Which of the following is true?
- a. Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue be the auditor of the company.**
- b. If the auditor appointed at the AGM refuses to accept the same, the Company can appoint another person by holding General Meeting.
- c. If appointment of a person as an auditor is void-ab-initio, it should be treated as a casual vacancy.
- d. An auditor can be appointed as first auditor of a newly formed company simply because his name has been stated in the Articles of Association.
11. As per proviso to Sec. 140(5) of Companies Act, 2013, 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 \_\_\_\_ of receipt of such application, make an order that he shall not function as an auditor and the \_\_\_\_ may appoint another auditor in his place.
- a. 15 days, Tribunal
- b. 15 days, Central Government**
- c. 30 days, Tribunal
- d. 30 days, Central Government
12. As per proviso to Sec. 140(5) of Companies Act, 2013, an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of \_\_\_\_\_ for a period of \_\_\_\_\_ from the date of passing of the order.
- a. any company, 5 years**
- b. same company, 5 years
- c. any company, 10 years
- d. same company, 10 years
13. Sec. 143(3)(i) of Companies Act, 2013 requires the auditor to report, whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls. This reporting is not required in case of private companies:
- a. which is a one person company or a small company**
- b. which has turnover less than 50 crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 25 Cr.

- c. which has turnover less than 7 25 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 50 Cr.
- d. which has turnover less than 100 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 50 Cr.
14. Sec. 143(3)(i) of Companies Act, 2013 requires the auditor to report, whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls. This reporting is not required in case of private companies:
- a. which has turnover less than? 50 crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 25 Cr.
- b. which has turnover less than 25 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 50 Cr.
- c. which has turnover less than t 100 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 50 Cr.
- d. which has turnover less than 50 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than 25 Cr.**
15. As per Sec. 143(6) of Companies Act, 2013, the Comptroller and Auditor General of India shall within \_\_\_\_\_ days from the date of receipt of the audit report have a right to, conduct a \_\_\_\_\_ of the \_\_\_\_\_ of the company by such person or persons as he may authorise in this behalf.
- a. 60 days, Supplementary Audit, books of account
- b. 60 days, Supplementary Audit, financial statements**
- c. 60 days, Test Audit, books of accounts
- d. 90 days, Test Audit, financial statements
16. As per Sec. 143(8) of Companies Act, 2013, where the branch office of a company is situated in a country outside India, the accounts of the branch office shall be audited
- a. only by the company's auditor
- b. only by a person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country
- c. either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country**
- d. either by the company's auditor or by a cost accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country
17. As per Sec. 143(12) of Companies Act, 2013, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed. The amount prescribed for this purpose is \_\_\_\_\_
- a. Individually 1 Cr. or above**
- b. Individually above 7 1 Cr.
- c. 1 Cr. or above in aggregate
- d. above 7 1 Cr. in aggregate

18. Reporting of fraud to Central Government required under Section 143(12) of Companies Act, 2013 read with Rule 13 of Companies (Audit & Auditor's) Rules, 2014 shall be in the form of a statement as specified in \_\_\_\_\_ and sent to \_\_\_\_\_
- Form ADT-3; Secretary, Institute of Chartered Accountants of India
  - Form ADT-4; Secretary, Ministry of Corporate Affairs**
  - Form ADT-4; Secretary, Ministry of Law and Justice
  - Form ADT-3; Secretary Indian Institute of Corporate Affairs
19. As per Sec. 143(15) of Companies Act, 2013, if any auditor, cost accountant or company secretary in practice do not comply with the provisions of Sec. 143(12), he shall be punishable with fine which shall not be less than \_\_\_\_\_ but which may extend to \_\_\_\_\_
- 1 lac; 25 Lacs**
  - 5 lac; 7 25 Lacs
  - 1 lac; 5 Lacs
  - 1 lac; 10 Lacs
20. As per Section 144 of the Companies Act, 2013, auditor appointed under this Act cannot render certain services to the company. Which of the following service is not covered in the services prescribed u/s 144?
- Investment Banking Services
  - Investment Advisory Services
  - Design and implementation of any Operational information system**
  - rendering of outsourced financial services
21. As per Section 144 of the Companies Act, 2013, auditor appointed under this Act cannot render certain services to the company, whether such services are rendered directly or indirectly. For the purposes of this section, the term "directly or indirectly" shall include rendering of services by the auditor, in case of auditor being an individual, either himself or through \_\_\_\_\_
- his partner or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual
  - his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual**
  - his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual may or may not have significant influence or control, or whose name or trade mark or brand is used by such individual
  - his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand may or may not use by such individual
22. As per Section 144 of the Companies Act, 2013, auditor appointed under this Act cannot render certain services to the company or its \_\_\_\_\_
- holding company or subsidiary company**
  - holding company, subsidiary company or associate company
  - holding company, subsidiary company, associate company or another subsidiary of holding company
  - holding company, subsidiary company, associate company, another subsidiary of holding company or subsidiary of associate company
23. For the purposes of Section 148(1) of the Companies Act, 2013, the specified class of companies, including foreign companies, engaged in the production of the goods or

providing services, having an overall turnover from all its products and services of \_\_\_\_\_, shall include cost records for such products or services in their books of account

**a. 35 Cr. or more during the immediately preceding financial year**

b. 35 Cr. or more during the financial year

c. More than 35 Cr. during the immediately preceding financial year

d. More than 35 Cr. during the financial year

24. Sec. 143(1) of Companies Act, 2013 requires the auditor to inquire into certain matters of propriety matters. Which of the following matter is not covered in Sec. 143(1)?

a. Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members.

b. Whether loans and advances made by the company have been shown as deposits.

**c. Whether the company has granted any loans, secured or unsecured to companies, firms, LLPs or other parties covered in the register maintained under section 189 of the Act. If so, whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular.**

d. Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment.

25. As per Sec. 143(3) of Companies Act, 2013, the auditor report shall also state certain matters. Which of the following is not covered in reporting u/s 143(3)?

a. whether any director is disqualified from being appointed as a director under sub-section (2) of section 164.

**b. whether maintenance of cost records has been specified by the Central Government u/s 148(1) of the Companies Act, 2013**

**and whether such accounts and records have been so made and maintained.**

c. whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns.

d. whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls.

26. As per Rule 11 of Companies (Audit & Auditor's) Rules, 2014, the auditor's report shall also include auditor's views and comments on certain matters. Which of the following is covered in Rule 11?

a. Whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised

b. Whether any fraud by the company or any fraud on the Company by its officers/employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated

c. Whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether provisions of Section 192 of Companies Act, 2013 have been complied with

**d. Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company**

27. ABC & Co. is a firm of Chartered Accountants has three partners, A, B & C. The firm is holding audit of 55 companies which include 10 small companies, 5 government public companies, 5 listed companies, 5 OPC, 15 public companies and 15 private companies having paid up capital more than 100 crores. Firm has been offered the appointment as auditors of 30 companies. Of the 30 companies, 5 are private companies having paid up capital of each

company is below 100 crores and the remaining 25 companies are public companies.

a. Firm can accept audit of all 30 companies.

**b. Firm can accept audit of 25 companies including 5 private companies.**

c. Firm can accept audit of 20 companies including 5 private companies.

d. Firm can accept audit of 15 companies including 5 private companies.

28. As per Sec. 143(3)(f) of Companies Act, 2013, auditor's report shall also state "the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company". The word "observations or comments" as used in the clause U) refers to:

**a. EOM Paragraphs and the situations leading to modification in the auditor's report.**

b. Key Audit matters communicated in the audit report.

c. Matters covered under Sec. 143(1) relating to propriety aspects.

d. Material uncertainty as to going concern which requires a separate section in the audit report titled "Material uncertainty relating to Going concern".

29. If the auditor has contravenes provisions of Sec. 139, 143, 144 or 145, knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, the auditor shall be punishable with imprisonment which may extend to \_\_\_\_\_ and with fine ranging from \_\_\_\_\_

a. one year; 25,000 - 5,00,000

b. five years; 1,00,000 to lower of 25,00,000 or 8 times of remuneration

**c. one years; 50,000 to lower of 25,00,000 or 8 times of remuneration**

d. five years; 50,000 - 25,00,000

30. The auditor who has resigned from the company shall file within a period of 30 days from the date of resignation, a statement in the Form ADT-3 with the company and the Registrar. If the auditor does not comply with

requirement of Sec. 140(2), he or it shall be punishable with fine of

**a. 50,000 or the remuneration of the auditor, whichever is less, but it may extend to 5 Lacs**

b. 50,000 or the remuneration of the auditor, whichever is higher, but it may extend to 5 Lacs

c. 50,000 or two times of the remuneration of the auditor, whichever is less, but it may extend to 5 Lacs

d. 50,000 or two times of the remuneration of the auditor, whichever is higher, but it may extend to 5 Lacs

31. As per Sec, 143(12) of Companies Act, 2013,11 an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraudinvolving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed. The amount so prescribed is

**a. 1 Cr. or above, individually as per Rule 13 of Companies (Audit and Auditor's) Rules, 2014**

b. 1 Cr. or above, in aggregate as per Rule 13 of Companies (Audit and Auditor's) Rules, 2014

c. 1 Cr. or above, individually as per Rule 13 of Companies (Accounts) Rules, 2014

d. 1 Cr. or above, in aggregate as per Rule 13 of Companies (Accounts) Rules, 2014

32. As per Sec. 146 of Companies Act, 2013, \_\_\_\_\_ 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

**a. the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company**

b. any qualification, reservation or adverse remark relating to the maintenance of

accounts and other matters connected therewith  
c. any operating effectiveness of internal financial controls with reference to financial statements

d. director's disqualifications u/s 164(2) of Companies Act, 2013

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## Chapter XI

# COMPANIES INCORPORATED OUTSIDE INDIA

## Foreign Companies [Sec.379 - 393]

Chapter XXII	Consists of sections 379 to 393A as well as the Companies (Registration of Foreign Companies) Rules, 2014.
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### Foreign Company - Meaning

Foreign Company[Sec.2(42)]:	<p>Foreign Company any <b>Company</b> or <b>Body Corporate</b> incorporated outside India which—</p> <p>a) has a <b>place of business in India</b> whether by <b>itself or through an Agent, physically or through electronic mode</b>, and</p> <p>b) conducts any business activity in India in any other manner.</p> <p><b>Note:</b> "Place of Business" includes a Share Transfer or Share Registration Office. [Sec.386]</p>
"electronic mode" means	<p>"electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –</p> <p>a) business to business and business to consumer transactions, data interchange and other digital supply transactions;</p> <p>b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;</p> <p>c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;</p> <p>d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and</p> <p>e) all related data communication services,</p> <p>whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.</p> <p><b>Explanation-</b> For the purposes of this clause, <b>electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres</b> set up under section 18 of the Special Economic Zones Act, 2005 <b>shall not be construed as 'electronic mode'</b> for the purpose of clause (42) of section 2 of the Act.</p>
Some different examples	<p>1. Zakpak Ltd. is a shipping company incorporated in Japan. The Company has set up a branch office in India after obtaining necessary approvals from RBI.</p>

	<p>Branch Offices are generally considered as a reflection of the Parent Company's 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.</p> <p>2. ABC Entertainment Limited (Indian Company) having foreign subsidiary UVW Limited rendering satellite services to the group will be covered under the definition of Foreign Company under the Companies Act, 2013.</p>
<p><b>1. Bring out the meaning of "Foreign Company" for Sec.379-393 purposes. RTP, N 08</b></p>	

1. Foreign Company means
  - a. any Company or Body Corporate outside India
  - b. place of business in India
  - c. conduct any business activity in India
  - d. all of the above
2. Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in 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. in

the light of the applicable provisions of the Companies Act, 2013:

- a. Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.
- b. Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.
- c. Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.
- d. Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.

**In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company': (module)**

- (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.**

**Hint -**

- (i) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone **Limited is not a foreign** company as per the Companies Act, 2013.
- (ii) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India

through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.	
<b>Special Foreign Companies</b>	Where <b>not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference</b> , of a foreign company incorporated outside India is held by: <ol style="list-style-type: none"> <li>i. one or more <b>citizens of India</b>; or</li> <li>ii. by one or more <b>companies or bodies corporate incorporated in India</b>; or</li> <li>iii. by one or more <b>citizens of India</b> and one or more <b>companies or bodies corporate</b> incorporated in India,</li> </ol> whether singly or in the aggregate,
<b>Practice Question</b>	<p>The shareholding of Emaar Company LLC, incorporated in Dubai and having a place of business in India, is as follows:</p> <ol style="list-style-type: none"> <li>1. Hinduja Company Limited (Indian Company): 26%</li> <li>2. Vaishali Company Limited (Indian Company): 25%</li> <li>3. Citizens of Dubai: Remaining holding</li> </ol> <p>As per section 379(2), Emaar Company LLC will also be required to comply with the provisions of Chapter XXII as not less than 50% of the shareholders of Emaar Company LLC consists of body corporates incorporated in India. Emaar Company LLC will also be required to comply with other provisions of this Act</p>

1. One or More Citizens of India, and 1 or Companies or Bodies Corporate incorporated in India, whether singly or in the hold less than \_\_\_\_\_ the Paid Share Capital (Equity or Preference or in aggregate, not of - Up partly both) of a Foreign Company, such Company shall comply with such of the provisions the Act with regard to the business

carried on by it in India, as if it were a Company incorporated in India.

- a. 50%
- b. 25%
- c. 51%
- d. 49%

### APPLICATION OF ACT TO FOREIGN COMPANIES [SECTION 379]

<b>To foreign companies</b>	Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies. It implies that all companies which falls within the definition of foreign company as per section 2(42), shall comply with the provisions of this Chapter.
<b>Special Foreign Companies</b>	<ul style="list-style-type: none"> <li>✓ <b>provisions of Chapter XXII</b> and such other provisions of this Act</li> <li>✓ as may be prescribed with <b>regard to the business carried on by it in India as if it were a company incorporated in India.</b> [Section 379(2)]</li> </ul>

## Obligations of a Foreign Company under Chapter XXII

[**Note:** ROC for the purpose of submission of documents by Foreign Company, means **ROC, New Delhi.**]

1. To deliver documents to the ROC, upon establishment of place of business in India, and inform changes [**Sec.380**]
2. To prepare Financial Statements, get it audited and deliver to ROC, along with other particulars [**Sec.381**]
3. To file Annual Return [**Rules**]
4. To display and state Name, Limited Liability and Country of Incorporation [**Sec.382**]
5. To comply with other requirements of the Act, e.g. Proper Books of Account, Annual Return, Inspection, etc. [**Sec.384**]

**Note: Details of Documents to be filed at various stages**

Situation	Documents to be delivered to ROC
1. <b>Initially</b> when they establish a place of business in India.	<b>Form No.FC.1</b> and other documents, as per Sec.380 [Refer <b>below</b> ]
2. <b>Periodically</b> or on the <b>happening</b> of certain events	<ul style="list-style-type: none"> <li>• Changes in Particulars of matters submitted to ROC, in <b>Form No.FC.2</b></li> <li>• Annual Accounts [<b>Sec.381</b>]</li> <li>• Annual Return in <b>Form No.FC.4</b>, [<b>Rules</b>]</li> <li>• List of Places of Business in <b>Form No.FC.3</b> [<b>Sec.381</b>]</li> <li>• Notice of ceasing to have Places of Business [<b>Rules</b>]</li> <li>• Charges on Properties [<b>Sec.384</b>]</li> <li>• Prospectus relating to issue of Securities [<b>Sec.387</b>]</li> </ul>

### Documents to ROC upon establishment of Place of Business [**Sec.380**]

Foreign Companies shall, <b>within 30</b> days of establishment of the place of business, deliver to the ROC for registration in form no FC-1	<p>a) <b>Certified Copy</b> of — (i) Charter, (ii) Statutes, (iii) Memorandum and Articles, or (iv) other instrument constituting or defining the constitution of the Company, and, a <b>certified English Translation thereof, if the instrument is not in the English Language,</b></p> <p>b) Full Address of the <b>Registered or Principal Office</b> of the Company,</p> <p>c) List of <b>Directors and Secretary</b> of the Company, containing prescribed particulars,</p> <p>d) Name(s) and Address(es) of person(s) resident in India, authorised to accept on behalf of the Company <b>service of process and any notices</b> or other documents required to be served on the Company, and</p> <p>e) Full Address of Office of the Company in India which is to be deemed its <b>Principal Place of Business</b> in India.</p> <p>f) Particulars of Opening and Closing of a <b>place of business</b> in India on earlier occasion or occasions,</p>
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	<p>g) Declaration that none of the Directors or Authorized Representative in India has ever been convicted or debarred from formation of Companies and management in India or abroad, and</p> <p>h) <b>Form FC-1</b>, along with — (i) attested copy of <b>approval from RBI / Other Regulators</b> under various law Regulations, or (ii) a declaration from the Authorized Representative that no such approval is required.</p>
<b>Office where documents to be delivered</b>	To the Registrar having jurisdiction over New Delhi.
<p><b>Illustration 1:</b> Search &amp; 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.</p> <p>Answer: 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</p>	
<p><b>2. State the documents which are required to be filed with the ROC by Foreign Companies, initially when they establish a place of business in India, and later on periodically or on the happening of certain events. M 96 RTP, M 99, N 94, M 09, M 14</b></p> <p><b>3. DEJYAS Company 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. State the documents you are required to furnish on behalf of the Company, on the establishment of a place of business at Mumbai. M 12, RTP (M 19)</b></p>	

1. Foreign Companies shall, the \_\_\_\_\_ of business, deliver Documents to the within of establishment of place ROC for registration
  - a. 60 days
  - b. 30 days**
  - c. 15 days
  - d. 45 days
2. 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 indicates the 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.
3. 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:
- a. 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 continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.
- b. 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.
- c. Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 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.

- d. **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.**
4. 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 and Mr. 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.**

3. (i) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.
- (ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied (module)

Hint –

- (i) Registrar of new delhi
- (ii) 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.
4. 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: (module)
- (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.

Hint –

- (i) Yes
- (ii) Refer above

5. 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. (module)

Hint - Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013. Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to Registrar.

<b>Change in Particulars: 380(3)</b>	If any alteration is made or occurs in the documents delivered to ROC, the Foreign Company shall file <b>Form FC-2</b> to ROC, containing the particulars of the alteration, <b>within 30 days</b> of such alteration.
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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. (module) .(RTP May24)

1. Any alteration is made or occurs in the documents delivered to ROC, the Foreign Company shall file \_\_\_\_\_ to ROC, containing the particulars of the alteration, within 30 days of such alteration.

- a. Form FC-1
- b. Form FC-4
- c. **Form FC-2**
- d. Form FC-3

### Accounts, Audit, Annual Return, Other Provisions of Act

#### Accounts

#### and Audit [Sec. 381]

A Foreign Company shall, in every calendar year —

1. make out a Financial Statement of its **Indian business operations** as per **Schedule III** or as near thereto as possible for **each financial year**,
2. get the Financial Statement **audited** by a practicing CA **in India** or a Firm or LLP of practicing CAs, (Chapter X Audit and Auditors shall apply).
3. deliver a copy of the Financial Statement to the ROC, along with prescribed details —
  - a) **Documents** required to be **annexed to Financial Statement** as per Chapter IX Accounts of Companies (e.g. Board's Report, Auditors' Report, etc.)
  - b) Copies of latest **Consolidated Financial Statements of the Parent Foreign Company**, as submitted to the prescribed authority in the country of its incorporation under the prevailing law in that country,
  - c) Statement of **Related Party Transactions** showing specified particulars,
  - d) Statement of **Repatriation of Profits** showing specified particulars,
  - e) Statement of **Transfer of Funds** showing specified particulars,

**In Form FC-3**, showing a list of all Places of Business established by the Foreign Company in India as on the date of Balance Sheet.

#### Note:

1. Time Limit for filing is **6 months** from the close of the **financial year**. On application by the Company, the time limit is extendable by ROC for maximum **another 3 months**, for any special reason. **Exemption:** With respect to **Financial Statements**, the Central Government can exempt any Foreign Company or class of Foreign Companies, by notification, subject to specified exceptions and modifications.
2. 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)]

**Galileo Ltd is a Foreign Company in Germany and it established a place of business in Mumbai. Explain the provisions of the Companies Act, 2013 and Rules thereunder, relating to preparation and filing of Financial Statement, as also the documents to be attached alongwith the Financial Statements by the Foreign Company. M 16**



1. A Foreign Company shall, in \_\_\_\_\_ make out a Financial Statement of its Indian business operations as per Schedule III or as near thereto as possible for each financial year,
  - a. Every Financial year
  - b. Every calendar year**
  - c. every Half year
  - d. either (a) or (b)
  
2. A Foreign Company shall deliver a copy of financial statement to ROC along with \_\_\_\_\_ a list showing of all Places of Business established by the Foreign Company in India as on the date of Balance Sheet.
  - a. Form FC-1
  - b. Form FC-4
  - c. Form FC-2
  - d. Form FC-3**
  
3. Time Limit for filing all the documents with ROC by Foreign Company shall be \_\_\_\_\_ from the close of the financial year.
  - a. 4 months
  - b. 3 months
  - c. 6 months**
  - d. 9 months
  
4. A Copy \_\_\_\_\_ of statements shall be accompanies with Financial statements for filing with ROC.
  - a. Statement of Related Party Transactions showing specified particulars
  - b. Statement of Repatriation of Profits showing specified particulars
  - c. Statement of Transfer of Funds showing specified **particulars**
  - d. All of the above**
  
5. 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 and loss 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:
  - a. Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.
  - b. Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.
  - c. Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.
  - d. Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.**

**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 alongwith the financial statements by the foreign company. (module) (MTP Mar. 24)**

<b>Annual Return</b>	1. Every Foreign Company shall prepare and file Annual Return in Form No.FC-4, to ROC with fees.
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	<p>2. Annual Return shall contain the particulars as they stood on the close of the financial year.</p> <p>3. Time Limit is <b>60 days</b> from the last day of its financial year. [<b>Note:</b> Time Limit not extendable by ROC.]</p>
<p><b>Other Provisions of Act [Sec. 384]</b></p>	<p>Following provisions of the Act shall apply to Foreign Companies —</p> <ol style="list-style-type: none"> <li>1. <b>Sec.71</b> — Debentures</li> <li>2. <b>Sec.92</b> — Annual Return (<b>here file FC-4</b> within 60 days of last date of F.y) and Sec.135 — CSR, as per Rules specified therein,</li> <li>3. <b>Sec.128 — Books of Account:</b> Foreign Company shall keep at its principal place of business in India, the books of account referred u/s 128, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its <b>business in India</b>.</li> <li>4. <b>Chapter VI Registration of Charges Sec.77 to 87</b> shall apply to <b>charges on properties</b> which are created or acquired by any Foreign Company.</li> <li>5. <b>Chapter XIV Inquiry, Inspection &amp; Investigation</b> shall apply to the <b>Indian business</b> of a Foreign Co.</li> <li>6. <b>Chapter XX — Provisions relating to Winding up</b></li> </ol>
<p><b>What are the books of account to be maintained by a Foreign Company having established a place of business in India? Who can inspect such books of account? RTP, N 95</b></p>	

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| <ol style="list-style-type: none"> <li>1. Every Foreign Company shall prepare and file Annual Return in Form No.FC-4, to ROC fees, with within _____ — from the last day of its financial year             <ol style="list-style-type: none"> <li>a. 90 days</li> <li><b>b. 60 days</b></li> <li>c. 120 days</li> <li>d. 45 days</li> </ol> </li> <li>2. Time Limit of 6 months for filing all the documents with ROC by Foreign company _____ and Time limit 60 days for filing Annual return with .ROC _____             <ol style="list-style-type: none"> <li><b>a. can be extended and cannot be extended</b></li> <li>b. cannot be extended and can be extended</li> <li>c. cannot be extended and cannot be extended</li> <li>d. can be extended and can be extended</li> </ol> </li> </ol> | <ol style="list-style-type: none"> <li>b. cannot be extended and can be extended</li> <li>c. cannot be extended and cannot be extended</li> <li>d. can be extended and can be extended</li> </ol> <ol style="list-style-type: none"> <li>3. Time Limit of 6 months for filing all the documents with ROC by Foreign company _____ and Time limit 60 days for filing Annual return with .ROC _____             <ol style="list-style-type: none"> <li><b>a. can be extended and cannot be extended</b></li> <li>b. cannot be extended and can be extended</li> <li>c. cannot be extended and cannot be extended</li> <li>d. can be extended and can be extended</li> </ol> </li> </ol> |
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<b>DISPLAY OF NAME, ETC., OF FOREIGN COMPANY [SECTION 382]</b>	
<b>1. Particulars to be disclosed</b>	<b>a) Name</b> of the Company, <b>b) Country</b> in which it is incorporated, c) If the <b>liability</b> of its Members is limited, such a fact.
<b>2. Places of disclosure</b>	a) Every <b>Prospectus</b> inviting subscriptions in India for its Shares / Debentures, b) On the outside of every Office or Place where it carries on business in India, c) All Business Letters, Billheads, Letter Paper, Notices, and other Official Publications.
<b>3. Manner</b>	The above particulars shall be written in <b>legible letters in English language and local language</b> .

<b>Service of Documents, etc. on a Foreign Company [Sec.383]</b>	
<b>1. Service of</b>	<b>a) Process,</b> <b>b) Notice,</b> c) Other <b>Document</b> .
<b>2. Manner of Service</b>	<b>a) Addressed to any person whose Name and Address have been delivered to ROC u/s 380, and</b> b) left at, or sent by post to, the address which has been so delivered to ROC, or by electronic mode.

<b>Prospectus by a Company incorporated outside India</b>	
<p><b>Note: Sec.387 — 389 dealing with Prospectuses</b>, shall apply to Companies incorporated <b>outside India</b>, i.e. <b>whether or not</b> they have a established a place of business inside India.</p> <p>A Company incorporated or to be incorporated outside India (<b>i.e. existing or proposed Company</b>), whether the Company has or has not established, or when formed will or will not establish, a place of business in India, shall issue, circulate or distribute in India, a <b>Prospectus</b> offering Securities for subscription. The conditions relating to such Prospectus are —</p>	
<b>A. Contents of Prospectus [Sec.387]:</b>	The <b>signed and dated</b> Prospectus shall contain the following — <ol style="list-style-type: none"> <li><b>1. Instrument</b> constituting or defining the constitution of the Company,</li> <li><b>2. Enactments</b> or provisions by or under which the incorporation of the Company was effected,</li> <li><b>3. Address</b> in India where the said instrument, enactments, or provision, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be <b>inspected</b>,</li> <li><b>4. Date</b> on which and the <b>country</b> in which the Company was incorporated,</li> <li>5. Whether the Company has established a <b>place of business</b> in India and, if so, the address of its Principal Office in India,</li> <li>6. Matters specified in <b>Sec.26 Prospectus</b>,</li> </ol>

	<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Sec. 387 will <b>not</b> apply in case of — (a) Rights Issues to existing Members / Debenture holders, and (b) Issue of Securities which have the same character as existing <b>Listed</b> Securities.</li> <li>• <b>Points (1), (2), (3) above shall not apply in the case of a Prospectus issued more than 2 years after the date at which the Company is entitled to commence business.</b></li> <li>• Application Form for Securities (except in case of Forms issued to Underwriters) shall be issued <b>only</b> along with a Prospectus which complies with Chapter XXII.</li> <li>• Any condition requiring or binding an Applicant for Securities to waive compliance with the above disclosures, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the Prospectus, shall be <b>void</b>.</li> </ul>
<b>Expert's Consent [Sec.388]:</b>	<p>Where the Prospectus includes a statement purporting to be made by an Expert</p> <ol style="list-style-type: none"> <li>1. He should have given, and before delivery of the Prospectus for registration, has not withdrawn, his written consent to the issue of the Prospectus,</li> <li>2. There appears in the Prospectus, a statement that he has given and has not withdrawn his consent as aforesaid.</li> </ol> <p><b>Note:</b> A Statement shall be <b>deemed</b> 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.</p>
<b>C. Compliance with Sec.33 &amp; 40 [Sec.388]:</b>	<p>The Prospectus should have the effect of rendering all concerned persons, bound by all the provisions of Sec.33 and Sec.40 to the extent applicable. <b>[Note:</b> Sec.33 deals with "Issue of Application Forms for Securities" and Sec.40 deals with "Securities to be dealt in Stock Exchanges"]</p>
<b>D. Registration of Prospectus [Sec.389]:</b>	<ol style="list-style-type: none"> <li>1. Before issue, circulation or distribution, a copy of the Prospectus certified by the Chairman and 2 other Directors of the Company, should be delivered for registration to the ROC.</li> <li>2. The Certificate (as above) should state that the Prospectus has been <b>approved</b> by resolution of the <b>Managing Body</b>.</li> <li>3. The Prospectus should state <b>on its face</b> that a copy has been delivered to the ROC.</li> <li>4. On the copy of Prospectus, there should be an <b>attachment / endorsement</b> of — <ol style="list-style-type: none"> <li>a) Expert's Consent to the issue of the Prospectus required by Sec.388,</li> <li>b) Copy of Contracts for appointment of MD or Manager, and in case of a contract not reduced into writing, a Memorandum giving full particulars thereof,</li> <li>c) Copy of any other <b>material contracts</b>, not entered in the ordinary course of business, but entered within preceding 2 years,</li> <li>d) Copy of Underwriting Agreement, and</li> <li>e) Copy of Power of Attorney, if Prospectus is signed through duly authorized Agent of Directors.</li> </ol> </li> </ol>

**What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014?(5 Marks) (MTP April 24)**

**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. (module)**

**Hint – Abstract of A,B,C above and D in detail**

### Indian Depository Receipts [Sec.390 & Rules]

(IDR) means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

To issue IDR

- complies with the conditions mentioned under rule
- Comply Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and
- any directions issued by the Reserve Bank of India.

The Rules relating to offer, disclosure requirements and manner of transfer, sale etc., related to IDR are contained in Companies (Registration of Foreign Companies) Rules, 2014.

### Contravention and Consequences

<b>1. Punishment [Sec 392] :</b>	Contravention of Chapter XXII Provisions is punishable as under -	
	<b>Foreign Company</b>	a) Fine of Minimum ! 1 Lakh, Maximum Z 3 Lakhs. b) Additional Fine of Maximum ! 50,000 per day in case of continuing offence.
	<b>Every Officer of Foreign Company, who is in default</b>	a) Imprisonment upto 6 months, b) Fine of Minimum ! 25,000, Maximum Z 5 Lakhs, or c) Both
<b>2. Liability w.r.t Prospectus IDRs Sec.391 :</b>	<b>Liability</b>	<b>No Liability [as per Rules]</b>
	In addition to Sec.392, punishment under the following sections are also applicable in case of Prospectus issued by a Company	Person(s) responsible for issue of Prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision, if -

	<p>outside India u/s 389, and for issue of IDRs by a Foreign Company -</p> <p>a) Sec.34 - Criminal Liability for Misstatements in Prospectus,</p> <p>b) Sec.35 - Civil Liability for Misstatements in Prospectus,</p> <p>c) Sec.36 - Punishment for fraudulently inducing persons to invest money.</p>	<p>a) As regards any matter not disclosed, he proves that he had <b>no knowledge</b> thereof, or</p> <p>b) The contravention arose in respect of such matters which in the opinion of Central Government / SEBI were <b>not material</b>.</p>
<p><b>Note:</b> Subject to the provisions of Sec.376, the provisions of <b>Chapter )0(</b> shall apply mutatis mutandis for closure of the place of business of a Foreign Company in India as if it were a Company incorporated in India in case such Foreign Company has raised monies through Offer or Issue of Securities under this Chapter which have not been repaid or redeemed.</p>		
<p>3. <b>No suit by Company [Sec.393]:</b></p>	<p>The Company shall <b>not</b> be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any contract, dealing or transaction, until it has complied with the provisions of Chapter XXII.</p>	
<p>4. <b>Suit by Others valid [Sec.393]:</b></p>	<p>Non-Compliance of Chapter XXII by the Company 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. Hence, third parties can sue the Company.</p>	

### Practical Questions

1. (a) Definition of Foreign Cos: Robertson Ltd is a Company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the COA, 2013? N 15, RTP (M 18)  
 (b) As per provisions of the Companies Act, 2013, define the status of Hillways Ltd., a Company incorporated in London, which has a share transfer office at Mumbai? RTP (M 18)
2. 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 customer 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. N 19
3. Analyse 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 contract with them a 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 taken out at the Board Meetings held only in India. [J 21]
4. Definition of Foreign Cos: State whether the following Companies are "Foreign Companies". RTP, M 03, N 96, N 04, N 09, RTP (N 18)
  - a) A Company incorporated in US, having a Share Registration Office in Mumbai.
  - b) Indian Citizens forming a Company in Singapore, for the purposes of carrying on business there.
  - c) A Company incorporated in UK, having a Liaison Office in Chennai.
  - d) A Company incorporated in India but all the Shares are held by Foreigners.
5. Definition of Foreign Cos: Indian Citizens incorporated a Company in UK for the purpose of carrying on business there. Examine with reference to the relevant provisions of the Companies Act, 1956 whether it is a "Foreign Company". What would be your answer in case the UK Company was incorporated by a Company registered in India? N 08
6. Definition of Foreign Cos: In the light of the provisions of the Companies Act 2013, explain whether the following Companies can be considered as a 'Foreign Company'. RTP, N 96, M 03, N 04, N 09, N 18 ,RTP (N 18)

- i. A Company which has no place of business established in India, yet, is doing online business through telemarketing in India.
- ii. A Company which is incorporate Outside India employs agents in India but has no place of business in India.
- iii. A Company incorporated outside India having Shareholders who are all Indian Citizens.
7. ROC: ABC Ltd, a Foreign Company, has its principal place of business in Kolkata, West Bengal. State to which ROC should this Company deliver the documents under the Act. RTP, N 04
8. ROC: Qinghai Huading Industrial Company Ltd incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarin Chinese (Chinese local language). It is required inter alia of 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? M 18
9. Filing of Accounts: Joel Ltd was incorporated in London with a Paid Up Capital of 10 million pounds. Mr. Y an Indian Citizen holds 25% of the Paid Up Capital. X Ltd, a Company registered in India holds 30% of the Paid Up Capital of Joel Ltd. Joel Ltd has recently established a Share Transfer Office at New Delhi. The Company seeks your advice as to what formalities it should observe as a Foreign Company. State briefly the requirements relating to filing of accounts with the ROC by the Foreign Company. RTP, N 07
10. Audit and Accounts: 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 Company on the following matters:
- Whether the accounts of the Company pertaining to Indian business operations shall be audited? If yes, by whom?
  - What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?
  - What is the effect of the contracts entered by an Indian Company with PHSI in vase PHSI has not filed Financial Statements with the RoC?
  - In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies? [ J 21 ]
11. Service of Notice: X Inc. is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the Company did not obtain registration or make arrangement to file Return, the State VAT Officer have jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the Department, advise the VAT Officer on valid Service of Notice. N 14
12. Prospectus: Ashes Ltd is a Company incorporated outside India. 50% of its Preference Share Capital and 20% of its Equity Share Capital is held by Companies incorporated in India. It issued Prospectus inviting subscriptions in India for its Shares but did not state the country in which it is incorporated. Examine — RTP, N 00, N 08
- Is the Prospectus of the Company valid?



b) What if none of the Shares (Preference and Equity) were held by Companies Incorporated in India?

c) What other disclosures are required to be made by a Foreign Company?

13. Effect of Non-Compliance: LMN Ltd, a Foreign Company has not furnished its annual accounts with the ROC. It has entered into a contract with M/s KLM Co, and intends to sue KLM Co for damages. Can LMN Ltd succeed in its suit? Can KLM Co sue the Company? Explain.

14. Effect of Non-Compliance: 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, 2013A. State the Provision of Penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd, for its Failure to Deliver the Documents. N 18

### Hint Answer to Practical Questions

1. (a) **See Sec.2(42):** Electronic Mode / Online Business Activity in India, will make it a **Foreign Company**.  
(b) The status of Hiliways 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.
2. **Refer Para 14.1.1, Page 14.1 & Chapter 1A for Meaning of Foreign Company u/s 2(42).**
  - i. M/s Red Stone Ltd incorporated outside India and the Board decisions were taken at India. Thus it is a Foreign Company.
  - ii. M/s Blue Star Public Company Limited incorporated outside India and conducts its business operations through an agent in India. Thus it is a Foreign Company.
  - iii. M/s XEX Limited Liability Company registered outside India and conducts its business activities in Electronic Mode. Thus it is a Foreign Company.
3.
  - i. Yes. The Company registered in Moscow, has a place of business in India through electronic mode and is conducting business activity in India.
  - ii. No. A Company is incorporated outside India and employs agents in India but does not have a place of business in India.
  - iii. Yes. The Company has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India.
  - iv. No. 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.
4. **See Sec.2(42).** (a), and (c) are Foreign Companies. (d) is incorporated in India, and hence not a Foreign Company. Company (b) is a Foreign Company only if fulfils Sec.2(42) as to place of business or other business activity in India.
5. **See Sec.2(42).** Since the Company is formed by Indian Citizens for carrying on business **outside India**, it is **not** a Foreign Company. It becomes a Foreign Company, if it fulfils Sec.2(42) as to place of business or other business activity in India.
6.
  - i. Yes it is a foreign Company, since place of business in India is through electronic mode.

- ii. Yes it is a foreign Company, since it has place of business through its agents.
  - iii. Foreign Company only if fulfils Sec. 2(42) as to place of business or other business activity in India.
7. ROC, New Delhi.
8. **Rule 10** of the Companies (Registration of Foreign Companies) Rules, 2014, provides as under -
- 1) All the documents required to be filed with ROC by the Foreign Companies shall be in **English** language. If 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) If the **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.

**Note:** If 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 in this behalf u/s 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 Sec.6 of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.
  - 3) If the **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 ROC's Opinion, an adequate knowledge of the language of the original and of English.
9. **Issue 1:** Joel Ltd is a Company which has to comply with the provisions of Chapter XXII, since 55% of its Capital is held by Indian Citizen / Company.
- Issue 2: Refer Para 14.1.2** for obligations, **Issue 3: Refer 14.1.4** for Filing of Accounts, etc.
- 10.
- i. PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing CA in India /a Firm /LLP of practicing CA's.
  - ii. The due date for filing the audited financial statements with the Registrar of Companies (RoC) shall be 30th sep 2020.(extended date not more than 3 months i.e 31.12.2020)
  - iii. Non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI. But the company 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. Annual return in Form FC-4 along with prescribed fees, and shall file within a period of 60 days i.e. by 30th May 2020.
11. Notice shall be addressed to any person whose Name & Address have been delivered to ROC u/s 380, and left at, or sent by post to, the address which has been so delivered to ROC, or by electronic mode.
12. Prospectus to contain prescribed particulars as per Sec.387.

13. Contract is valid, KLM Co, can sue, but LMN Ltd cannot sue for damages, unless it has complied with Chapter XXII and furnished all prescribed documents to the ROC.

CA WALLAH

## Chapter XII

### THE GENERAL CLAUSES ACT, 1897

Introduction	
<b>Basics</b>	<ul style="list-style-type: none"> <li>The General Clauses Act, 1897 (Act) was enacted on 11th March, 1897</li> <li>Called as “<b>Law of all the Laws</b>” or “<b>Interpretation Law of India</b>”</li> </ul>
<b>Contents</b>	<ol style="list-style-type: none"> <li>‘definitions’ of certain terms and</li> <li><b>general principles of interpretation</b></li> </ol>
<b>Applicability</b>	<ul style="list-style-type: none"> <li>applicable to all Central Acts and Regulations</li> <li>The Act does not define any “territorial extent” clause</li> <li>The Central Acts to which this Act apply are: —               <ol style="list-style-type: none"> <li>Acts of the <b>Indian Parliament</b> (Central Act) along with the rules and regulations made under the Central Act;</li> <li>Acts of the <b>Dominion Legislature passed between the 15th August, 1947 and the 26th January, 1950;</b></li> <li>Acts passed <b>before the commencement of the Constitution</b> by the Governor-General in Council or the Governor-General acting in a legislative capacity.</li> </ol> </li> </ul>
<b>Object</b>	<p>The objects of the Act are several, namely:</p> <ol style="list-style-type: none"> <li>to <b>shorten the language of Central Acts;</b></li> <li>to <b>provide for uniformity of expression in Central Acts</b>, by giving definitions of a series of terms in common use;</li> <li>To state <b>rules for the construction and interpretation of Central Acts;</b></li> </ol>
<b>Note</b>	Section 2 of the General Clauses Act, 1897 has been repealed.

#### SOME BASIC UNDERSTANDING OF LEGISLATION

<b>“Preamble”:</b>	<ul style="list-style-type: none"> <li>Every Act has a preamble which expresses the scope, object and purpose of the Act.</li> <li>It is the main source for understanding the intention of lawmaker behind the Act.</li> <li>Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.</li> <li>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.</li> </ul> <p><b>Example :</b> Preamble of the Negotiable Instruments Act, 1881 states - “An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheque.”</p> <p><b>Example :</b> Preamble of the Companies Act, 2013 states – “An Act to consolidate and amend the law relating to companies.”</p>
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1. 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.
    - a. Definition
    - b. Preamble**
    - c. Affidavit
    - d. Document
- 
2. 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 explanation of all the sections of the entire Act.
    - d. Provides side notes often found at the side of a section. **(1 Mark) (MTP Oct. 23)**

<b>“Definitions”:</b>	<ul style="list-style-type: none"> <li>• Every Act contains a definition part for the purpose of that particular Act and that definition part is usually mentioned in Section 2 (or sometimes in Section 3 or other initial sections).</li> <li>• The object of the definition clause is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply.</li> <li>• These definitions contain explanation of what a word means in the respective Act. Sometimes, it may refer to definition in any other statute.</li> <li>• However, if there may be words which are not defined in a particular Act, then the meaning of such words may be taken from General Clauses Act, 1897.</li> </ul>	
<b>Exhaustive vs. Inclusive Definitions</b>	<b>Exhaustive Definitions</b>	<b>Inclusive Definitions</b>
	Some definitions use the word 'means' or 'means and includes' Such definitions are exhaustive definitions and exactly define the term.	Some definitions use the word 'include'. Such definitions do not define the word but are inclusive in nature.
	This definition is closed for interpretation	This definition is open for interpretation
	Example : Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company law.	Example 12: "Body Corporate" or "Corporation" includes a company incorporated outside India. [Section 2(11) of the Companies Act, 2013]
<b>Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.(4 Marks) (MTP Oct. 23)</b>		
<b>Shall and May</b>	<ul style="list-style-type: none"> <li>• The word 'shall' is used to raise a presumption of something which is <b>mandatory or imperative</b>.</li> <li>• The word 'may' is used to connote something which is not mandatory but is only <b>directory</b> or enabling.</li> </ul>	

	<ul style="list-style-type: none"> <li>While the word 'shall' is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demands. <b>Example</b> : Section 3 of the Companies Act, 2013 states that “A company may be formed for any lawful purpose by “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.</li> </ul>
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DEFINITIONS [SECTION 3]	
<b>“Act” [Section 3(2)]</b>	<ul style="list-style-type: none"> <li><b>‘Act’</b>, used with reference to an <b>offence or a civil wrong</b>, shall <b>include a series of acts</b>, and words which refer to acts done <b>extend also to illegal omissions</b>;</li> <li>An act required to be done cannot necessarily mean a positive act only and may <b>also include acts which one is precluded from doing</b> from decree.</li> <li>This definition <b>applies to civil wrongs as well as crimes</b>.</li> <li>'Act' includes illegal omissions as well but it <b>does not include an omission which is not illegal</b>.</li> <li><b>Example</b> - section 36 of the Indian Penal Code, the act by which A causes Z's death consists of a series of acts, namely, the blows given in beating him, plus a series of illegal omissions, namely, wrongfully neglecting or refusing to supply him with food at proper times.</li> <li><b>Note:</b> However, <b>every omission is not an illegal omission</b>. Failure of the municipality to discharge its liability under the provisions of the Ajmer-Merwara Municipalities Regulation 1925 will not ordinarily become an illegal omission as it does not entail penal consequences for the public official responsible for it. [Amalgamated Electricity Co. (Belgaum) Ltd., v. Municipal Committee — (SC) 1969]</li> </ul>
<b>“Affidavit” [Section 3(3)]</b>	<ul style="list-style-type: none"> <li><b>‘Affidavit’</b> shall <b>include</b> <ul style="list-style-type: none"> <li>➤ affirmation and</li> <li>➤ declaration</li> <li>➤ in the case of persons by law allowed to affirm or declare instead of swearing.</li> </ul> </li> <li>Generally ,Affidavit is a           <ul style="list-style-type: none"> <li>➤ written statement</li> <li>➤ confirmed by oath or affirmation</li> <li>➤ for use as evidence</li> <li>➤ in Court or before any authority.</li> </ul> </li> </ul>
<b>Define the term "Affidavit" under the General Clauses Act, 1897.(MAY 2019)</b>	
<b>“Central Act” [Section 3(7)]:</b>	<ul style="list-style-type: none"> <li><b>‘Central Act’</b> shall mean an Act of Parliament,</li> <li>and shall <b>include-</b></li> </ul>

	<p>(i) An Act of the <b>Dominion Legislature or of the Indian Legislature</b> passed <b>before the commencement</b> of the Constitution*, and</p> <p>(ii) An Act made before such commencement <b>by the Governor General in Council or the Governor General</b>, acting in a legislative capacity;</p> <p>Note - *The date of the commencement of the Constitution is 26th January, 1950.</p>
<p><b>“Central Government”</b> [Section 3(8)]:</p>	<p>‘Central Government’ shall-</p> <p>a) In relation to anything done <b>before the commencement of the Constitution, mean the Governor General in Council</b>, as the case may be; and <b>shall include,-</b></p> <p>(i) In relation to <b>functions</b> to the <b>Government of a Province, the Principal Government acting within the scope of the authority</b>; and</p> <p>(ii) In relation to the <b>administration</b> of a <b>Chief Commissioner’s Province, the Chief Commissioner acting within the scope</b> of the authority and</p> <p>b) In relation to anything done or to be done <b>after the commencement of the constitution of the Constitution, mean the President</b>; and shall include;-</p> <p>(i) In relation to <b>function</b> entrusted under clause (1) of the article of the Constitution, to the Government of a state, <b>the State Government acting within the scope</b> of the authority given to it under that clause;</p> <p>(ii) In relation to the <b>administration</b> of a <b>Part C State before</b> the commencement of the <b>Constitution (Seventh Amendment) Act, 1956*</b>, the <b>Chief Commissioner or the Lieutenant Governor or the Government of a neighboring State or other authority acting within the scope of the authority</b> given to him or it under article 239 or article 243 of the Constitution, as the case may be; and</p> <p>(iii) In relation to the administration of a <b>Union territory</b>, the <b>administrator</b> thereof acting within the scope of the authority given to him under article 239 of the Constitution;</p>
<p><b>“Commencement”</b> [Section 3(13)]:</p>	<ul style="list-style-type: none"> <li>• ‘Commencement’, used with reference to an Act or Regulation, shall mean <b>the day on which the Act or Regulation comes into force.</b></li> <li>• 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.</li> </ul>
<p><b>Elucidate the term “Commencement” as per the General Clauses Act, 1897 .(3 Marks) (MTP M 21)</b></p>	
<p><b>“Document”</b> [Section 3(18)]:</p>	<p>‘Document’ shall include any matter written, <b>expressed or described upon any substance</b> by means of <b>letters, figures or marks</b>, or by more than one of those means which is intended to be used, or which may be used, <b>for the purpose of recording that matter.</b></p> <ul style="list-style-type: none"> <li>• A book, file, painting, inscription and even computer files are all documents.</li> <li>• However, it does not include Indian currency notes.</li> </ul>

<p>State what do you understand by the term 'Document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as document? (MTP MAY 2018)</p> <p>(a) Power-of-attorney.</p> <p>(b) Cheque</p> <p>Hint –</p> <p>(a) Yes, power-of-attorney is a document.</p> <p>(b) Yes, cheque upon a banker is a document.</p>	
<p><b>"Enactment"</b> [Section 2(19)]:</p>	<p>'Enactment' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include <b>any provision contained in any Act or in any such Regulation</b> as aforesaid.</p> <ul style="list-style-type: none"> <li>• Normally, the Act is passed by the Legislature itself, but the power to enact rules and regulation are normally delegated to other persons. According to definition given in Section 3(19), whatever is enacted by the delegate of legislature is also enactment.</li> <li>• Since 'enactment' is defined to include not only the Act itself, but also any provision contained in the Act, Section 6 (Effect of repeal) would apply to a case where not only the entire Act is repealed, but also any provision of an Act is repealed. [State of Punjab v. Sukh Deo Sarup Gupta — (SC) 1970]</li> <li>• It has been held that an "enactment" would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.</li> </ul>
<p><b>"Financial Year"</b> [Section 3(21)]:</p>	<p>'Financial year' shall mean the year commencing on the first day of April.</p> <ul style="list-style-type: none"> <li>• <b>Note:</b> Section 3(66) separately defines a year which means a calendar year starting from January to December.</li> </ul> <p><b>Difference between Financial Year and Calendar Year:</b> Financial year starts from first day of April but Calendar Year starts from first day of January</p>
<p>1. What is "Financial Year" under the General Clauses Act, 1897? (module)</p> <p>2. Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.(RTP MAY 2021) (4 Marks) (MTP Oct. 23)</p>	
<p><b>"Good Faith"</b> [Section 3(22)]:</p>	<ul style="list-style-type: none"> <li>• A thing shall be deemed to be done in "good faith" <b>where it is in fact done honestly, whether it is done negligently or not;</b></li> <li>• The question of good faith under the General Clauses Act, 1897 is <b>one of fact.</b></li> <li>• It is to determine with reference to the facts and circumstances of each case.</li> <li>• Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. For eg: An authority is not acting honestly where it had a suspicion that there was something wrong and did not make further enquiries</li> </ul>



	<ul style="list-style-type: none"> <li>• In <i>Maung Aung Pu Vs. Maung Si Maung</i>, it was pointed out that the expression “good faith” is not defined in the Indian Contract Act, 1872 and the <b>definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act.</b></li> <li>• 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 contract Act 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. <b>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.</b></li> </ul>
<p><b>1. What do you understand by the term ‘Good Faith’. Explain as per the provisions of the General Clauses Act, 1897.(MTP MAY 2019)(MTP NOV 2018)</b></p> <p><b>2. 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.(NOV 2019)</b></p> <p><b>Hint -</b> 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.</p> <p><b>3. Mrs. K went to a Jewellery shop to purchase diamond ornaments. The owners of jewellery shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?</b></p> <p><b>Hint -</b> 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.</p> <p><b>4. "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.(3 Marks) (MTP Sep. 23)</b></p>	
<p><b>“Government” [Section 3(23)]:</b></p>	<p><b>‘Government’ or ‘the Government’ shall include both the Central Government and any State Government.</b></p> <ul style="list-style-type: none"> <li>• Government generally connotes three wings: the Legislature, the Executive and the Judiciary; but in a narrow sense it is used to connote the Executive only. Meaning to be assigned to that expression, therefore, depends on the context in which it is used.</li> </ul>
<p><b>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.</b></p> <p><b>Hint – Govt includes both central and state((MTP Sep. 23)</b></p>	

<p><b>“Government Securities” [Section 3(24)]:</b></p>	<p>‘Government securities’ shall <b>mean securities of the Central Government or of any State Government,</b></p>														
<p><b>1) “Immovable Property” [Section 3(26)]:</b></p>	<p>‘Immovable property’ shall <b>include —</b></p> <ol style="list-style-type: none"> <li>1. land,</li> <li>2. benefits to arise out of land and</li> <li>3. things attached to the earth, or permanently fastened to anything attached to the earth.</li> </ol> <ul style="list-style-type: none"> <li>• Two tests are necessary to determine when things attached or annexed to the earth become immovable property under the Act: (1) the degree or mode of annexation and (2) the object of annexation and of these two, the latter, which is more important, depends upon the circumstances of each case. [D.H. Subhiah v. Govindrao — (Nagpur) 1953]</li> <li>• ‘Immovable property’ is also defined in the Transfer of Property Act and the Registration Act. But in both Acts, the definitions are not exhaustive. They only specify what is included or not included therein. <b>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</b> to the expression given in that enactment.</li> </ul> <table border="1" data-bbox="432 1050 1433 1953"> <thead> <tr> <th data-bbox="432 1050 651 1099">Items</th> <th data-bbox="651 1050 1433 1099">Immovable Property or Not?</th> </tr> </thead> <tbody> <tr> <td data-bbox="432 1099 651 1196"><b>Trees</b></td> <td data-bbox="651 1099 1433 1196">Held as Immovable property because they are attached to or rooted in the earth.</td> </tr> <tr> <td data-bbox="432 1196 651 1375"><b>Timber</b></td> <td data-bbox="651 1196 1433 1375">A tree after it is cut down i.e. its trunk etc. can be used as timber. Trees that have been felled or cut down are no longer things attached to the earth and, therefore, would not be within the meaning of immovable property.</td> </tr> <tr> <td data-bbox="432 1375 651 1592"><b>Forest Produce</b></td> <td data-bbox="651 1375 1433 1592">An agreement to convey forest produce like tendu leaves, timber bamboos etc. the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all <b>included</b> in the term immovable property.</td> </tr> <tr> <td data-bbox="432 1592 651 1727"><b>Right to Catch and Carry Away Fish</b></td> <td data-bbox="651 1592 1433 1727">A sale of right to catch and carry away fish, is a profit or benefit arising out of land, and so has to be regarded as immovable property</td> </tr> <tr> <td data-bbox="432 1727 651 1861"><b>Right of Way vs. Right to Drain</b></td> <td data-bbox="651 1727 1433 1861">Right of way to access from one place to another may come within the definition of Immovable property whereas the right to drain of water is not immovable property.</td> </tr> <tr> <td data-bbox="432 1861 651 1953"><b>Machinery Fixed to Soil</b></td> <td data-bbox="651 1861 1433 1953">Any machinery fixed to the soil can be held as immovable property according to the General Clauses Act, 1897.</td> </tr> </tbody> </table>	Items	Immovable Property or Not?	<b>Trees</b>	Held as Immovable property because they are attached to or rooted in the earth.	<b>Timber</b>	A tree after it is cut down i.e. its trunk etc. can be used as timber. Trees that have been felled or cut down are no longer things attached to the earth and, therefore, would not be within the meaning of immovable property.	<b>Forest Produce</b>	An agreement to convey forest produce like tendu leaves, timber bamboos etc. the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all <b>included</b> in the term immovable property.	<b>Right to Catch and Carry Away Fish</b>	A sale of right to catch and carry away fish, is a profit or benefit arising out of land, and so has to be regarded as immovable property	<b>Right of Way vs. Right to Drain</b>	Right of way to access from one place to another may come within the definition of Immovable property whereas the right to drain of water is not immovable property.	<b>Machinery Fixed to Soil</b>	Any machinery fixed to the soil can be held as immovable property according to the General Clauses Act, 1897.
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1. Mr. Z passed away at the age of 75 leaving behind some properties including both movable and immovable to be distributed between his two sons A & B, as per his registered will. According to the provisions of his duly registered will, Mr. Z specified that all immovable properties should go to A, while all the movable properties should go to B. Both the brothers divided the properties as per the will except for mentioned properties, because they could not establish which property should go to whom. Kindly help them by identifying the property which should go to B out of the followings, as per the provisions of the General Clauses Act, 1897 : **(Nov 23)**
  - a. Standing crop in the fields
  - b. Tubewell in the agricultural land
  - c. **Cut crops, ready to sell**
  - d. Sandalwood tree
2. Which of the following is not an Immovable Property? (module) **(MTP M 21)**
  - a. Land
  - b. Building
  - c. **Timber**
  - d. Machinery permanently attached to the land
3. What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897? (module) **(2 Marks) (MTP Oct. 22)**
  - (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)

1. **What is "Immovable Property" under the General Clauses Act, 1897? (module)**
2. **X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to V. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897. (module) (MTP MAY 2019)**

**Hint** - 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.

**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. (Mar. 22)(2 Marks)**

**Hint** - The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct

**"Imprisonment"**  
**[Section 3(27)]:**

'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860).

- By virtue of Section 53 of the Indian Penal Code, imprisonment can be of two descriptions, namely, rigorous, that is with hard labour and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.

<p><b>“Indian law”</b> [Section 3(29)]</p>	<p>‘Indian law’ shall mean any <b>Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof</b> or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;</p>
<p><b>“Month”</b> [Section 3(35)]:</p>	<p>‘Month’ shall mean a month reckoned according to the British calendar.</p> <ul style="list-style-type: none"> <li>• <b>Note 1:</b> This definition does not apply to contracts, nor to cases where the context shows a different meaning.</li> <li>• <b>Note 2:</b> It may be noted that the word 'month' occurring in Section 271(1)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of 30 days and not a month as defined in the General Clauses Act.</li> </ul>
<p><b>“Movable Property”</b> [Section 3(36)]:</p>	<p>Movable property' shall mean property of every description, <b>except immovable property.</b></p> <ul style="list-style-type: none"> <li>• Any property which is not immovable property is movable property.</li> <li>• Debts, share and electricity are moveable property.</li> </ul>
<p><b>“Oath”</b> [Section 3(37)]:</p>	<p>‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.</p>
<p><b>“Offence”</b> [Section 3(38)]:</p>	<p>‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.</p> <p>Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.</p>
<p><b>“Official Gazette”</b> [Section 3(39)]:</p>	<p>‘Official Gazette’ or ‘Gazette’ shall mean the Gazette of India or the Official Gazette of a State.</p> <ul style="list-style-type: none"> <li>• The Gazette of India is a public journal and an authorised legal document of the Government of India, published by the Department of Publication, Ministry of Housing and Urban Affairs.</li> <li>• As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions.</li> <li>• The gazette is printed by the Government of India Press.</li> </ul>
<p><b>“Person”</b> [Section 3(42)]:</p>	<p>2) “Person” shall include:</p> <ol style="list-style-type: none"> <li>(i) any company, or</li> <li>(ii) association, or</li> <li>(iii) body of individuals, whether incorporated or not</li> </ol>
<p><b>What is the meaning of the following as per provisions of the General Clauses Act, 1897?</b></p> <p><b>(i) Movable Property</b></p> <p><b>(ii) Person (April 22) (3 Marks)</b></p>	

<b>“Year” [Section 3(66)]:</b>	‘Year’ shall mean a year reckoned according to the British calendar.
<b>Some Other Definitions</b>	<ol style="list-style-type: none"> <li>1) <b>“Registered” [Section 3(49)]:</b> ‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.</li> <li>2) <b>“Rule” [Section 3(51)]:</b> ‘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;</li> <li>3) <b>“Schedule” [Section 3(52)]:</b> ‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs;</li> <li>4) <b>“Section” [Section 3(54)]:</b> ‘Section’ shall mean a section of the Act or Regulation in which the word occurs;</li> <li>5) <b>“Sub-section” [Section 3(61)]:</b> ‘Sub-section’ shall mean a sub-section of the section in which the word occurs;</li> <li>6) <b>“Swear” [Section 3(62)]:</b> “Swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. <b>Note:</b> The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act.</li> <li>7) <b>“Writing” [Section 3(65)]:</b> Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a 2visible forms.</li> </ol>

### GENERAL RULES OF CONSTRUCTION:

<b>“Coming into operation of enactment” [Section 5]</b>	<b>When does a Central Act Come into Operation?</b> <table border="1" data-bbox="485 1361 1398 1890"> <tr> <td data-bbox="485 1361 940 1621"> <b>1. When there is no day specified in the published Act in Official Gazette</b> </td> <td data-bbox="940 1361 1398 1621">           The day on which it receives <b>the assent of the President of India*</b>. (*For Acts made before commencement of Constitution of India — <b>On</b> the day of assent of the Governor-General).         </td> </tr> <tr> <td data-bbox="485 1621 940 1890"> <b>2. Where there is any particular day specified in the published Central Act or Regulation in Official Gazette</b> </td> <td data-bbox="940 1621 1398 1890">           Immediately on the expiration of the day preceding its commencement (i.e. effectively on the day mentioned in the published Act in Official Gazette).         </td> </tr> </table> <p data-bbox="485 1944 1155 1980"><b>When do the Rules/regulations Come into Operation?</b></p> <ul data-bbox="485 1998 1447 2031" style="list-style-type: none"> <li>• The effective date of Rules would be as <b>mentioned</b> but if nothing is</li> </ul>		<b>1. When there is no day specified in the published Act in Official Gazette</b>	The day on which it receives <b>the assent of the President of India*</b> . (*For Acts made before commencement of Constitution of India — <b>On</b> the day of assent of the Governor-General).	<b>2. Where there is any particular day specified in the published Central Act or Regulation in Official Gazette</b>	Immediately on the expiration of the day preceding its commencement (i.e. effectively on the day mentioned in the published Act in Official Gazette).
<b>1. When there is no day specified in the published Act in Official Gazette</b>	The day on which it receives <b>the assent of the President of India*</b> . (*For Acts made before commencement of Constitution of India — <b>On</b> the day of assent of the Governor-General).					
<b>2. Where there is any particular day specified in the published Central Act or Regulation in Official Gazette</b>	Immediately on the expiration of the day preceding its commencement (i.e. effectively on the day mentioned in the published Act in Official Gazette).					

	<p>mentioned then <b>when the Rules are published vide Gazette notification</b> and not from the date when the Rules were under preparation.</p> <p><b>Presumption Against Retrospectivity</b></p> <ul style="list-style-type: none"> <li>All laws which affect substantive vested rights generally operate prospectively and there is a presumption against their retrospectivity till there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended.</li> </ul>
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| <p>1. 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: (module)</p> <p><b>a. It receives the assent of the President</b></p> | <p>b. It receives the assent of the Governor General</p> <p>c. It receives assent of both the houses of Parliament</p> <p>d. It receives assent of the Prime Minister</p> |
|---|---|

<p><b>1. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also, (module) (RTP NOV 2020)</b></p> <p><b>1) An Act of Parliament which has not specifically mentioned a particular date.</b></p> <p><b>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.</b></p> <p><b>Hint –</b></p> <p>(1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.</p> <p>(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.</p>	
<p><b>2. 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 MAY 2018)</b></p>	

<p><b>“Effect of Repeal”</b> <b>[Section 6]:</b></p>	<ul style="list-style-type: none"> <li>Whenever an Act is repealed, it must be considered as <b>if it had never existed</b>. Object of repeal is to obliterate the Act from statutory books, <b>except for certain purposes as provided under Section 6 of the Act.</b></li> <li>It is important to note the <b>difference between 'repeal' of a provision and 'deletion' of a provision</b>. 'Repeal' ordinarily brings about <b>complete obliteration of the provision as if it never existed</b>, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision</li> </ul>
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	<p>while <b>'deletion' ordinarily takes effect from the date of legislature affecting the said deletion</b>, never to effect total effecting or wiping out of the provision as if it never existed.</p> <ul style="list-style-type: none"> <li>• Since the definition of 'enactment' under Section 3(19) includes not only any Act, but also a provision contained <b>therein_ Section 6 would apply to a case where not only the entire Act is repealed, but also where any provision of an Act is repealed.</b></li> <li>• However. er. <b>a rule made under an Act is not a Central Act or a Regulation.</b> Therefore, <b>if a rule is repealed by another rule, Section 6 of the General Clauses Act will not be attracted</b> and hence neither the prosecution could be continued nor could punishment be imposed in absence of any saving clause.</li> </ul> <p>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, <b>the repeal shall not:</b></p> <ol style="list-style-type: none"> <li><b>1 Revive anything not enforced</b> or prevailed during the period at which repeal is effected or;</li> <li><b>2 Affect any right</b>, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or</li> <li><b>3 Affect any penalty</b>, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or</li> <li><b>4 Affect any inquiry, litigation or remedy</b> with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.</li> </ol>
<p><b>1. 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897. (module) (MTP NOV 2019)</b></p> <p><b>2. Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.(MAY 2018)</b></p> <p><b>3. "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, 1897.4 Marks (May 23)</b></p>	
<p><b>"Repeal of Act making textual amendment in Act or Regulation" [Section 6A]-</b></p>	<p>unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.</p>
<p><b>"Revival of repealed enactments" [Section 7]-</b></p>	<p>to revive a repealed statute, it is necessary to state an intention/Purpose to do so.</p>
<p><b>"Construction of references to repealed enactments" [Section 8</b></p>	<p>Where this Act or Central Act or Regulation made after the commencement of this Act, <b>repeals and re-enacts</b>, with or without modification, any provision of a former enactment, then <b>references in any other enactment</b> or in any</p>

	<p>instrument to the provision so repealed shall, unless a different intention appears, <b>be construed as references to the provision so re-enacted.</b></p> <p><b>Example:</b> In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.</p>
<p><b>“Commencement and termination of time”</b> <b>[Section 9]</b></p>	<ul style="list-style-type: none"> <li>• <b>excluding</b> the first in a series of days or any other period of time to use the word <b>“from”</b> and</li> <li>• for the purpose of <b>including</b> the last in a series of days or any other period of time, to use the word <b>“to”</b>.</li> </ul> <p><b>Example :</b> A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2022. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2022 to 30/10/2022. In this series of 30 days, 30/09/2022 will be excluded and last 30th day i.e. 30/10/2022 will be included.</p>
<p><b>Komal Ltd. declares a dividend for its shareholders in its AGM held on 27<sup>th</sup> September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice: (module) (MTP MAY 2020)</b></p> <p><b>(i) The dates during which Komal Ltd. is required to pay the dividend?</b></p> <p><b>(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?</b></p> <p>Hint -</p> <p><b>(i) Payment of dividend:</b> In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).</p> <p><b>(ii) Transfer of unpaid or unclaimed dividend:</b> As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).</p>	
<p><b>“Computation of time”</b> <b>[Section 10]:</b></p>	<ul style="list-style-type: none"> <li>• Where any act or proceeding</li> <li>• is <b>directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period</b></li> </ul>



	<ul style="list-style-type: none"> <li>• then, if the Court or office is closed on that day or last day of the prescribed period,</li> <li>• the act or proceeding shall be considered as done or taken in due time</li> <li>• if it is done or taken on the next day afterwards on which the Court or office is open.</li> </ul> <p><b>Note: Nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.</b></p>
<p>1. Kiran and Naman 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 29.04.2023, 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 Sep. 23)</p> <p><b>Ans –</b> When court opens</p> <p>2. Shree was supposed to submit an appeal to the High Court of Delhi on 8<sup>th</sup> 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.(3 Marks) (MTP Oct. 23)</p> <p><b>Hint –</b> When court reopens</p>	
<p><b>“Measurement of Distances” [Section 11]:</b></p>	<p>unless a different intention appears, be measured in a straight line on a horizontal plane.</p>
<p>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? (2 + 2 = 4 Marks)(NOV 2020)</p> <p><b>Hint -</b> in a straight line on a horizontal plane.</p>	
<p><b>“Duty to be taken pro rata in enactments” [Section 12]:</b></p>	<p>Where 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.</p> <p>Pro rata is a Latin term used to describe a proportionate</p>
<p><b>“Gender and number” [Section 13]:</b></p>	<ol style="list-style-type: none"> <li>1. words importing the masculine gender shall be taken to include females; and</li> <li>2. words in the singular shall include the plural, and vice versa.</li> </ol> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• 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 the General Clauses Act do not apply. Therefore, the word 'bullocks' cannot be interpreted to include 'cows'.</li> <li>• The pronoun 'he' and its derivatives may be construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in Section 125 (1)(d) of the Code of Criminal Procedure, 1973 has been</li> </ul>

	<p>construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.</p> <ul style="list-style-type: none"> <li>• However, it may be noted that the general rule in Section 13 has to be applied with circumspection for interpreting laws dealing with matter of succession. Thus, the words 'male descendants' occurring in Sections 7 and 8 of the Chota Nagpur Tenancy Act, 1908 were not interpreted to include female descendants</li> <li>• However, it may be noted that the <b>context may rule out the application of Section 13 in certain cases.</b> For example, to construe 'previous year' in Section 2(11) of the Income-tax Act to include previous years would be to nullify the very definition of 'previous year' enacted therein.</li> </ul>
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1. In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken: (1 Mark) (MTP Sep. 23)

- a. To exclude females
- b. To exclude girl child
- c. **To include females**
- d. To exclude boy child

1. **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? (module) (MTP NOV 2020)**

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

2. **Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.4 M (Nov 23)**

**Hint -**

3. **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)

Hint – Masculine includes feminine . She is bound for punishment

### POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19]

<p>“Power conferred to be exercisable from time to time” [Section 14]:</p>	<p>Where, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.</p>
<p>“Power to appoint to include power to appoint ex-officio” [Section 15]:</p>	<p>Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, any such appointment, may be made either by name or by virtue of office.</p> <ul style="list-style-type: none"> <li>Ex-officio is a Latin word which means by virtue of one’s position or office.</li> </ul>
<p>“Power to appoint to include power to suspend or dismiss” [Section 16]:</p>	<p>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.</p> <p><b>Examples –</b></p> <ol style="list-style-type: none"> <li>Order 40, Rule 1(a) of CPC, 1908, which authorises a court to appoint a receiver, has been construed to embrace power of removing a receiver.</li> <li>Article 229(1) of the Constitution which empowers the Chief Justice to make appointment of officers and servants of a High Court has been interpreted to include a power to suspend or dismiss.</li> </ol> <p>Note - However, power to suspend or dismiss <b>does not necessarily imply a power to make rules for dismissal.</b></p>
<p><b>Examine the validity of the following statements with reference to the General Clauses Act, 1897:</b></p> <p><b>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 authorized Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? (April 22)(4 Marks)</b></p>	
<p>“Substitution of functionaries” [Section 17]:</p>	<p>it shall be sufficient to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.</p>
<p>“Successors” [Section 18]:</p>	<p>it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.</p>

<p><b>“Official Chiefs and subordinates” [Section 19]:</b></p>	<p>A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.</p> <p><b>Example :</b> in case under the Preventive Detention Act, where there is a change in the Advisory Board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.</p>
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<b>PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS [SECTION 20 TO SECTION 24]</b>	
<p><b>“Construction of orders, etc., issued under enactments” [Section 20]:</b></p>	<p>Where by any legislation or regulation, <b>a power to issue any notification, order, scheme, rule, form, or by-law is conferred</b>, then <b>expression used</b> in the notification, order, scheme, rule, form or bye-law, shall have the same respective meaning as in the Act or regulation conferring power.</p>
<p><b>“Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws” [Section 21]:</b></p>	<p>Where by any legislations or regulations <b>a power to issue</b> notifications, orders, rules or bye-laws <b>is conferred</b>, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), <b>to add, to amend, vary or rescind</b> any notifications, orders, rules or bye laws so issued.</p>
<p><b>“Making of rules or bye-laws and issuing of orders between passing and commencement of enactment” [Section 22]:</b></p>	<p>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 Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred —</p> <ul style="list-style-type: none"> <li>○ to make rules or bye-laws,</li> <li>○ to issue orders with respect to the application of the Act or Regulation or</li> <li>○ with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, 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,</li> </ul> <p><b>then that power may be exercised at any time after the 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.</b></p> <ul style="list-style-type: none"> <li>• Section 22 is an enabling provision, and facilitates the making of rules, bye-laws and orders at any time after passing of the Act or Regulation but the rules will not take effect until the commencement of such Act or Regulation.</li> </ul>
<p><b>“Provisions applicable to making of rules or</b></p>	<p>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</p>

<p><b>bye-laws after previous publications” [Section 23]:</b></p>	<p>made after previous publication, then the following provisions shall apply, namely:</p> <ol style="list-style-type: none"> <li>1. The authority having power to make the rules or bye-laws shall, before making them, <b>publish a draft of the proposed rules or bye-laws</b> for the information of persons likely to be affected thereby;</li> <li>2. The publication shall be made <b>in such manner as that authority deems to be sufficient</b>, or, if the condition with respect to previous publication so requires, <b>in such manner as the Government concerned prescribes</b>;</li> <li>3. There shall be published with the <b>draft a notice specifying a date on or after which the draft will be taken into consideration</b>;</li> <li>4. 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 <b>shall consider any objection or suggestion which may be received</b> 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; and</li> <li>5. The <b>publication in the Official Gazette of a rule or bye-law</b> 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-law has been duly made.</li> </ol> <ul style="list-style-type: none"> <li>• Section 23(5) 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 and <b>any irregularities in the publication of the draft cannot therefore be questioned</b>.</li> <li>• <b>Note:</b> It is also open to the authority publishing the draft and entitled to make the rules to <b>make suitable changes in the draft before finally publishing them</b>.</li> </ul>
<p><b>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.(NOV 2018)</b></p>	
<p><b>“Continuation of orders etc., issued under enactments repealed and reenacted” [Section 24]:</b></p>	<ul style="list-style-type: none"> <li>• Where any Central Act is repealed and re-enacted</li> <li>• any appointment , notification, order, scheme, rule, form or bye-law,</li> <li>• made or issued under the repealed Act,</li> <li>• continue in force, and be deemed to have been made or issued</li> <li>• under the notification, order, scheme, rule, form or bye-law,</li> <li>• made or issued under the provisions so re-enacted</li> </ul> <p>The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.</p>

<b>MISCELLANEOUS [SECTION 25 TO SECTION 30]</b>	
<b>“Recovery of fines” [Section 25]:</b>	Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.
<b>“Provision as to offence punishable under two or more enactments” [Section 26]:</b>	<p>Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be <b>prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.</b></p> <ul style="list-style-type: none"> <li>• <b>there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence.</b></li> <li>• When there are two alternative charges in the same trial, the fact that the accused is acquitted of one of the charges will not bar his conviction on the other.</li> <li>• <b>Provisions of Section 26 and Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution are the same, i.e. the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.</b></li> </ul>

1. 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: **(module)**
  - a. The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
  - b. 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 both the 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 for the same offence.**
2. As per the provisions 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: (Mar.22)(1 Mark)
  - 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) Under the cumulative effect of both the enactments
3. A company enter into process of reducing capital. Mr. Shah is concerned officer designated for preparing the list of creditor to

records their reservation and reach to a settlement under section 66 of the Companies Act, 2013. Mr. Shah while preparing such list deliberately conceal the name of Ms. Ramya who is one of the company’s creditor and object to the reduction, whereas make misstatement in context of some other creditors’ claims. The offence committed by Mr. Shah is punishable under; (i) Under section 447 of the Companies Act, 2013 and (ii) Also under sections 417 read with 415 of Indian Penal Code 1860 (as dishonest concealment is involved). You are required to select the most appropriate option out of given below in context of offence committed by Mr. Shah:

a. Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code 1860, but shall

be punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.

b. Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code, 1860, but shall be punished under the Companies Act, 2013 or the Indian Penal Code, 1860 where maximum punishment is lower.

c. **Mr. Shah shall be liable to be prosecuted and punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.**

d. Mr. Shah shall be liable to be prosecuted and punished under both of the Companies Act, 2013 and the Indian Penal Code, 1860. **(RTP Nov 23)**

1. **Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.(RTP NOV 2018)**

**Hint** - Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

2. **"No person 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, 1897.3 Marks (May 23)**

**“Meaning of Service by post” [Section 27]:**

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.**

Addressee himself or anyone at the given address (tenant etc.) refuses to accept a letter sent to him by registered post.

Due service is presumed and the addressee is presumed with the knowledge of the content of the letter

When the notice is returned with postal endorsements 'not available in house', 'house locked' and 'shop closed'.

Due service is presumed. [State of M.P. v. Heerala (SC) —1996]

	<p>A notice required under statutory rules to be sent by 'registered post acknowledgment due' is instead sent by 'registered post' only.</p>	<p>Due service cannot be presumed. [United Commercial Bank v. Bhim SaM Makhija, (Del) —1994]</p>	
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- 1. What is the meaning of service by post as per provisions of the General Clauses Act, 1897? (module)**
- 2. 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. (module) (RTP NOV 2019) (RTP MAY 2019)**

**Hint** - 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 acknowledgment due', then, if notice was sent by 'registered post' only it **will not be the compliance of said rules.**

- 3. Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas. (RTP MAY 2020)**

**Hint** - The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to 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. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

- 4. 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 NOV 2018)**

**Hint** - Thus, 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. Hence, in the given situation, a notice was rightfully served to Mr. Wise.

- 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 MAY 2019)**

**Hint** - 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.



<b>“Saving for previous enactments, rules and bye laws” [Section 29]:</b>	The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.
<b>“Application of Act to Ordinances” [Section 30]:</b>	In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word ‘Act’ in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under Article 123 of the Constitution.

## Chapter XIII

### INTERPRETATION OF STATUES

Meaning of certain words	
'Statute'	<ul style="list-style-type: none"> <li>will of the legislature in writing</li> </ul>
'Instrument'	<ul style="list-style-type: none"> <li>means a <b>formal legal document</b> which creates or confirms a <b>right or liability or records a fact</b></li> <li>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 <b>created, transferred, extended, extinguished or recorded.</b></li> <li>It is a formal writing of any kind, such as <b>an agreement, deed, charter or record</b>, drawn up and executed in a technical form</li> </ul>
'Deed'	<ul style="list-style-type: none"> <li><b>instrument</b> in writing (or other legible representation or words on parchment or paper) <b>purporting to effect some legal disposition.</b></li> <li>Simply stated deeds are instruments though all instruments may not be deeds.</li> </ul>
'Interpretation'	<ul style="list-style-type: none"> <li>the process by which the <b>real meaning of an Act</b> (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) <b>is ascertained.</b></li> <li>It is the <b>art of finding out the true sense of words</b> in which their author intended to convey the subject matter.</li> </ul>
'Construction'	<p><b>Construction involves drawing conclusions beyond the actual expressions used in the text.</b> 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.</p>
Difference between Interpretation and Construction:	<ol style="list-style-type: none"> <li>where the Court adheres to the <b>plain meaning</b> of the language used by the legislature, it would be <b>'interpretation'</b> of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation <b>to understand intent of legislature</b> . Here, the court would be resorting to <b>'construction'</b>.</li> <li>Conclusions drawn by <b>Interpretation are within the letter of law</b> but by <b>construction are within the spirit</b> though not necessarily within the letter of the law.</li> </ol>

#### Need for Interpretation (AUDI)

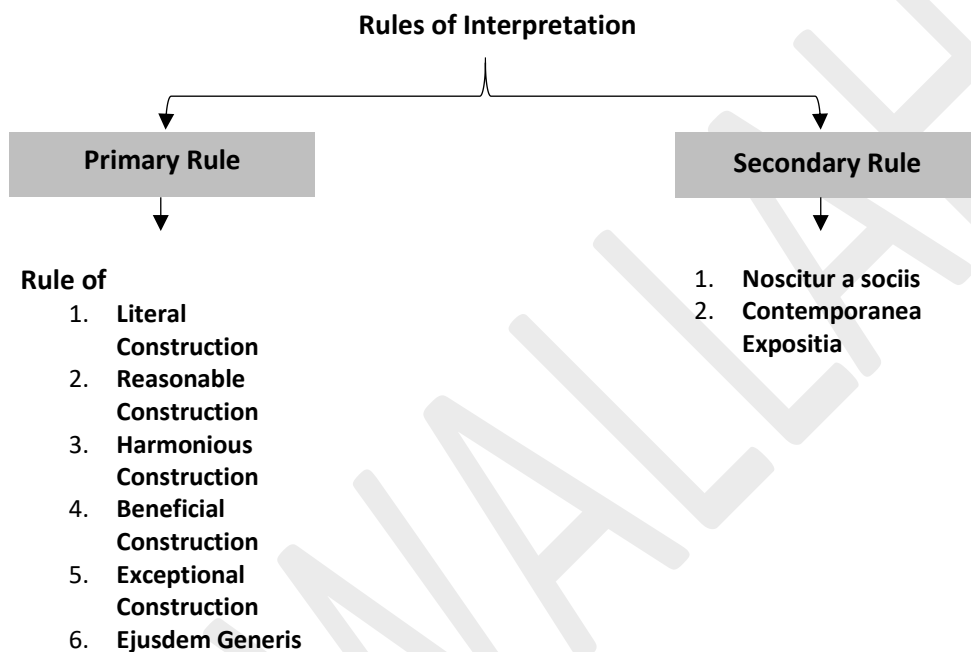
- To remove **ambiguities**: The courts have to resort to interpretation to remove ambiguities in the language.

- **To understand intent of the legislature:** A statute is made by legislator and many times the intent of the legislature is derived not only from the language but also the surrounding circumstances that prevailed at the time when that particular law was enacted.
- **Different situations and facts:** Law cannot be made for all situations. So where law is silent or not clear about a particular case and situation, interpretation is required
- **Multiple interpretations:** If any provision of the statute is open to two interpretations, the court has to choose that interpretation which represents the true intention of the legislature.

1. \_\_\_\_\_ means a legal document that is signed and delivered, especially one regarding the ownership of property or legal rights.
  - a. Statute
  - b. Document
  - c. Instrument
  - d. Deed**
2. \_\_\_\_\_ includes every document by which any right **or** liability is or purports to be created, transferred, extended, extinguished or recorded.
  - a. Statute
  - b. Document
  - c. Instrument**
  - d. Deed
3. \_\_\_\_\_ means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of these means, intended to be used, or which may be used, for the purpose of recording that matter.
  - a. Statute
  - b. Document**
  - c. Instrument
  - d. Deed
4. The general considerations in the interpretation and construction of deeds and documents is/are:
  - a. The intention of the parties which manifested at the time when the document was executed.
  - b. Understanding as would a reasonable man construe, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intent.
  - c. Where there is a conflict between what is said in one part of the document and in another part, read the two parts of the document harmoniously if possible.
  - d. All of the above.**
5. Which of the following explain the need for interpretation of statutes?
  - a. To remove ambiguities in the language of the statutes
  - b. To understand the intent of the legislature
  - c. To select the correct intent from multiple interpretations
  - d. All of the above**
6. \_\_\_\_\_ is defined as the will of legislature conveyed in the form of text.
  - a. Statute**
  - b. Document
  - c. Instrument
  - d. Deed
7. \_\_\_\_\_ is the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed.
  - a. Authorisation and Interpretation

- b. Analysis and Evaluation
  - c. Interpretation or Construction**
  - d. Appraisal or\_ Construction
8. The object of interpretation is:
- a. To find out dictionary meaning of the words and phrase

- b. To find out correct translation of the words and phrase
- c. To find out the true intent and spirit of word and phrase**
- d. To apply the meaning depending on situation



Shortcut to Remember	
<b>ROMAN → HD</b>	
<b>R</b>	Rule → Which rule
<b>O</b>	Other Imp Pts.
<b>M</b>	Meaning
<b>A</b>	Applicable
<b>N</b>	Not applicable
<b>H</b>	How to apply
<b>D</b>	Draftsman

<b>Rule of Literal / Grammatical Interpretation</b>	
<b>(i) R → Rule</b>	<ul style="list-style-type: none"> <li>➤ Primary and Cardinal rule</li> <li>➤ Entry gate of every interpretation</li> </ul>
<b>(ii) Meaning</b>	<p>Interpret <b>literally &amp; grammatically</b></p> <p>↓</p> <p>Giving words their</p> <p>↓</p> <p><b>Ordinary and natural meaning</b></p> <ul style="list-style-type: none"> <li>• the language used in the statute must be construed in its grammatical sense.</li> </ul>
<b>(iii) Applicable</b>	➤ Language → Plain, simple, unambiguous, only 1 meaning
<b>(iv) Not - Applicable</b>	<p>If words or law creates</p> <ul style="list-style-type: none"> <li>✓ Ambiguity,</li> <li>✓ unreasonable or absurd results,</li> <li>✓ defeats intention of law is defeated.</li> <li>✓ in consistency, in completeness,</li> </ul>
<b>(v) H → How to apply</b>	<ol style="list-style-type: none"> <li>1. Follow rules of grammar</li> <li>2. No word to be added or deleted</li> </ol>
<b>(vi) D → Draftsman</b>	Perfect (Assumption)
<b>(vii) Other Imp Pts</b>	<ol style="list-style-type: none"> <li>i. <b>Absoluta sententia expositore non indigent</b></li> </ol> <p>↓</p> <p>If plain words capable of only one interpretation, no explanation required</p> <ol style="list-style-type: none"> <li>ii. If two interpretation – Narrower &amp; Broader → if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.</li> </ol>
<b>Example</b>	<ol style="list-style-type: none"> <li>1. When we talk of disclosure of '<b>the nature of concern or interest, financial or otherwise</b>' 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), <b>we have to interpret in its broader sense of referring to any concern or interest containing any information and facts</b> 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.</li> </ol>

	<p>2. In construing the word 'practice' in the Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369)</p>
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**Nehul, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Nehul is correct? (3 Marks) (MTP Sep. 23)**

1. \_\_\_\_\_ 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. **(1 Mark)**  
**(MTP Oct. 22)(MTP Oct. 23)**

- a. **Rule of Literal Construction**
- b. Rule of Harmonious Construction
- c. Rule of Beneficial Construction
- d. Rule of Exceptional Construction

<b>Rule of Reasonable / Logical Interpretation/Golden Rule</b>	
<b>(i) R → Rule</b>	Primary
<b>(ii) Meaning</b>	If legislature fails to give intended results ↓ Give <b>sensible meaning</b> to it
<b>(iii) Applicable</b>	If Words / Provisions ↓ creates Ambiguity, unreasonable or absurd results, defeats intention of law is defeated. in consistency, in completeness,
<b>(iv) Not - Applicable</b>	Language is plain simple, unambiguous and has only 1 meaning and give intended results.
<b>(v) H → How to apply</b>	✓ <b>If absurdity</b> , adopt construction ↓ <b>which was the intent of the legislator</b> ✓ This <b>departure from the grammatical construction is permissible only to the extent it avoids such absurdity</b> and no further
<b>(vi) D → Draftsman</b>	Faulty
<b>(vii) Other imp Pts.</b>	Maxim → <b>Utres magis valeat Quam pareat</b>

↓	It is better to have effect then to be made void and words of statute must be construed so as to lead to a sensible meaning
<p><b>1. Explain the principles of “Grammatical Interpretation” and “Logical Interpretation” of a Statute. What are the duties of a court in this regard?</b></p> <p><b>Hint - Application of the principles in the court:</b></p> <ol style="list-style-type: none"> <li>In all ordinary cases, The court cannot delete or add to modify the letter of the law.</li> <li>However, on account of ambiguity, inconsistency or incompleteness, the court is under a duty to determine the true intentions of the legislature</li> <li>The duty of the court is to administer the law</li> <li>.However, if there are two possible constructions of a clause, the courts may prefer the logical construction.</li> </ol> <p><b>2. Define Grammatical Interpretation. What are the exceptions to grammatical interpretation? (module)</b></p> <p><b>Hint – Use where Not applicable in chart above</b></p>	

<b>Rule of Harmonious Construction</b>	
<b>(i) R → Rule</b>	Primary
<b>(ii) Meaning</b>	<p><b>When there is conflict between two or more provisions</b></p> <p style="text-align: center;">↓</p> <p>Harmonize it to give effect to all provisions</p>
<b>(iii) Applicable</b>	<p>Where there is conflict between.</p> <p style="text-align: center;">↓</p> <ol style="list-style-type: none"> <li>Two statutes of same law</li> <li>Two statutes of different laws</li> <li>Conflict between previous and new law</li> </ol>
<b>(iv) Not - Applicable</b>	<ol style="list-style-type: none"> <li>Language is plain simple, unambiguous and has only 1 meaning and give intended results, where one provision overrides the other.</li> <li><b>If merely apparent conflict between provisions and not real</b></li> <li>Where statute give a <b>clear indication</b> as to which provision is subservient and which overrides. This is done by the use of the terms <b>“subject to”, “notwithstanding” and “without prejudice”</b>.</li> </ol>
<b>(v) H → How to apply</b>	<ol style="list-style-type: none"> <li>Harmonize and If not possible give effect to both</li> <li>Still not possible, amended, later act should prevail and Specific rule to over-ride general rule (<b>“generalia specialibus non derogant”</b>.)</li> </ol>
<b>(vi) D → Draftsman</b>	Faulty (Assumption)
<b>(vii) Other imp Pts.</b>	Statute should give clear reference of over riding provisions by using words. Subject to, notwithstanding, without prejudice.

Note													
<b>Subject to</b>	<p>The impact of the words “<b>subject to</b>” when used in a provision is that when the same subject matter is covered by that provision and by another provision or enactment subject to which it operates and there is a conflict between them, <b>then the latter will prevail over the former</b>. Thus, a clause that uses the words “<b>subject to</b>” is <b>subservient to another</b>.</p> <p><b>Example :</b> Section 13(2) of the Companies Act, 2013, “Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing. “This implies that the any change in the name of the company has to in accordance with the provisions of the section 4(2) and section 4(3) of the Companies Act, 2013.</p>												
<b>Notwithstanding</b>	<p>✓ A clause that begins with the words “notwithstanding anything contained” is called a <b>non-obstante</b> clause. Unlike the “subject to” clause, the notwithstanding clause has the effect of making the provision <b>prevail over others</b>.</p> <p>✓ A notwithstanding clause can operate at four levels.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Clause</th> <th style="width: 33%;">Effect</th> <th style="width: 33%;">Example</th> </tr> </thead> <tbody> <tr> <td>Notwithstanding anything contained in <b>another section or sub– section of that statute.</b></td> <td>The clause will override such other section(s) / sub-section(s)</td> <td><b>Section 42(11) of the Companies Act, 2013</b> “(11) Notwithstanding anything contained in sub- section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub- section (2) shall be deemed to be a public offer</td> </tr> <tr> <td>Notwithstanding anything <b>contained in a statute.</b></td> <td>The clause will override the entire enactment.</td> <td>Section 8(8) of the Companies Act, 2013 “(8) 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...”</td> </tr> <tr> <td>Notwithstanding anything contained in specific section(s) or sub-section(s)</td> <td>The clause will prevail over the other enactment.</td> <td>Section 183 of the Companies Act, 2013 “183(1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company</td> </tr> </tbody> </table>	Clause	Effect	Example	Notwithstanding anything contained in <b>another section or sub– section of that statute.</b>	The clause will override such other section(s) / sub-section(s)	<b>Section 42(11) of the Companies Act, 2013</b> “(11) Notwithstanding anything contained in sub- section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub- section (2) shall be deemed to be a public offer	Notwithstanding anything <b>contained in a statute.</b>	The clause will override the entire enactment.	Section 8(8) of the Companies Act, 2013 “(8) 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...”	Notwithstanding anything contained in specific section(s) or sub-section(s)	The clause will prevail over the other enactment.	Section 183 of the Companies Act, 2013 “183(1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company
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	<p>or all the provisions contained in <b>another statute.</b></p>		<p>in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.”</p>
	<p>Notwithstanding anything contained in <b>any other law</b> for the time being in force.</p>	<p>The clause will override all other laws.</p>	<p>(i) Section 8 of the Securities Contracts (Regulation) Act,1956 “... the rules so made are amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have effect...”.</p>

**A clause that begins with the words "notwithstanding anything contained" is a clause that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.4 Marks (Nov 23 )**

<p><b>Without prejudice</b></p>	<p>When certain <b>particular provisions follow general provisions</b> and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the <b>particular provisions shall operate in addition to and not in derogation of the general provisions.</b></p> <p><b>Example 5:</b> 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 ”</p> <p>This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.</p>
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**Explain the meaning of ‘Without Prejudice’ as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example. (RTP Nov 23)**

1. When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable: (1 Mark) (MTP Oct. 23)

- a. Welfare construction
- b. Strict construction
- c. **Harmonious construction**
- d. Mischief Rule

<b>Smith v. Hughes (1960)</b>	
Law: "Prostitutes shall be liable to prosecution if found guilty of attracting the attention of passers by in street".	
<b>1) Literally</b> ↓	No prosecution (as attention is attracted from balconies/ windows)
<b>2) Mischief</b>	<ul style="list-style-type: none"> <li>• Purpose was to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes.</li> <li>• Considering the purpose, lady is liable to prosecution.</li> </ul>

<b>Royal Challenge of Nursing (1981)</b>	
Law : Legal abortion can be performed only by Doctors (Abortion Act 1967)	
<div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: right; margin-right: 20px;"> <p>1970</p> <p>Nurse</p> <p>↓</p> </div> <div style="text-align: center; margin-right: 20px;"> <p>Drugs given for abortion (Under Supervision of Doctors )</p> <p>→</p> </div> <div style="text-align: left;"> <p>Patient</p> </div> </div>	
<b>1) Literally</b> ↓	Illegal (as not performed by Doctor)
<b>2) Mischief</b>	<ul style="list-style-type: none"> <li>• Purpose was to curb/ check 'back-street abortions performed by unqualified people.</li> <li>• Drug based abortion done in hospital under supervision of doctor ∴ it is legal</li> </ul>

<b>Mischief Rule / Heydon's Rule</b>			
<b>(i) R → Rule</b>	Primary		
<b>(ii) Meaning</b>	Where statute does not give intended result ↓ Words in statute may be extended to give intended meaning Thus, applying Heydon's case courts will be bound to look at the state of the <b>law at the time of the passing of the enactment</b> and not only as it then stood, but under previous Statutes too		
<b>(iii) Applicable</b>	i. Where actual law is different but intention of lawmaker is different ii. Where law was made to grant remedy to a problem		
<b>(iv) Not - Applicable</b>	Language is plain simple, unambiguous and has only 1 meaning and give intended results.		
<b>(v) H → How to apply</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">           Court shall consider:           <ol style="list-style-type: none"> <li>a) What was the earlier law?</li> <li>b) What was the defect, mischief, hardship caused by the earlier law?</li> <li>c) What law seek to cure remedy?</li> </ol> </td> <td style="width: 40%; text-align: center; vertical-align: top;">           And then the courts shall make such construction as will suppress the mischief and advance the remedy         </td> </tr> </table>	Court shall consider: <ol style="list-style-type: none"> <li>a) What was the earlier law?</li> <li>b) What was the defect, mischief, hardship caused by the earlier law?</li> <li>c) What law seek to cure remedy?</li> </ol>	And then the courts shall make such construction as will suppress the mischief and advance the remedy
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	d) True Reason for the remedy
(vi) D → Draftsman	Faulty (Assumption)
<p>1. Explain 'Mischief Rule' for interpretation of statute. Also, give four matters it considers in construing an Act. (MTP N 19/M 21)(Nov. 2018)</p> <p>2. Explain the rule in 'Heydon's Case' while interpreting the Statutes quoting an example.</p>	

### Rule of Beneficial Construction:

Beneficial construction will be given to a statute, 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. In such cases it is permissible to give an extended meaning to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal.

- |   |  |
|---|--|
| <p>1. 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. (RTP Nov 23)</p> | <p>a. Rule of Literal Construction</p> <p>b. Rule of Harmonious Construction</p> <p><b>c. Rule of Beneficial Construction</b></p> <p>d. Rule of Exceptional Construction</p> |
|---|--|

### Rule of Exceptional Construction

(i) R → Rule	Primary
(ii) Meaning	Where statute does not give intended result ↓ Words in statute may be <b>eliminated/replaced</b> to give sensible meaning
(iii) Applicable	if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment
(iv) Not - Applicable	Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) H → How to apply	The word "and" is normally conjunctive, while "or" is disjunctive. But sometimes "and" is read as "or" and vice versa to give effect to the manifest intention of the legislature as disclosed from the context. (Municipal Council v. Bishandas Nathumal AIR 1969 MP 147).
(vi) D → Draftsman	Faulty (Assumption)

**Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? (Module)**

whether it is mandatory or directory depends upon

- 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.

**“May”, “Must” and “Shall”**

- ❖ ‘May’ signifies permission and implies that the authority has been allowed discretion.
- ❖ “Shall” in the normal sense imports a command.
- ❖ ‘Must’ is doubtlessly a word of command.

**Rule of Ejusdem Generis:**

<b>(i) R → Rule</b>	Primary
<b>(ii) Meaning</b>	<b>Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified.</b>
<b>(iii) Applicable</b>	This rule applies when: <ol style="list-style-type: none"> <li>1. The statute contains an <b>enumeration of specific words</b></li> <li>2. The subject of enumeration <b>constitutes a class or category</b>;</li> <li>3. That class or category is <b>not exhausted</b> by the enumeration</li> <li>4. <b>General terms follow</b> the enumeration; and</li> <li>5. There is <b>no indication</b> of a different legislative intent.</li> </ol>
<b>(iv) Not - Applicable</b>	<ol style="list-style-type: none"> <li>1. If the preceding term is general, as well as that which follows this rule cannot be applied.</li> <li>2. Where the particular words <b>exhaust</b> the whole genus.</li> <li>3. Where the specific objects enumerated are essentially diverse in character.</li> </ol>
<b>(v) H → How to apply</b>	-----
<b>Examples</b>	<ul style="list-style-type: none"> <li>• Pineapple juice, orange, mosambi juice, etc (kya hoga??? ...Vodka, gin, whiskey ??)</li> </ul> Solution - juices <ul style="list-style-type: none"> <li>• E.g bread , butter, fruits , vegetable and other things</li> </ul> Other things means – edibles
<b>Enumerate when does the rule of Ejusdem Generis apply. (3 Marks) (MTP Sep. 22)</b>	

**Noscitur A Sociis**

<b>(i) R → Rule</b>	Secondary
<b>(ii) Meaning</b>	‘Word is known by its associates’ ↓ The meaning of a word is derived from the words found in immediate connection. <b>Noscitur a Sociis</b> means that when two or more words that are susceptible of <b>analogous meaning, are coupled together</b> they are understood to be used in their <b>cognate sense</b> .
<b>(iii) Applicable</b>	When some articles are grouped together, each word in the entry draws color from the other words therein.
<b>(iv) Not - Applicable</b>	It cannot be applied where the meaning of the words was deliberately used in order to make the scope wider.

<b>(v) H → How to apply</b>	<ul style="list-style-type: none"> <li>• 2 or more specific words</li> <li>• One ambiguous specific word</li> <li>• Such ambiguous specific word to derive its meaning from other specific word</li> </ul>
<p>1. "Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes. (3 Marks) (MTP Oct. 22)</p> <p>2. Define the concept of "Doctrine of Noscitur a Sociis" with example in accordance with the provisions of the Interpretation of Statutes. 3 Marks (Nov 23)</p>	

1. \_\_\_\_\_ 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. (1 Mark) (MTP Oct. 23)

- Noscitur a Sociis**
- Contemporanea Expositio
- prima facie
- absoluta sententia expositore non indigent

### Effect of usage and customs

- The Latin maxim of '**Optima legum interpres est consuetude**' which means that the best interpreter of laws is custom, has been recognised as one of the oldest principle in construing statutes.
- The Apex Court also confirmed another maxim **Contemporanea expositio est optima et fortissima in lege** meaning 'the best way to construe a document is to read it as it would have been read when made'. The rule is that a statute must be considered in the light of all circumstances existing at the time of its enactment. [Desh Bandhu Gupta v. Delhi Stock Exchange Assn. Ltd. — (SC) 1979]

1. At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'? (Module) (Nov 23)
2. Explain the Doctrine of Contemporanea Expositio. 3 Marks (May 23)

1. In construing statutes, the cardinal rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning so that they may have effect in their \_\_\_\_\_ amplitude.

**a. Widest**

- Narrowest
- Original
- Contextual

2. The phrase and sentences are to be construed according to the rules of grammar except:

- Where the words in the enactment are logically defective on account of ambiguity,

inconsistency or incompleteness.

- Where the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says.

**c. Both (a) and (b)**

- None of the above

3. Which among the following is the cardinal rule of construction of statutes:

**a. Literal Rule of construction**

- Harmonious Rule of construction
- Beneficial Rule of construction
- Reasonable Rule of construction

4. The maxim 'absoluta sententia expositore non

indiget' means:

- a. **No explanation is required when you have plain words capable of only one interpretation.**
  - b. When a choice has to be made between two interpretations, the wider one should be adopted.
  - c. The word used by legislature can be expanded to fill in gaps or omissions.
  - d. Words in statutes should be construed in their popular meaning.
5. If there are two possible constructions of a clause —one a mere mechanical and literal construction and another contextual which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also from the words used therein, the courts may prefer:
- a. Literal construction
  - b. Contextual construction**
  - c. Depends on the facts of the case
  - d. Depends on the interpretation taken by foreign cases
6. The word 'livestock' is interpreted to mean all domestic animals but will not include 'chicks'. This is application of which rule of interpretation?
- a. Rule of Literal Interpretation**
  - b. Rule of Reasonable Construction
  - c. Rule of Reasonable Construction
  - d. Rule of Ejusdem Generis
7. Rule of Reasonable Construction is based on the maxim:
- a. Absolut asentenia expositor non indigent
  - b. Ut res magis valeat quam pereat**
  - c. Quo facit per alium facit per se
  - d. Contemporanea exposition
8. The maxim 'tit res magis valeat quam pereat' means:

- a. No explanation is required when you have plain words capable of only one interpretation.
  - b. It is better for a thing to have effect than to be made void.**
  - c. When a choice has to be made between two interpretations, the wider one should be adopted.
  - d. The word used by legislature can be expanded to fill in gaps or omissions.
9. On a question before the court whether a transaction is intra vires the objects of a company, the company counsel argues that the transaction is question is covered under the general clause of the Memorandum of Association to 'do other incidental things'. Applying the rules of interpretation, how would you decide?
- a. According to Rule of Literal Interpretation, the claim of company is valid.
  - b. According to Rule of Reasonable construction, any object not expressly provided cannot be found by reference to the general clause.**
  - c. According to Rule of Harmonious construction, the different object clauses of Memorandum should be read together as a whole and therefore any object not expressly provided can be covered under the general clause.
  - d. According to Heydon's Rule the purpose of Memorandum is to allow all kinds of object.
10. Which rule of construction is applicable where 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:
- a. Rule of Literal construction
  - b. Rule of Reasonable construction
  - c. Rule of Harmonious construction**
  - d. Rule of Exceptional construction
11. If there is inconsistency in two provisions of

the Act enacted at different points of time, as per Rule of Harmonious Construction which one should prevail?

- a. Both the provisions should be applied by removing the inconsistency through insertion/ deletion of words therein.
- b. The provision enacted earliest in point of time must prevail.
- c. The provision enacted later in point of time must prevail.**
- d. Both the provisions should be discarded.

12. The rule of beneficial construction is also known as:

- a. Heydon's Rule
- b. Rule of Purposive Construction
- c. Mischief Rule

**d. All of the above**

13. Which of the following statements is/are true with reference to rule of exceptional construction:

- a. The conjunctive word 'and' and disjunctive word 'or' can be read as vice versa.
- b. The mandatory word 'shall' and directory word 'may' can be read as vice versa.

**c. Both (a) and (b)**

d. None of the above

14. Which of the following statements is/are true with reference to rule of exceptional construction:

**a. Whether a provision is mandatory or directory depends on the substance and not merely the form.**

- b. The expression 'shall' and 'may' should be construed literally and cannot be interpreted vice versa'.
- c. If there is inconsistency, it is better for a thing to be void than have effect.
- d. The word 'may' is always used as a matter of pure conventional courtesy and never intend a mandatory force.

15. The word 'may' should be interpreted to convey a mandatory force:

- a. Where it involves a discretion coupled with an obligation
- b. Where it confers a positive benefit to the general class of subjects
- c. Where giving the word a directory significance would defeat the very object of the Act

**d. All of the above**

16. Rule of Ejusdem Generis means:

**a. General words following specific words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words.**

b. General words coming before specific words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words.

c. Both (a) and (b)

d. None of the above

17. An Act permits keeping of dogs, cats, cows, buffaloes and other animals. Applying the rule of Ejusdem Generis, the expression 'other animals' would:

a. Include all kind of wild and domesticated animals

b. Include only wild animals

**c. Include only domesticated animals**

d. Include all kind of wild and domesticated animals depending on the facts of the case

18. The maxim 'Optima legum interpret est consuetude' means:

a. The best interpreter of laws is the Constitution

**b. The best interpreter of laws is the Customs**

c. The best interpreter of laws is the Context

d. The best interpreter of laws is the Case laws

19. The maxim 'Contemporanea expositio est optima et fortissima in lege' means:
- The best way to construe a document is to read it as it would have been read when made.**
  - The best way to construe a document is to read literally.
  - The best way to construe a document is to read it as a whole.
  - The best way to construe a document is to read it as required.
20. The maxim Noscitur a Sociis' means:
- Two or more words in a list within a statute should be read as unrelated to each other.
  - Two or more words used in a statute restrict each other.
  - Two or more words susceptible of dissimilar

meaning coupled together, they are understood to be used in their cognate sense.

- Two or more words susceptible of analogous meaning coupled together, they are understood to be used in their cognate sense.**
21. Applying the rule 'Noscitur a Sociis', in the list 'cosmetics, perfumery and toilet goods excluding toothpaste, tooth powder kumkum and soap', the word 'perfumery' can include:
- Aerosol perfume sprays and body deodorants**
  - Dhoop and Agarbatti
  - Both (a) and (b)
  - None of the above

**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? (Module)**

**Hint – Give very short summary of all primary rules**

Aid to Interpretations	
Internal Aid	External Aid
<ol style="list-style-type: none"> <li>Long title</li> <li>Preamble</li> <li>Heading &amp; chapter name</li> <li>Definitions</li> <li>Illustrations</li> <li>Proviso</li> <li>Explanations</li> <li>Schedule</li> <li>Marginal notes</li> <li>Act as a whole</li> </ol>	<ol style="list-style-type: none"> <li>History</li> <li>Consolidating Statutes &amp; Previous laws</li> <li>Usage</li> <li>Earlier Act / later act.</li> <li>Dictionary definition</li> <li>Court decisions</li> </ol>

Internal Aids	
<b>1) Long/short title</b>	<ul style="list-style-type: none"> <li>Short title – identifies enactment &amp; used for convenience – not aid</li> <li>Long title – describes enactment and used to ascertain its general scope</li> </ul>



	<p><b>Example :</b> Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.</p>
<p><b>2) Preamble</b></p>	<ul style="list-style-type: none"> <li>Express more comprehensively <b>scope, object and purpose</b> than long title.</li> <li>Preamble discloses primary intention of legislature but can only be used as aid if statute is not clear</li> <li>However, it cannot override the provisions of the enactment.</li> </ul> <p><b>Example 8:</b> Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus " has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [Gullipoli Sowria Raj v. Bandaru Pavani, (2009)1 SCC714]</p>
<p><b>1. When can the Preamble be used as an aid to interpretation of a statute? (RTP Mar 23) (module) 3 Marks (May 23)</b></p> <p><b>Hint:</b></p> <p><b>Situation 1:</b> Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.</p> <p><b>Situation 2:</b> Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.</p>	
<p><b>2. Preamble does not over-ride the plain provision of the Act. Comment. Also give suitable example. (Module)</b></p>	
<p><b>3) Headings/ title of chapter</b></p>	<p>Used for interpretation of sections included in it.</p>
<p><b>4) Definitions</b></p>	<p>When definition is included, interpreter uses definition meaning and not ordinary meaning</p> <p><b>Construction of definitions may be understood under the following headings:</b></p> <p>(i) Restrictive and extensive definitions</p> <p>(ii) Ambiguous definitions</p> <p>(iii) Definitions subject to a contrary context</p> <p><b>Student's note – Definitions discussed later after this entire table</b></p>
<p><b>5) Illustrations (Examples)</b></p>	<p>do not form a part of the Sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. However, illustrations cannot have the effect of modifying the</p>

	language of the section and can neither curtail nor expand the ambit of the section.
<b>6) Proviso</b>	<ul style="list-style-type: none"> <li>The normal function of a proviso is to <b>except something out of the enactment or to qualify something</b> stated in the enactment which would be within its purview if the proviso were not there.</li> <li>Provisos that are so included begin with the words, <b>“provided that”</b>.</li> <li>The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.</li> <li><b>Exception clauses</b> are intended to restrain the enacting clause to particular cases.</li> <li><b>Savings clause</b> is used to preserve from destruction certain rights, remedies, or privileges already existing.</li> </ul>
<b>What is the effect of proviso? Does it qualify the main provisions of an Enactment? (Module)</b>	
<b>7) Explanation</b>	<ul style="list-style-type: none"> <li>An internal aid that may be added to include something within the section or to exclude something from it</li> <li>Normally used to clear ambiguity</li> </ul>
<b>Does an explanation added to a section widen the ambit of a section? (Module)</b>	
<b>Hint</b> - 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.	
<b>8) Schedule</b>	<ul style="list-style-type: none"> <li>A list , a format ,Form part of Act</li> <li>Read together with Act for construction</li> <li>If conflict between enactment or schedule, then Act prevail</li> </ul>
<b>9) Marginal notes</b>	<ul style="list-style-type: none"> <li>❖ Marginal notes are summaries and side notes often found at the side of a section</li> <li>❖ Normally cannot be used for construction except in exceptional cases</li> </ul>
<b>10) Act as a whole</b>	<ul style="list-style-type: none"> <li>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.</li> <li>The deed 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</li> </ul>

### Classification of Definitions

<b>a) Restrictive and exhaustive definitions</b>	<p>When a word is defined to <b>‘mean’</b> 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.</p> <p>We may also find a word being defined as <b>‘means and includes’</b> such and such. In this case, the definition would be exhaustive.</p>
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b) <b>b. Extensive or inclusive definitions</b>	But where the word is defined to <b>'include'</b> 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.
<b>Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition. (3 Marks) (MTP Oct. 22)</b>	
c) <b>Ambiguous definitions</b>	Sometime, we may find that the definition section may itself be ambiguous, and <b>so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning</b> of the word defined.  <b>Example 12:</b> Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. [Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana, AIR 1997 SC 2698]. But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project. [S.M. Nilajkar v. Telecom District Manager Karnataka, (2003)4 SCC].
<b>Definitions subject to a contrary context:</b>	When a word is defined to <b>bear a number of inclusive meanings</b> , the <b>sense</b> in which the word is used in a <b>particular provision</b> must be ascertained from the <b>context of the scheme</b> of the Act, the <b>language of the provision</b> and the <b>object intended</b> to be served thereby.

### Proviso vs. Exception and Saving Clauses

- **'Exception'** is intended to **restrain the enacting clause to particular cases** i.e reverse effect to the section e.g sec 149 – total 15 directors – except by passing S.R
- **'Proviso'** is used to remove special cases from the general enactment and provide for them specially (provided that ) sec 188- RPt- B.R → N.A to Arm's length transaction
- **'Saving clause'** is used to **preserve provision of other sections in statute** e.g MOA – alteration – S.R save as sec 61

### External aids

1. <b>Historical Setting:</b>	<ul style="list-style-type: none"> <li>✓ Helps in understanding subject matter object and scope of law.</li> <li>✓ History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act</li> </ul>
2. <b>Consolidating statutes &amp; Previous law</b>	<ul style="list-style-type: none"> <li>▪ The Preambles to many Statutes contain expressions such as "An Act to consolidate" the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law.</li> <li>▪ <b>They may solve doubtful points in the statute with the aid of such presumption</b> in intention, rejecting the literal construction</li> </ul>

3. Usage	Usage – <b>how</b> that <b>language</b> has been <b>interpreted and acted upon</b> over a long period In case of doubt, usage helps to create understanding
4. Earlier law/ later law/ Analogous law	The general principle is that where there are different Statutes in ‘pani matenia’ (i.e. <b>in an analogous case</b> ), though made at different times, or even expired and not referring to each other, they <b>shall be taken and construed together as one system</b> and as explanatory of each other.  <b>If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the earlier one.</b>
5. Dictionary definition	<ul style="list-style-type: none"> <li>• First we have to refer to the Act in question to find out if any particular word or expression is defined in it.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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 ‘pani matenia’ will have greater weight than the meaning furnished by dictionaries.</li> <li>• However, for technical terms reference may be made to technical dictionaries.</li> </ul>
<p>1. Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous. (module)</p> <p>2. What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?(3 Marks) (MTP Sep. 23)</p>	
3. Court decision	Used for construction of our own law However prime importance given to Indian statutes
4. Use of Foreign Decisions:	Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.
<p><b>In what way are the following terms considered as external aid in the interpretation of statutes:</b></p> <p>(i) <b>Historical Setting</b></p> <p>(ii) <b>Use of Foreign Decisions (3 Marks) (MTP Oct. 22) (MTP Oct. 23)</b></p>	

1. Pick the odd one out of the following aids to interpretation:(1 Mark) (MTP Oct. 22)

- a. Preamble
- b. Marginal Notes

- c. Proviso
- d. **Usage**
2. 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 **(1 Mark) (MTP Sep. 23)**
3. 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 **(1 Mark) (MTP Sep. 23)**
4. 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 explanation of all the sections of the entire Act.
- d. Provides side notes often found at the side of a section. **(1 Mark) (MTP Oct. 23)**
5. For interpretation of statute, the following being integral part of the statute can be used as an aid to its construction:
- a. Short title
- b. **Long title**
- c. Both (a) and (b)
- d. None of the above
6. An aid that expresses the scope, object and purpose of the Act:
- a. Title of the Act
- b. Heading of the chapter
- c. **Preamble**
- d. Definitional sections
7. Which of the following statement is/are correct with reference to aids to construction of statutes:
- a. **In case of any ambiguity or uncertainty, the preamble can be used by the courts to interpret any provision of that statute.**
- b. The court can resort to preamble when the language of the statute is clear and unambiguous.
- c. In case of conflict between Preamble and a Section, the section would succumb and preamble shall prevail.
- d. All of the above.
8. The preamble of the Hindu Marriage Act, 1955 reads, 'An Act to amend and codify the law relating to marriage among Hindus'. Section 5 of the Act reads, 'A marriage may be solemnized between any two Hindus....'. A marriage was solemnised between a Christian male and a Hindu female. With regard to Hindu Marriage Act, decide whether this marriage is

valid or not?

- a. The word 'may' in Section 5 gives an option and therefore both parties to the marriage need not be Hindus. Hence, the marriage is valid.
  - b. The preamble of the Act clearly gives the intention of legislature i.e. the statute is about marriage of Hindus. Therefore, marriage between non-Hindus is void under this Act.**
  - c. On a harmonious reading of the preamble and the provision, the marriage between non-Hindus is valid.
  - d. The court will decide on more facts of the case.
9. Section 2(16) of the Indian Stamp Act, 1899 defines 'Lease' as 'Lease means a lease of immovable property, and includes ' This is:
- a. Restrictive and exhaustive definition
  - b. Extensive and inclusive definition**
  - c. Ambiguous definition
  - d. Contextual definition
10. Section 2(2) of the Companies Act, 2013 defines 'Company' as 'Company means a company incorporated under this Act or under any previous company law'. This is:
- a. Restrictive and exhaustive definition**
  - b. Extensive and inclusive definition
  - c. Ambiguous definition
  - d. Contextual definition
11. Which of the following statement is/are correct with reference to aids to construction of statutes:
- a. Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.
  - b. Illustrations cannot have the effect of modifying the language of the provision itself.
  - c. Marginal notes are very rarely used for interpretation as they are not considered to be a good aid to construction.
  - d. All of the above.**
12. Historical settings as an external aid to interpretation would include:
- a. Parliamentary history, speech and debates in parliament
  - b. Historical circumstances which led to enactment of the law
  - c. Reports of various expert committees
  - d. All of the above**
13. Different statutes in 'pari materia', though made at different times and not referring to each other:
- a. Can be construed together as one system and as explanatory of each other.**
  - b. Cannot be legitimately referred while interpreting either in any case.
  - c. Can be referred only if the court decides in a particular case.
  - d. Cannot be used for interpretation as they are not considered to be a good aid to construction.
14. Which of the following statement is/are correct with reference to aids to construction of statutes:
- a. Court judgments from foreign countries can be considered even if they follow different system of jurisprudence as in India.
  - b. When referring to Foreign and Indian cases, priority and prime importance is always to be given to the language of foreign judgements.
  - c. When the meaning of the word is not clear in the statute itself, the meaning of those words can be figured by referring to dictionaries to find out the general sense in which that word is commonly understood.**

d. Where a part of an Act has been repealed,  
it loses its operative force and therefore

cannot be taken into account for  
construing the unrepealed part of the Act.

CA WALLAH

## Chapter XIV

# LIMITED LIABILITY PARTNERSHIP ACT, 2008

INTRODUCTION											
<b>Enactment</b>	<ul style="list-style-type: none"> <li>The Ministry of Law and Justice on <b>9th January 2009</b> notified the Act</li> <li>The LLP Act, 2008 has <b>81 sections</b> (of which section 81 is now omitted with effect from 1st April 2022) and <b>4 schedules</b>.</li> </ul> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Schedule</th> <th>Deals with</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them</td> </tr> <tr> <td>II</td> <td>conversion of a firm into LLP.</td> </tr> <tr> <td>III</td> <td>conversion of a private company into LLP.</td> </tr> <tr> <td>IV</td> <td>conversion of unlisted public company into LLP.</td> </tr> </tbody> </table>	Schedule	Deals with	I	mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them	II	conversion of a firm into LLP.	III	conversion of a private company into LLP.	IV	conversion of unlisted public company into LLP.
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<b>Need</b>	<ul style="list-style-type: none"> <li>A need has been felt for a new corporate form that would provide an <b>alternative to the traditional partnership with unlimited personal liability</b> on the one hand and the <b>statute-based governance structure of the limited liability company</b> on the other hand</li> <li>It provides the <b>benefits of limited liability</b> but allows its members the <b>flexibility of organizing their internal structure</b> as a partnership based on a <b>mutually arrived agreement</b>.</li> </ul>										
<b>Meaning</b>	<ul style="list-style-type: none"> <li>LLP as a <b>separate legal entity and business organisation</b> is an alternative corporate business form that gives the <b>benefits of limited liability</b> of a company and <b>the flexibility of a partnership</b>.</li> <li>Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a <b>hybrid between a company and a partnership</b>.</li> </ul>										
<p><b>1. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.(module)</b></p> <p>Ans - LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership</p> <p><b>Limited Liability:</b> 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.</p> <p><b>Flexibility of a partnership:</b> 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</p>											



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.

### Some Imp Definitions

1. **Address [(Section 2(1)(a))]:**

individual	usual residential address
body corporate	its registered office

2. **Body Corporate [(Section 2(1)(d))]:** It means a **company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes—**

- (i) a **LLP** registered under **this Act**;
  - (ii) a **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 specified by Central Government** by notification in the Official Gazette

3. **Business [Section 2(1)(e)]:** “Business” includes **every trade, profession, service and occupation** except any activity which the Central Government may, by notification, exclude.

4. **Designated Partner [Section 2(1)(j)]:** “Designated partner” means any partner designated as such pursuant to section 7.

5. **Financial Year [Section 2(1)(l)]:** “Financial year”, in relation to a LLP, means the period **from the 1st day of April of a year to the 31st day of March** of the following year.

However, in the case of a **LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.**

**Example :** If a LLP has been incorporated on 15th October, 2022, then its financial year may be from 15th October, 2022 to 31st March, 2024. However, the LLP can always maintain its first accounts from 15th October, 2022 to 31st March, 2023 i.e. for a period of less than 12 months. The period for which the first accounts of LLP are prepared shall not exceed 18 months.

6. **Foreign LLP [section 2(1)(m)]:** It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

7. **Limited Liability partnership agreement [Section 2(1)(o)]:** It means any **written agreement between the partners of the LLP or between the LLP** and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

	<p>8. <b>Small limited liability partnership [Section 2(1)(ta)]:</b> It means a limited liability partnership—</p> <table border="1" data-bbox="448 286 1433 488"> <thead> <tr> <th data-bbox="448 286 903 338">Contribution</th> <th data-bbox="903 286 1433 338">Up to ` 25L, &amp;</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 338 903 432">Turnover for immediately preceding F.Y</td> <td data-bbox="903 338 1433 432">Up to ` 40 L, or</td> </tr> <tr> <td data-bbox="448 432 903 488">Fulfills</td> <td data-bbox="903 432 1433 488">prescribed conditions terms and</td> </tr> </tbody> </table> <p>9. <b>Tribunal [Section 2(1)(u)]:</b> means the National Company Law Tribunal constituted u/s 408 of Companies Act 2013.</p>	Contribution	Up to ` 25L, &	Turnover for immediately preceding F.Y	Up to ` 40 L, or	Fulfills	prescribed conditions terms and
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<p><b>Application of the provisions of the Companies Act [Sec.67]</b></p>	<p>The Central Government may, by Notification in the Official Gazette, direct that any of the provisions of the Companies Act, 2013 specified in the Notification -shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the Notification.</p>						
<p><b>Partners [Sec.5]</b></p>	<p>a) Any Individual or Body Corporate may be a Partner in a LLP.</p> <p>b) An <b>individual</b> shall not be capable of becoming a Partner of a LLP, if —</p> <ul style="list-style-type: none"> <li>• He has been found to be of <b>unsound mind</b> by a Court of competent jurisdiction and the finding is in force,</li> <li>• He is an <b>undischarged insolvent</b>, or</li> <li>• He has applied to be <b>adjudicated as an insolvent</b> and his application is pending.</li> </ul> <p>c) Every LLP shall have <b>atleast 2 Partners.</b>[Sec.6]</p>						
<p><b>The following persons can become partner in LLP:</b></p>	<p>(i) Individuals (Resident Indians including Non Resident Indians &amp; Overseas Citizen of India as well as foreign nationals)*</p> <p>(ii) Limited Liability Partnerships</p> <p>(iii) Companies (including foreign companies)*</p> <p>(iv) Foreign Limited Liability Partnerships*</p> <p>(v) Limited Liability Partnerships incorporated outside India</p> <p>(vi) Foreign Companies.</p> <p>Note - Co-operative society and corporation sole cannot become partner in a LLP.</p>						
<p><b>Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain. (module)</b></p> <p><b>Hint</b> - HUF is not covered in the definition of body corporate and cannot be partner in LLP.</p>							
<p><b>Foreign LLP [Sec.59]</b></p>	<p><b>The</b> Central Government may make rules for provisions in relation to establishment of place of business by Foreign LLPs within India and carrying on their business therein by applying or incorporating, with such modifications, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed</p>						

<b>Characteristics and Comparison with Other Forms Of Business ( PLASTIC + Basics )</b>			
<b>Particulars</b>	<b>Company</b>	<b>Partnership Firm</b>	<b>LLP</b>
<b>1 Perpetual Succession</b>	Yes	No	Yes
<b>2 Liability</b>	Limited	Unlimited	Limited to agreed Contribution
<b>3 Artificial person but separate legal Entity</b>	yes	no	yes
<b>4 Seperation of Ownership From management</b>	yes	No	Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
<b>5 Separate Property in its own name</b>	Yes	No	Yes
<b>6 Trasferability Of Shares</b>	Freely transferable in Public co	With consent of partners	With consent of partners
<b>7 Incorporated Association (Registration Compulsory )</b>	Yes	No	Yes
<b>8 Common Seal</b>	not mandatory	Not required	not mandatory
<b>9 Capacity to sue in its own name</b>	Yes	Through partners	Yes
<b>10 Min Members /Partners</b>	Pvt – 2 Public – 7 OPC- 1	2	at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India
<b>11 Max Members / Partners</b>	Pvt- 200 Public – No limit	50	No limit
<b>12 Agreement</b>	MOA/AOA	Partnership deed	LLP Agreement
<b>13 Business</b>	For profit or non profit	Only for profit	Only for profit
<b>14 Mutual Agency</b>	Members not agent of company	All partners are agent of firm and of other partners	All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

ADVANTAGES OF LLP FORM (LOL-FEE)	
L	1. All partners enjoy <b>limited liability</b> .
O	2. <b>organised and operates</b> on the basis of an agreement.
L	3. <b>Less legal and procedural</b> requirements.
F	4. <b>Flexible Capital Structure</b>
E	5. Easy to form
E	6. Easy to dissolve.

Designated Partners [Sec.7]					
<b>Minimum no. of Designated Partners [Sec 7[1]]:</b>	a) Every LLP shall have <b>at least 2 Designated Partners who are Individuals</b> and at least one of them shall be a <b>Resident</b> in India. b) In case of a LLP in which all the Partners are Bodies Corporate or in which one or more Partners are Individuals and Bodies Corporate, <b>at least 2 individuals</b> who are Partners of such LLP or Nominees of such Bodies Corporate shall act as Designated Partners. <b>(Note: Resident in India means a person who has stayed in India for a period of not less than 120 days during the Financial year).</b>				
<b>Example :</b> There is a LLP by the name Indian Helicopters LLP having 5 partners namely Mr. A (Non Resident), Mr. B (Non Resident) Ms. C (resident), Ms. D (resident) and Ms. E (resident). In this case, at least 2 should be named as Designated Partner out of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.					
<b>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? (module)</b> <b>Hint -</b> Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.					
<b>Who can be Designated Partners? [Sec 7[2]]</b>	a) <b>At the time of Incorporation :</b> if the Incorporation Document <table border="1" style="width: 100%; margin-top: 5px;"> <tbody> <tr> <td style="width: 50%;">Specifies who are to be Designated Partners</td> <td>Such Persons shall be Designated Partners on Incorporation.</td> </tr> <tr> <td>States that each of the Partners from time to time of LLP is to be Designated Partner</td> <td>Every Partner shall be a Designated Partner.</td> </tr> </tbody> </table> b) <b>At any other time:</b> Any Partner may become or cease to be a Designated Partner by and in accordance with the LLP Agreement.	Specifies who are to be Designated Partners	Such Persons shall be Designated Partners on Incorporation.	States that each of the Partners from time to time of LLP is to be Designated Partner	Every Partner shall be a Designated Partner.
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<b>Registration [Sec 7 [4]]</b>	i. Every LLP shall file with the Registrar the particulars of every individual who has given his consent to act as Designated Partner in form-4 along with fee as per Annexure A within <b>30 days</b> of his appointment. In case of incorporation, the				

	<p>individual who has given consent to act as partner or designated partner shall file consent in Form FiLLip along with fee as mentioned in Annexure A.</p> <p>ii. Where the intending partner is a body corporate, copy of Resolution on the letterhead of such body corporate to become a partner in the proposed LLP and</p> <p>iii. a copy of resolution or authorization of such body corporate also on letterhead mentioning the name and address of an individual nominated to act as nominee or nominee &amp; Designated Partner on its behalf shall be attached</p> <p>iv. in the case of Foreign Nationals residing outside India or Foreign Body Corporate(s) registered outside India, seeking to register a LLP in India, the name, address and signature of an individual or nominee or nominee &amp; Designated Partner of a body corporate on the incorporation document, proof of identity, where required and documents referred in this rule, shall be duly certified and the provisions of sub-rule (2) of rule 34 of these rules, shall apply <i>mutatis mutandis</i> for this purpose. [R.12]</p>	
<b>Duties of the Designated Partner:</b>	<p>a) An individual shall become a Designated Partner in any LLP only if he has given his <b>prior consent</b> to act as such to the LLP in Form-9 and manner as may be prescribed. <b>[Sec 7[3]]</b></p> <p>b) An individual eligible to be a Designated Partner shall <b>satisfy such conditions and requirements</b> as may be prescribed. <b>[Sec 7[5]]</b></p> <p>c) Every Designated Partner of a LLP shall obtain a <b>Designated Partner Identification Number [DPIN]</b> from the Central Government and the provisions of Sections 153 to 159 [both inclusive] of the Companies Act, 2013 shall apply <i>mutatis mutandis</i> for the said purpose. <b>[Sec 7[6]]</b></p>	
<b>Liabilities of a Designated Partner [Sec.8]</b>	<p>a) Designated Partner is <b>responsible for doing of all acts</b>, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act.</p> <p>b) It extends to <b>filing of any Document</b>, Return, Statement and the like report pursuant to the provisions of this Act and as may be specified in the LLP Agreement.</p> <p>c) He is <b>liable to all penalties imposed on the LLP</b> for any contravention of those provisions.</p>	
<b>Changes in Designated Partners [Sec.9]</b>	<p>a) A LLP may appoint a Designated Partner within <b>30 days of a vacancy</b> arising for any reason.</p> <p>b) The provisions of Sec.7[4] and [5] shall apply in respect of such new Designated Partner.</p> <p>c) If no Designated Partner is appointed, or if at any time there is only 1 Designated Partner, each Partner shall be deemed to be a Designated Partner.</p>	
<b>Contravention of Sec. 7 and Sec. 9 [Sec. 10]</b>	<b>Contravention of</b>	<b>LLP and its every Partner shall be punishable with</b>
	<b>Sec.7[1]</b>	Penalty of ₹ 10,000 and in case of continuing contravention ₹ 100 per day, subject to a maximum limit of: (a) For LLP = ₹ 1 Lakh, (b) For every partner of such LLP= ₹ 50,000

	<b>Sec.7[4]</b>	Penalty of Z 5,000 and in case of continuing contravention Z 100 per day, subject to a maximum limit of: (a) For LLP = Z 50,000, (b) For every designated partner of such LLP= Z 25,000
	<b>Sec.7[5] &amp; [9]</b>	Penalty of Z 10,000 and in case of continuing contravention Z 100 per day, subject to a maximum limit of: (a) For LLP = Z 1 Lakh, (b) For every partner of such LLP= Z 50,000

### Incorporation of LLP[Sec. 11 &12]

<b>Incorporation Document[Sec.11]:</b>	<p>1. For a LLP to be incorporated:</p> <ol style="list-style-type: none"> <li>a) <b>two or more persons</b> associated for carrying on a <b>lawful business</b> with a <b>view to earn profit</b> shall <b>subscribe their names</b> to an incorporation document;</li> <li>b) the incorporation document shall be <b>filed in such manner and with such fees, as may be prescribed</b> with the Registrar of the State in which the registered office of the LLP is to be situated (Incorporation documents are now processed electronically by Registrar, Central Registration Centre since 2nd October 2018); and</li> <li>c) <b>Statement to be filed:</b> <ul style="list-style-type: none"> <li>➤ there shall be filed along with the incorporation document, a <b>statement</b> in the prescribed form: <ul style="list-style-type: none"> <li>○ <b>made by</b> either an <b>advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant</b>, who is engaged in the formation of the LLP and</li> <li>○ <b>by any one who subscribed</b> his name to the incorporation document,</li> <li>○ <b>that all the requirements</b> of this Act and the rules made thereunder have been complied with,</li> <li>○ in respect of incorporation and matters precedent and incidental thereto.</li> </ul> </li> </ul> </li> </ol> <p>2. <b>The incorporation document</b> shall—</p> <ol style="list-style-type: none"> <li>a) be in a form as may be prescribed;</li> <li>b) state the name of the LLP;</li> <li>c) state the proposed business of the LLP;</li> <li>d) state the address of the registered office of the LLP;</li> <li>e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;</li> <li>f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;</li> </ol>
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	<p>g) contain such other information concerning the proposed LLP as may be prescribed.</p> <p>3. If a person makes a statement as discussed above which he—</p> <p>a) knows to be false; or</p> <p>b) does not believe to be true,</p> <p>shall be punishable (Penalty for false declaration)</p> <ul style="list-style-type: none"> <li>➤ with imprisonment for a term which may extend to 2 years and</li> <li>➤ with fine which shall not be less than `10,000 but which may extend to `5 Lakhs.</li> </ul>
<b>Registration[Sec.12]:</b>	<p>1. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, <b>the Registrar shall retain the incorporation document</b> and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, <b>within a period of 14 days—</b></p> <p>a) <b>register</b> the incorporation document; and</p> <p>b) give a <b>certificate</b> that the LLP is incorporated by the name specified therein.</p> <p>2. The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.</p> <p>3. The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.</p> <p>4. The certificate shall be <b>conclusive evidence</b> that the LLP is incorporated by the name specified therein.</p>
<b>Effect of registration [Sec.14]</b>	<p>On Registration, a LLP by its name shall be capable of —</p> <p>a) Suing and being sued,</p> <p>b) Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible,</p> <p>c) Having a common seal, if it decides to have one, and</p> <p>d) Doing and suffering such other acts and things as Bodies Corporate may lawfully do and suffer.</p>

### Provisions relating to Registered Office and Name of LLP

<b>Registered Office [Sec.13]</b>	<p>1. Every LLP shall have a <b>Registered Office</b> to which all communications and notices may be addressed and where they shall be received.</p> <p>2. A Document may be served on a LLP, Partner or Designated Partner thereof, by sending it by post under a certificate of posting or by Registered Post or by prescribed mode u/r 15 such as Electronic Transmission, Courier, at the Registered Office and any other address specifically declared by the LLP for the purpose, in such form and manner as may be prescribed.</p>
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	<p>3. A LLP may change the place of its Registered Office and file the Notice of such change with the Registrar, subject to such conditions as may be prescribed. Any such change shall take effect only upon such filing.</p> <p>4. On contravention of provisions of Sec. 13, the LLP and its every Partner shall be punishable with fine of 500 for each day during which the default continues, subject to a maximum of Z 50,000 for the LLP and its every partner.</p>
<b>Name of LLP</b>	<p>1. <b>Name[Sec.15]:</b></p> <p>a) Every LLP shall have either the words "<b>Limited Liability Partnership</b>" or the acronym "<b>LLP</b>" as the last words of its name.</p> <p>b) A LLP shall not be registered by a name which, in the opinion of the Central Government is — [i] Undesirable, or [ii] Identical or [iii] 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.</p> <p>2. <b>Reservation of Name [Sec.16]:</b></p> <p>a) <b>Proposal:</b> A person may apply in <b>form FiLLip</b> and accompanied by <b>such fee as may be prescribed</b> to the Registrar for the reservation of a name set out in the application as —</p> <ul style="list-style-type: none"> <li>• The Name of a proposed Limited Liability Partnership, or</li> <li>• The Name to which a Limited Liability Partnership proposes to change its name.</li> </ul> <p>b) <b>Reservation:</b> Upon receipt of the application and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in Sec.15[2], <b>reserve the name for a period of 3 months</b> from the date of intimation by the Registrar.</p>
<b>Rectification of Name of Limited Liability Partnership [Sec.17]</b>	<p>a) <b>Directions by Central Government:</b> The Central Government may direct a LLP to change its name or new name, where it is satisfied that the LLP has been registered whether through inadvertence or otherwise and whether on its first registration or on its registration by a new body corporate with a name which is identical with or too nearly resembles —</p> <ul style="list-style-type: none"> <li>• the name of any other LLP or a company.</li> <li>• A registered trademark of a proprietor under the trade marks act, 1999, as is likely to be mistaken, then on an application of such LLP or proprietor referred above or a company</li> </ul> <p>b) The LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.</p> <p><b>Note:</b> An application of the Proprietor of the registered trademarks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.</p>



	<p><b>c) Action by Central Government:</b> If the LLP is in default in complying with any directions given, the Central Government shall allot a new name to the LLP in such prescribed manner and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.</p> <p><b>d) Notice of Change:</b> In case of change of Name of LLP or obtaining of new name, the LLP shall <b>within 15 days</b> from the date of such change, give Notice of Change to the registrar along with the Order of Central Government.</p> <p><b>e) Changes in Certificate of Incorporation:</b> The Registrar on receipt of the notice shall carry out the necessary changes in the Certificate of Incorporation.</p> <p><b>f) Changes in LLP Agreement:</b> <b>Within 30 days</b> of such change in the Certificate of Incorporation the LLP shall change its name in the LLP Agreement.</p>
<p><b>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? (module)</b></p> <p><b>Hint -</b> 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.</p> <p>Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.</p>	
<p><b>Application for direction to change Name in certain circumstances [Sec.18]</b></p>	<p>a) Any entity which already has a Name similar to the Name of a LLP which has been incorporated subsequently, may apply to the Registrar to give a direction to any LLP, on a ground referred to in Sec.17 to change its name.</p> <p>b) The Registrar shall not consider any application unless it is received within 24 months from the date of registration of the LLP under that name.</p>
<p><b>Change of Registered Name [Sec.19]</b></p>	<p>Any LLP may change its Name registered with the Registrar by filing with him a Notice of such change in such form and manner and on payment of such fees as may be prescribed.</p>
<p><b>Penalty for improper use of words "Limited Liability Partnership" or "LLP" [Sec.20]</b></p>	<p>If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as LLP, be punishable with fine which shall not be less than 50,000 but which may extend to 5 Lakhs.</p>
<p><b>Publication of Name and Limited Liability [Sec.21]</b></p>	<p>a) Every LLP shall ensure that its invoices, official correspondence and publications bear the following, namely —</p> <ul style="list-style-type: none"> <li>• The Name, Address of its Registered Office and Registration Number of the LLP, and</li> </ul>

	<ul style="list-style-type: none"> <li>• A Statement that it is registered with limited liability.</li> </ul> <p>b) Any LLP that contravenes the provisions of Section 21 shall be liable to a penalty of 10,000</p>
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Partners			
<b>Who can be Partners? [Sec.22]</b>	<p>a) <b>During Incorporation:</b> On the Incorporation of a LLP, the persons who subscribed their names to the <b>Incorporation Document</b> shall be its Partners.</p> <p>b) <b>Subsequent appointment:</b> Any other person may become a Partner of the LLP by and in accordance with the <b>LLP Agreement</b>.</p>		
<b>Mutual Rights and Duties of Partners [Sec.23]</b>	<p>a) <b>As per LLP Agreement:</b> The mutual rights and duties of the Partners of a LLP, and the mutual rights and duties of a LLP and its Partners, shall be governed by the <b>LLP Agreement</b> between the Partners, or between the LLP and its Partners.</p> <p>b) <b>LLP Agreement to be registered:</b> The LLP Agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.</p> <p>c) <b>Agreement before Incorporation:</b> An Agreement in writing made before the Incorporation of a Limited Liability Partnership between the persons who subscribe their names to <b>the Incorporation Document</b> may impose obligations on the LLP, provided such agreement is <b>ratified</b> by all the Partners after the Incorporation of LLP.</p> <p>d) <b>No Agreement:</b> In the absence of agreement as to any matter, the mutual rights and duties of the Partners and the mutual rights and duties of the LLP and the Partners shall be determined by the provisions relating to that matter as are set out in the <b>First Schedule</b>.</p>		
<b>Business Transactions of Partner with LLP [Sec.66]</b>	A Partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.		
<b>Registration of changes in Partners [Sec.25]</b>	<p>a) <b>Communication of Changes to LLP:</b> Every Partner <b>shall inform the LLP</b> of any change in his name or address within a period of 15 days of such change.</p> <p>b) <b>Communication of changes to Registrar:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> <p><b>By the LLP:</b> A LLP shall —</p> <p><b>where a person becomes or ceases to be a Partner</b> — file a <b>Notice</b> with the Registrar <b>within 30 days</b> from the date he becomes or ceases to be a Partner, and</p> <p><b>where there is any change in the name or address of a</b></p> </td> <td style="width: 50%; padding: 5px;"> <p><b>By the person who ceases to be a Partner:</b></p> <ul style="list-style-type: none"> <li>• Any Person who ceases to be a Partner of a LLP may himself file with the Registrar the Notice, if he has reasonable cause to believe that the LLP may not file the notice with the Registrar.</li> <li>• Where such notice is filed by a Partner, the Registrar shall obtain a <b>confirmation</b> to this effect from the LLP, unless the LLP has also filed such Notice.</li> </ul> </td> </tr> </table>	<p><b>By the LLP:</b> A LLP shall —</p> <p><b>where a person becomes or ceases to be a Partner</b> — file a <b>Notice</b> with the Registrar <b>within 30 days</b> from the date he becomes or ceases to be a Partner, and</p> <p><b>where there is any change in the name or address of a</b></p>	<p><b>By the person who ceases to be a Partner:</b></p> <ul style="list-style-type: none"> <li>• Any Person who ceases to be a Partner of a LLP may himself file with the Registrar the Notice, if he has reasonable cause to believe that the LLP may not file the notice with the Registrar.</li> <li>• Where such notice is filed by a Partner, the Registrar shall obtain a <b>confirmation</b> to this effect from the LLP, unless the LLP has also filed such Notice.</li> </ul>
<p><b>By the LLP:</b> A LLP shall —</p> <p><b>where a person becomes or ceases to be a Partner</b> — file a <b>Notice</b> with the Registrar <b>within 30 days</b> from the date he becomes or ceases to be a Partner, and</p> <p><b>where there is any change in the name or address of a</b></p>	<p><b>By the person who ceases to be a Partner:</b></p> <ul style="list-style-type: none"> <li>• Any Person who ceases to be a Partner of a LLP may himself file with the Registrar the Notice, if he has reasonable cause to believe that the LLP may not file the notice with the Registrar.</li> <li>• Where such notice is filed by a Partner, the Registrar shall obtain a <b>confirmation</b> to this effect from the LLP, unless the LLP has also filed such Notice.</li> </ul>		

	<p><b>Partner</b> — file a <b>Notice</b> with the Registrar within 30 days of such change.</p> <ul style="list-style-type: none"> <li>Where no confirmation is given by the LLP within <b>15 days</b>, the Registrar shall register the Notice made by a person ceasing to be a Partner under this section.</li> </ul> <p>c) <b>Requisites of Notice:</b> The Notice filed with the Registrar —</p> <ul style="list-style-type: none"> <li>shall be in such form and accompanied by such fees as may be prescribed.</li> <li>shall be signed by the Designated Partner of the LLP and authenticated in a manner as may be prescribed, and</li> <li>if it relates to an Incoming Partner, shall contain a statement by such Partner that he consents to becoming a Partner, signed by him and authenticated in the manner as may be prescribed.</li> </ul> <p>d) <b>Contravention of above Provisions [Sec. 25(4) and Sec. 25(5)]:</b></p> <p><b>A. For Default in relation to (a) above:</b> The Defaulting Partner shall be liable to a penalty of Z 10,000</p> <p><b>B. For Default in relation to (b) above:</b> The LLP and every Designated Partner shall be liable to a penalty of Z 10,000.</p>
<p><b>Cessation of Partnership Interest [Sec.24]</b></p>	<p>a) <b>Resignation by a Partner:</b> A Person may cease to be a Partner of a LLP —</p> <ul style="list-style-type: none"> <li>in accordance with an <b>Agreement</b> with the other partners or,</li> <li>in the absence of agreement, by giving a <b>Notice</b> in writing of not less than 30 days to the other Partners of his intention to resign as Partner.</li> </ul> <p>b) <b>Cessation by Law:</b> A Person shall cease to be a Partner of a LLP —</p> <ul style="list-style-type: none"> <li>on his death, or dissolution of the LLP, or</li> <li>if he is declared to be of unsound mind by a competent court, or</li> <li>if he has applied to be adjudged as an insolvent or declared as an insolvent.</li> </ul> <p>c) <b>Notice of Cessation:</b> A person who has ceased to be a Partner of a LLP is referred to as "Former Partner". The Former Partner shall be regarded as still being a Partner of the LLP in relation to any person dealing with the LLP unless —</p> <ul style="list-style-type: none"> <li>such person has notice that the Former Partner has ceased to be a Partner of the LLP, or</li> <li>Notice that the Former Partner has ceased to be a Partner of the LLP has been delivered to the Registrar.</li> </ul> <p>d) <b>Cessation does not discharge pending obligations:</b> The cessation of a Partner from the LLP does not by itself discharge the Partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a Partner.</p> <p>e) <b>Rights of the Former Partner:</b> The Former Partner, or a person entitled to his share in consequence of the death or insolvency of the Former Partner, shall be entitled to receive from the LLP — [i] an amount equal to the capital contribution of the Former Partner actually made to the LLP, and [ii] his right to share in the</p>

	<p>Accumulated Profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the Former Partner ceased to be a Partner.</p> <p><b>f) Former Partner cannot interfere in Management of affairs:</b> A Former Partner or a person entitled to his share in consequence of the death or insolvency of the Former Partner shall not have any right to interfere in the Management of the LLP.</p>
<p><b>Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain &amp; 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? (module)</b></p> <p><b>Hint</b> - 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—</p> <p>a) the person has notice that the former partner has ceased to be a partner of the LLP; or</p> <p>b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.</p> <p>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.</p>	

<b>Liability of LLP and its Partners</b>	
<b>Partner as Agent [Sec.26]:</b>	Every Partner of a LLP is, for the purpose of its business, the <b>agent of the LLP, but not of other partners.</b>
<b>Extent of Liability of a LLP [Sec.27]:</b>	<p>a) A LLP is <b>not bound</b> by anything done by a Partner in dealing with a person if —</p> <ul style="list-style-type: none"> <li>• The Partner has no authority to act for the LLP in doing a particular act, and</li> <li>• The Person knows that he has no authority or does not know or believe him to be a Partner of the LLP.</li> </ul> <p>b) The LLP is liable if its Partner is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.</p> <p>c) An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.</p> <p>d) The liabilities of the LLP shall be met out of its property.</p>
<b>Extent of liability of Partner [Sec.28]</b>	<p>a) A Partner is not personally liable, directly or indirectly for an obligation solely by reason of being a Partner of the LLP, unless it was as a result of his own wrongful act or omission.</p> <p>b) A Partner shall not be personally liable for the wrongful act or omission of any other Partner of the LLP.</p>
<p><b>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? (module)</b></p>	

**Hint** - The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ` 3,00,000 from the partners of Devi Ram Food Circle LLP.

<p><b>Partner by Holding out [Sec.29]</b></p>	<p>a) <b>Meaning:</b> Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a Partner in a LLP.</p> <p>b) <b>Liability:</b> He is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a Partner does or does not know that the representation has reached the person so giving credit.</p> <p>c) <b>LLP liable for the benefits enjoyed:</b> Where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a Partner, be <b>liable to the extent of credit received by it or any financial benefit derived thereon.</b></p> <p>d) <b>Death of a Partner:</b> Where after a Partner's death the business is continued in the same LLP name, the continued use of that name or of the Deceased Partner's name as a part thereof, shall not by itself make his legal representative or his estate liable for any act of the LLP done after his death.</p>
<p><b>Unlimited Liability in case of Fraud [Sec.30]</b></p>	<p>a) <b>Defrauding Creditors:</b></p> <ul style="list-style-type: none"> <li>• An act carried out by a LLP, or any of its Partners, — [i]with intent to defraud its Creditors or any other person, or [ii] for any fraudulent purpose, the liability of the LLP and such Partners shall be <b>unlimited</b> for all or any of the debts or other liabilities of the LLP.</li> <li>• In case any such act is carried out by a Partner, the LLP is liable to the same extent as the Partner, unless it is established by the LLP that such act was without its knowledge or authority.</li> <li>• Where any business is carried on with intent to defraud Creditors or for a fraudulent purpose, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to 5 years and with fine which shall not be less than Z 50,000, but which may extend to Z 5 Lakhs.</li> </ul> <p>b) <b>Conducting Business in a fraudulent manner:</b></p> <ul style="list-style-type: none"> <li>• Where a LLP, or its Partner, Designated Partner, or Employee has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such Partner, Designated Partner or Employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.</li> </ul>

	<ul style="list-style-type: none"> <li>The LLP shall not be liable if any such Partner or Designated Partner or Employee has acted fraudulently without knowledge of the LLP.</li> </ul>
<b>Whistle Blowing[Sec.31]:</b>	<p>a) The Court or Tribunal may <b>reduce or waive any penalty</b> leviable against any Partner or Employee of a LLP, if it is satisfied that —</p> <ul style="list-style-type: none"> <li>Such Partner or Employee has <b>provided useful information during investigation</b> of such LLP, or</li> <li>When any information given by any Partner or Employee [whether or not during investigation] leads to LLP, or any Partner or Employee being convicted under this Act or any other Act.</li> </ul> <p>b) A Partner or Employee may not be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided.</p>

### Contributions

<b>Form of Contribution [Sec.32]:</b>	<p>a) A Contribution of a Partner may consist of — [i]Tangible, Movable or Immovable or Intangible Property, or other benefit to the LLP, [ii]Money, Promissory Notes, other Agreements to contribute Cash or Property, and [iii]Contracts for Services performed or to be performed.</p> <p>b) The monetary value of contribution of each Partner shall be accounted for and disclosed in the accounts of the LLP in the manner as may be prescribed.</p>
<b>Obligation to contribute [Sec.33]</b>	<p>a) The obligation of a Partner to contribute money or other property or other benefit or to perform services for a LLP shall be as per the LLP Agreement.</p> <p>b) A Creditor of a LLP, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between Partners, may enforce the original obligation against such Partner.</p>

### FINANCIAL DISCLOSURES

#### Maintenance of books of account, other records and audit, etc. [Section 34]

- Proper 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.
3. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.
  4. The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.
  5. Penalty for non-compliance of provisions of sub-section 3-  
 LLP – ₹100 per day subject to maximum ₹1,00,000  
 Every Designated Partners - ₹100 per day subject to maximum ₹50,000.
  6. Penalty for non-compliance of provisions of sub-section 1, 2 & 4 -  
 LLP – not less than ₹25,000 which may extend to ₹5 Lakhs.  
 Every designated partner –not less than ₹10,000 which may extend to ₹1 Lakh.

### Accounting and auditing standards [Section 34A]

Central Government may, in consultation with the National Financial Reporting Authority constituted under Section 132 of the Companies Act 2013 —

- a) Prescribe the standards of accounting; and
- b) Prescribe the standards of auditing, as recommended by ICAI.

### Annual Return [Section 35]

1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

**Example 6:** Suppose, the financial year of a LLP closes on 31st March, 2022 then the LLP has to file an annual return with the Registrar latest by 30th May, 2022.

#### Note

The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013. This is a new feature of the LLPs.

2. Penalty for non-filing of annual return –  
 LLP – ₹100 per day subject to maximum ₹1,00,000  
 Every Designated Partners - ₹100 per day subject to maximum ₹50,000

**INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]**

The incorporation document, name of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each LLP with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

**PENALTY FOR FALSE STATEMENT [SECTION 37]**

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

- a) which is false in any material particular, knowing it to be false; or
- b) which omits any material fact knowing it to be material,

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

**POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]**

1. In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.
2. In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.
3. Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

**COMPOUNDING OF OFFENCES [SECTION 39]**

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of  
Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.
2. Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

Explanation.—For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.



3. Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.
4. Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
6. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.
7. The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the LLP to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.
8. Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the LLP who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under subsection (7), the maximum amount of fine for the offence, which was under consideration Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

## ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

### PARTNER'S TRANSFERABLE INTEREST [SECTION 42]

1. The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
2. The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
3. The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

## CONVERSION INTO LLP

**Conversion from firm into LLP [Section 55]:** A firm may convert into an LLP in accordance with the provisions of this Chapter and the Second Schedule.

**Conversion from private company into LLP [Section 56]:** A private company may convert into an LLP in accordance with the provisions of this Chapter and the Third Schedule.

**Conversion from unlisted public company into LLP [Section 57]:** An unlisted public company may convert into an LLP in accordance with the provisions of this Chapter and the Fourth Schedule.

**Registration and effect of conversion [Section 58]**

- (i) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the respective Schedules, provisions of this Act and the rules made thereunder, register the documents submitted under such schedules and issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
- (ii) The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 (Now Companies Act, 2013) as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.
- (iii) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the LLP to which such firm or such company has converted, and the partners of the LLP shall be bound by the respective Schedules, as the case may be, applicable to them.
- (iv) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the respective schedules, as the case may be.

**Effect of Registration:** Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the respective Schedule, as the case may be,—

- a) there shall be a LLP by the name specified in the certificate of registration registered under this Act;
- b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

<b>Compromise, Arrangement or Reconstruction of LLP</b>	
<b>1 Compromise or Arrangement</b>	There is a Proposed Compromise or Arrangement between a LLP and its Creditors, or LLP and its Partners.
<b>Call for Meeting [Sec.60[1]]</b>	The Tribunal may, on the application of — [i] LLP, or [ii] any Creditor or Partner of the LPP, or [iii] In the case of a LLP which is being wound up, the Liquidator, order a meeting of the Creditors or of the Partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or directed by it.
<b>Consent to the Compromise or Arrangement</b>	The Compromise or Arrangement is agreed by a majority representing 3/4th in value of the Creditors, or Partners, and it is sanctioned by the Tribunal.

<b>Effect of Compromise or Arrangement [Sec.60[2]]</b>	The Compromise or Arrangement, by order be binding on the — [i] LLP, [ii] all its Creditors or Partners, or [iii] the Liquidator and Contributories, in case of a LLP which is being wound up.
<b>Prerequisite for grant of Order of Sanction:</b>	The LLP or any other person by whom an application has been made for Compromise or Arrangement shall disclose to the Tribunal, by Affidavit or otherwise, — [i] all material facts relating to the LLP, including its latest financial position, and [ii] the pendency of any investigation proceedings in relation to the LLP.
<b>Order to be filed with the Registrar [Sec.60[3] and 60[4]]</b>	The Order made by the Tribunal shall be filed by the LLP with the Registrar within 30 days after making such an order and shall have effect only after it is so filed. On default, the LLP and its every designated partner shall be liable to a penalty of <b>210,000</b> , and in case of continuing default, with a further penalty of <b>2100</b> for each day after the first during which such default continues, subject to a maximum of, — a) 1 lakh for LLP, and b) 50,000 for every designated partners
<b>Powers of Tribunal</b>	<p>a) <b>Order Stay[Sec.60[5]]:</b> The Tribunal may, at any time after an application has been made to it, stay the commencement or continuation of any suit or proceeding against the LLP on such terms as the Tribunal thinks fit, until the application is finally disposed of.</p> <p>b) <b>Supervise the Compromise or Arrangement [Sec.61[1]]:</b> The Tribunal shall have power to supervise the carrying out of the Compromise or an Arrangement and may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the Compromise or Arrangement as it may consider necessary for its proper working.</p> <p>c) <b>Order for Winding up[Sec.61[2]]:</b> If the Tribunal is satisfied that a Compromise or an Arrangement cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the LLP, make an order for winding up the LLP. Such an order shall be deemed to be an order made u/s 64 of this Act.</p>

### Reconstruction or Amalgamation of LLP[Sec.62]

<b>Condition</b>	Application made to the Tribunal u/s 60 for sanctioning of a Compromise or Arrangement proposed between a LLP and any such persons, shows that — a) Compromise or Arrangement has been proposed for the purposes of, or in connection with, a scheme for the Reconstruction of any LLP or LLPs, or the Amalgamation of any two or more LLP, and b) under the scheme the whole or any part of the Undertaking, Property or Liabilities of any LLP concerned in the scheme [herein referred to as a "Transferor LLP"] is to be transferred to another LLP [herein referred to as the "Transferee Limited Liability LLP"].
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<b>Order by the Tribunal</b>	<p>The Tribunal may, either by the Order sanctioning the Compromise or Arrangement, or by a subsequent Order, make provisions for all or any of the following matters, namely —</p> <ol style="list-style-type: none"> <li>a) Transfer to the Transferee LLP of the whole or any part of the Undertaking, Property or Liabilities of any Transferor LLP,</li> <li>b) Continuation by or against the Transferee LLP of any legal proceedings pending by or against any Transferor LLP,</li> <li>c) The Dissolution, without winding up, of any Transferor LLP,</li> <li>d) The provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the Compromise or Arrangement, and</li> <li>e) Such incidental, consequential and supplemental matters as are necessary to secure that the Reconstruction or Amalgamation shall be fully and effectively carried out.</li> </ol>
<b>Report from the Registrar</b>	<p>A Compromise or Arrangement proposed for the purposes of, or in connection with, a scheme for the Amalgamation of a LLP, which is being wound up, with any other LLP or LLPs, shall be sanctioned by the Tribunal, only if it has received a Report from the Registrar that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its Partners or to Public Interest.</p>
<b>Report from Official Liquidator</b>	<p>An Order for the dissolution of any Transferor LLP shall not be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the LLP, made a Report that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.</p>
<b>Effect of the Order</b>	<ol style="list-style-type: none"> <li>a) Where an Order provides for the transfer of any Property or Liabilities, then, by virtue of the Order, that Property shall be transferred to and vest in, and those Liabilities shall be transferred to and become the Liabilities of, the Transferee LLP.</li> <li>b) In the case of any property, if the order so directs, freed from any charge which is, by virtue of the Compromise or Arrangement, to cease to have effect.</li> </ol>
<b>Registration of the Order</b>	<ol style="list-style-type: none"> <li>a) Within 30 days of making an Order, every LLP in relation to which the Order is made shall cause a certified copy thereof to be filed with the Registrar for Registration.</li> <li>b) If default is made in complying with the provisions of Registration, the LLP, and every Designated Partner of the LLP shall be liable to a penalty of 210,000, and in case of continuing default, with a further penalty of 2100 for each day after the first during which such default continues, subject to a maximum of, — <ol style="list-style-type: none"> <li>i. Z 1 lakh for LLP, and</li> <li>ii. Z 50,000 for every designated partners</li> </ol> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>A. An LLP shall not be amalgamated with a company</li> <li>B. "Property" includes Property, Rights &amp; Powers of every description, &amp; "Liabilities" includes duties of every description.]</li> </ol> </li> </ol>

**Winding Up and Dissolution[Sec.63 & 64]**

The Winding up of a LLP may be **either Voluntary or by the Tribunal** and LLP, so wound up may be dissolved.

**Circumstances in which LLP may be wound up by Tribunal —**

- a) If the LLP
- Decides that LLP be wound up by the Tribunal,
  - Has less than 2 Partners for a period of more than 6 months,
  - Is unable to pay its debts,
  - Has acted against the Interests of the Sovereignty & Integrity of India, the Security of the State or Public Order,
  - 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
- b) If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up. 15.3The Central Government may make Rules for the provisions in relation to winding up and dissolution of LLPs.[Sec.65]

**MISCELLANEOUS**

**Business Transactions of Partner with LLP [Section 66]:**

A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

**Application of the Provisions of the Companies Act [Section 67]**

1. The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—
  - shall apply to any LLP; or
  - shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
2. A copy of every notification proposed to be issued under sub-section (1)
  - shall be laid in draft before each House of Parliament, while it is in session,
  - for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and
  - if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification,
  - the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

**Payment of Additional Fee [Section 69]**

Any document or return required to be registered or filed under this Act with Registrar, if, is not registered or filed in time provided therein, may be registered

	<p>or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:</p> <p>Provided that such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act:</p> <p>Provided further that a different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.</p>
<b>Enhanced Punishment [Section 70]</b>	<p>In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.</p>

1. Which of the following cannot be converted into LLP?
  - a. Partnership firm
  - b. Private company
  - c. Listed company**
  - d. Unlisted company
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
3. Name of the Limited Liability Partnership shall be ended by:
  - a. Limited
  - b. Limited Liability partnership or LLP**
  - c. Private Limited
  - d. OPC
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.**
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.**
6. LLP shall have atleast Partners.
  - a. 2**
  - b. 4
  - c. 3
  - d. 5
7. The maximum no. of Persons in a LLP is —
  - a. 50
  - b. 100
  - c. 20

- d. No limit**
8. Duration of LLP —
- a. Is Limited
  - b. Depends on the Partnership Agreement
  - c. Extends upto proper dissolution (perpetual succession)**
  - d. None of the above
9. The is responsible for doing all acts, matters and things as are required to be done by LLP as per the Act.
- a. Designated Partner**
- b. Active Partner
  - c. Designated Director
  - d. All the Partners
10. Which of the following enjoys separate legal entity status?
- a. Partnership Firm
  - b. LLP
  - c. Company
  - d. Both (b) and (c)**

## Chapter XV

# THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Preliminaries - Objective, Scope and Extent	
<b>Objective</b>	The Preamble to FEMA states the objective as — "an Act to consolidate and amend the law relating to foreign exchange with the objective of — <b>(a) facilitating external trade and payments, and (b) for promoting the orderly development and maintenance of foreign exchange market in India.</b>
<b>Scope and Extent</b>	<p>a) The Act extends to the whole of India.</p> <p>b) It shall also apply —</p> <ul style="list-style-type: none"> <li>• to all <b>branches, offices and agencies outside India</b> owned or controlled by a person <b>resident in India</b>, and</li> <li>• to any contravention thereunder committed outside India, by any person to whom this Act applies.</li> </ul>
<b>Salient Features of the Act</b>	<p>It provides for-</p> <ul style="list-style-type: none"> <li>• Regulation of transactions between residents and non-residents</li> <li>• Investments in India by non-residents and overseas investments by Indian residents</li> <li>• Freely permissible transactions on current account subject to reasonable restrictions that may be imposed</li> <li>• Reserve Bank of India (RBI) and Central Government control over capital account transactions</li> <li>• Requirement for realisation of export proceeds and repatriation to India</li> <li>• Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/ Money Changer/ Off-shore banking unit</li> <li>• Adjudication and Compounding of Offences</li> <li>• Investigation of offences by Directorate of Enforcement</li> <li>• Appeal provisions including Special Director (Appeals) and Appellate Tribunal.</li> </ul>
<b>Enforcement of FEMA</b>	Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement' formed for this purpose. [Section 36].
<b>Effective date</b>	The Act shall come into force w.e.f. 1st June 2000. Different dates may be notified for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.



Definitions under FEMA		
Sec.	Term	Definition
2(c)	Authorised Person	Authorised Dealer, Money Changer, Off—Shore Banking Unit or any other person for the time being authorised u/s 10(1) to deal in Foreign Exchange or Foreign Securities
2(e)	Capital Account Transaction	<b>Refer below</b>
2(h)	Currency	<ul style="list-style-type: none"> <li>• <b>Includes</b> all — (a) Currency Notes, (b) Postal Notes, (c) Postal Orders, (d) Money Orders, (e) Cheques, (f) Drafts, (g) Travellers' Cheques, (h) Letters of Credit, (i) Bills of Exchange and Promissory Notes, (j) Credit Cards or (k) such other similar instruments, as may be notified by RBI.</li> <li>• Debit Cards, ATM Cards or any other instrument by whatever name called, that can be used to create a financial liability, is "Currency". <b>[Notification: GSR 402(E) dated 03-05-2000]</b></li> </ul>
2(i)	Currency Notes	Means and Includes Cash in the form of Coins and Bank Notes.
2(j)	Current Account Transaction	<b>Refer later in chapter</b>
2(l)	Export	"Export", with its grammatical variations and cognate expressions <b>means</b> — <ul style="list-style-type: none"> <li>i. the taking out of India to a place outside India any goods,</li> <li>ii. provision of services from India to any person outside India.</li> </ul>
2(m)	Foreign Currency	Any Currency other than Indian Currency.
2(n)	Foreign Exchange	<b>Means</b> Foreign Currency, and <b>Includes</b> — <ul style="list-style-type: none"> <li>i. Deposits, Credits and Balances payable in any Foreign Currency,</li> <li>ii. Drafts, Travellers' Cheques, Letters of Credit or Bills of Exchange, expressed or drawn in Indian currency but payable in any Foreign Currency,</li> <li>iii. Drafts, Travellers' Cheques, Letters of Credit or Bills of Exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.</li> </ul>
2(o)	Foreign Security	<ul style="list-style-type: none"> <li>• <b>Means</b> any Security, in the form of Shares, Stocks, Bonds, Debentures, or any other instrument denominated or expressed in Foreign Currency, and</li> <li>• <b>Includes</b> securities expressed in Foreign Currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.</li> </ul>
2(p)	Import	Import <b>means</b> bringing into India any goods or services.

2(q)	Indian Currency	Currency which is expressed or drawn in Indian Rupees. <b>Does not include</b> Special Bank Notes and Special One Rupee Notes issued u/s 28A of RBI Act.
2(u)	Person	<b>Includes —</b> i. an Individual, ii. a Hindu Undivided Family, iii. a Company, iv. a Firm, v. an Association of Persons or Body of Individuals, whether incorporated or not, vi. every Artificial Juridical Person, not falling within any of the preceding sub—clauses, and vii. any agency, office or branch owned or controlled by such person.
2(v)	Person resident in India	<b>Refer Paragraph 16.1.3</b>
2(w)	Person resident outside India	A Person who is <b>not</b> resident in India.
2(y)	Repatriate to India <b>(M 02)</b>	<ul style="list-style-type: none"> <li>• <b>Means</b> bringing into India the realised Foreign Exchange and —</li> <li>• the selling of such Foreign Exchange to an authorised person in India in exchange for rupees, or</li> <li>• the holding of realised amount in an account with an authorised person in India to the extent notified by RBI.</li> <li>• <b>Includes</b> use of the realised amount for discharge of a debt or liability denominated in Foreign Exchange. The expression "Repatriation" shall be construed accordingly.</li> </ul>
2(ze)	Transfer	<b>Includes</b> Sale, Purchase, Exchange, Mortgage, Pledge, Gift, Loan or any other form of transfer of right, title, possession or lien.

### Person Resident in India [Sec. 2(v)]

"Person resident in India" **means —**

1. a person **residing** in India for more than 182 days during the course of the **preceding financial year** but **does not include —** (even though they may have resided in India for more than 182 days.)

A. a person who has <b>gone out of India or who stays outside India</b> , in either case —	B. a person who has <b>come to or stay in India</b> , in either case, <b>otherwise than —</b>
a) for or on taking up <b>employment</b> outside India, or	a) for or on taking up employment in India, or
b) for carrying on outside India a <b>business or vocation</b> outside 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 <b>his intention to stay outside India</b> for an uncertain period.	c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
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1. any person or body corporate registered or incorporated in India,
2. an office, branch or agency **in India** owned or controlled by a person **resident outside India**,
3. an office, branch or agency **outside India** owned or controlled by a person **resident in India**. **Points to be noted:**
  - The Act uses the word "**residing**" and not "**stays**". "Stay" is a physical attribute, while "residing" denotes an element of permanence.
  - Residing during the current financial year is not considered. The residing during the course of the "**preceding financial year**" is taken into account.
  - Employment, Carrying on business or vocation, or any other purpose etc. used in the first clause denotes that the first clause is applicable to **Individuals**. It may not be extendable to HUF, AOP or BOI or agencies.

### SUMMARY OF RULES RELATING TO DETERMINATION OF RESIDENTIAL STATUS

**Person Resident in India (PRII) — Sec 2(v):** Individual residing in India for **more than 182 days** during the previous financial year.

Gone out of India OR Stays Outside India for	a) Employment outside India b) Carrying on business/ vocation outside India c) Other purpose with an intention to stay outside for an Uncertain period	PROI
	Any Other purpose	PRII
Comes to India OR Stays in India for	Employment in India Carrying on business/ vocation in India Other purpose for an uncertain period	PRII
	Other purpose	PROI

**Person Resident Outside India (PROI) —** Person who is not resident in India

**Note:** For a Factory, Office or a similar Business Unit, the Residential Status is dependent on —

- **Situation**, i.e. in India or outside India,
- **Control**, i.e. by a Resident or by a Non—Resident, and
- **Residential Status** of the person who owns / controls the Business Unit.

<b>Practical Questions - Residential Status (RS)</b>	
1. Come to India for Employment: Balram had resided in India during the financial year 2016-2017 for less than 183 days. He had come to India on April 1, 2017 for employment. What would be his residential status during the Financial Year 2017-2018? [J 09, N 09]	
2. Higher Studies Abroad: Ramji had resided in India during the Financial Year 2015-2016. He left India on 1st August 2016 for USA for pursuing higher studies for 3 years. What would be his residential status during the Financial Year 2016-2017 and during 2017-2018? RTP, N 10	
3. Return to India: During the Financial Year 2016-17 Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April 2017, Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the Financial Year 2017-18. N 04, M 07, M 11, RTP	
4. Business in India: Mr. Kishore resided in India during the Financial year 2015-2016 for less than 182 days. He came to India on 01.04.2016 for business. He closed down his business on 30.04.2017 and left India on 30.06.2017 for the purpose of employment outside India. Decide the Residential Status of Mr. Kishore during the Financial year 2016-2017 and 2017-2018 under FEMA. M 13	
5. Business in India: Kadhira had come to India for the first time, on 1st April 2016 for doing business. He intends to close the business on 30th April 2017 and leave India on 30th June 2017. What would be his Residential Status during the Financial Years (a) 2015-16, (b) 2016-17 and (c) 2017-2018?	
6. <b>Medical Treatment in India:</b> Bharat, born and brought up in India, goes to USA on 10.04.2016 to look after his son, Amit, who is suffering from chronic disease, with the intention to stay over there till his son, Amit recovers completely. Determine his residential status under FEMA for the financial years 2016-2017 and 2017-2018. RTP	
7. <b>Studies and Business in India:</b> Ram had resided in India during financial year 2016-2017 for less than 183 days. He again came to India on 1st May 2017 for higher studies and business, and stayed upto 15th July 2017. State, with reference to FEMA— N 02 <ul style="list-style-type: none"> <li>• Can Ram be considered as "Person Resident in India" during financial year 2017-18?</li> <li>• Is citizenship relevant for determining residential status?</li> </ul>	
8. <b>Irregular Stay in India:</b> Lakshman is an advisor to a Company in India, which has JV with an American Company, headquartered in Houston. Lakshman visits the Indian Plant once in a month and for the purpose	

<p>stays in India at Mumbai for a period of 10-12 days. Referring to the provisions of FEMA, decide the Residential Status. <b>RTP</b></p>	
<p><b>9. Stay Vs Residing:Anu</b> is an air—hostess with the British Airways. She flies for 12 days in a month and thereafter a break for 18 days. During the break, she is accommodated at 'base' which is normally the city where the Airways is headquartered. In India, the base city for British Airways is Mumbai. During the Financial Year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA? <b>RTP</b></p>	
<p><b>10. Employment outside India:Mr.</b> Ashok, born and brought up in India, goes to USA for taking up an employment on 15.05.2017. Determine his residential status under FEMA for the FY 2017-2018. <b>RTP</b></p>	
<p><b>11. Medical Treatment in India:</b>Vanderwelt, a Dutch Citizen, comes to India for the first time for medical treatment, on 1st May 2017. The treatment is fully completed and he leaves India on 27th November 2017. Is he is a resident in India for the year 2017-2018? <b>RTP</b></p>	
<p><b>12. Tourism in India:Rosy,</b> a Canadian Citizen, comes to India for the first time on a tourist visa for a 3 month vacation, on 15th August 2017. After her arrival, she intends to extend her vacation. She left India on 30th April 2017. Is she a resident in India for the year 2017-2018?</p>	
<p><b>13. RS for Company:</b>Printex Computers 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 FEMA, of the Printer Unit in Pune &amp; that of Dubai Branch? <b>(RTP, M 02, N 09)</b></p> <p><b>14. RS for Company:</b>Kwai Ltd is a Japanese Company having several business units all over the world. It has a robotic unit with its headquarters in Mumbai and has a branch in Singapore. Headquarters at Mumbai controls the Singapore branch of robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?</p> <p><b>15. RS for Company:</b> ABC Ltd, a Company incorporated in India, established a branch at London on 1st January 2017. <b>(M 03, RTP)</b></p> <p><b>16. RS for Company:</b> XYZ Inc., a Foreign Company, established a branch at New Delhi on 1st January 2017. The branch at New Delhi controls a branch at Colombo.<b>(M 03, RTP)</b></p> <p><b>17. RS for Company:</b> MKP Ltd, an Indian Company having its Registered Office at Mumbai, established a branch at New York USA, on 1st April 2017.<b>(M 05, N 07)</b></p>	

<p><b>18. RS for Company:</b> WIP Ltd, a Company incorporated &amp; registered in London. established a branch at Chandigarh in India on 1st April 2017. <b>(M 05, N 07)</b></p> <p><b>19. RS for Company:</b> WIP Ltd's Singapore branch, which is controlled by its Chandigarh Branch. <b>(M 05, N 07)</b></p>	
<p><b>20. RS for Individual:</b> 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.</p> <ul style="list-style-type: none"> <li>• What are the provisions of FEMA Governing such type of Transaction?</li> <li>• Can Mr. Mittal join her daughter in acquiring such a flat in Australia?</li> <li>• Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. What are the relevant provisions? <b>(M 17), RTP (M 18)</b></li> </ul>	

## REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

### Dealing and Holding of Foreign Exchange [Sec.3]

**Dealing in Foreign Exchange, etc. [Sec.3]:** Unless permitted by the Act, Rules or Regulations made thereunder, or with the general or special permission of the RBI, **no person shall** —

Cases	Example
a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);	A PROI comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.
b) make any payment to or for the credit of any person resident outside India in any manner,	A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.
c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner,	A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.
d) enter into any "Financial Transaction" in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.	Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives ` 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

**Explanation:**

- **For Clause(c) purposes**, 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.
- **For Clause(d) purposes**, "Financial Transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any Bill of Exchange or Promissory Note, or transferring any security or acknowledging any debt.

Under RBI Notifications, the following General Permissions have been granted —

Category	Conditions
Any person	<p>To receive any payment, made in rupees, by order or on behalf of a person resident outside India, during his stay in India by converting the Foreign Exchange into rupees, by sale to an authorised person —</p> <ul style="list-style-type: none"> <li>• Made by means of a Cheque drawn on a Bank outside India or a Bank Draft or Travellers' Cheques issued outside India or made in Foreign Currency Notes directly, from out of India, provided the Cheques, Drafts or Foreign Currency is sold to an authorised person, <b>within 7 days</b> of its receipt.</li> <li>• Made by means of a Postal Order or Postal Money Order, issued by a Post Office outside India.</li> </ul>
Person resident in India	<p>To make any payment in Rupees, to any person resident outside India —</p> <ul style="list-style-type: none"> <li>• For extending hospitality to such person,</li> <li>• To such person, for purchase of gold or silver imported by such person under the law / order under Foreign Trade (Development and Regulation) Act, 1992.</li> </ul>
Company in India	<p>To make payment of Sitting Fees or Commission or Remuneration or Travel Expenses to and from or within India, to its Whole Time Director, who is on a visit to India for the Company's work, subject to other conditions specified in the Notification.</p>

**Holding of Foreign Exchange, etc. [Sec. 4]:**

Except as provided in this Act, No person **resident in India** shall acquire, hold, own, possess or transfer any — (a) foreign exchange, (b) foreign security, or (c) any immovable property situated outside India.

**Example** : If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

Under FEM (Acquisition and Transfer of **Immovable Property** outside India) Regulations, the following transactions are **permissible** without specific approval from RBI —

- Property held by a person resident in India who is national of a Foreign Citizen.
- Property acquired by a person on or before 8th July 1947, and held with the permission of the RBI.

- c) Property acquired by a person resident in India by way of gift or inheritance from persons referred above (point b).
- d) Property purchased by a person resident in India out of funds held in RFC Account.

**Note:**

- Immovable Property mentioned in (c) and (d) above may be transferred by the person resident in India, by way of gift to his relative, who is a person resident in India, without specific RBI approval.
- RBI may permit a Company incorporated in India having overseas offices, to acquire immovable property outside India for its business and for residential purposes of its staff, subject to specific conditions.

### Capital Account and Current Account Transactions - Meaning

#### "Current Account Transaction" [Sec. 2(j)] [Section 5]

Means	&	Includes
A transaction other than a Capital Account Transaction.		<p>a) Payments due in connection with foreign trade, other current business, services, and short—term banking and credit facilities in the ordinary course of business,</p> <p>b) Payments due as interest on loans and as net income from investments,</p> <p>c) Remittances for living expenses of parents, spouse and children residing abroad, and</p> <p>d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.</p>

**Example :** An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a “capital expenditure”. However, under 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 is owed anything in the other country. Hence it is a Current Account Transaction.

**Example :** An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [Section 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 Current Account Transaction.

**Example :** A Person Resident in India transfers US\$ 1,000 to his NRI brother in New York as “gift”. The funds are sent from the PRII’s Indian bank account to the NRI brother’s bank account in New York. Under accounts and income-tax law, gift is a “capital receipt”. However, under 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.

The general rule regarding permissibility of the above transactions is —

- Capital Account Transactions are prohibited unless specifically permitted.
- Current Account Transactions are permitted, unless they are specifically prohibited.



### Permissibility of Current Account Transactions [Sec.5]

1. Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a **Current Account Transaction**. 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.
2. **Current Account Rules:** The permissibility of Current Account Transactions are provided in Foreign Exchange Management (Current Account Transactions) Rules, 2000 —
  - a) Schedules — (I) Prohibited Transactions: Drawal of foreign exchange by any person for the following purpose is prohibited, namely— (i) a transaction specified in the Schedule I, or (ii) a travel to Nepal and/or Bhutan, or (iii) a transaction with a person resident in Nepal or Bhutan (unless specifically exempted by RBI)
  - b) Schedules — (II) Transactions requiring CG approval
  - c) Schedules — (III) Transactions requiring RBI approval.

### Schedule - 3 Types of Current Account Transactions

- A. **Prohibited Transactions:** Drawal of Foreign Exchange for the following transactions is prohibited by Schedule I —
  1. Remittance out of Lottery Winnings,
  2. Remittance of income from racing / riding etc. or any other hobby,
  3. Remittance for purchase of lottery tickets, banned / prescribed magazines, football pools, sweepstakes, etc.
  4. Payment of Commission on exports made towards Equity Investment in Joint Ventures / Wholly owned Subsidiaries abroad of Indian Companies,
  5. Remittance of Dividend by any Company to which the requirement of dividend balancing is applicable,
  6. Payment of Commission on Exports under Rupee State Credit Route, except commission upto 10% of Invoice Value of exports of tea and tobacco,
  7. Payment related to "Call Back Services" of Telephones, and
  8. Remittance of interest income on funds held in Non—Resident Special Rupee (NRSR) A/c Scheme.
- B. **Transactions requiring Central Government Approval:** Under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of the Central Government is required for drawal of foreign exchange in respect of the following —

	Transaction	Approval from
1.	Cultural Tours.	Ministry of Human Resource Development (Department of Education and Culture)
2.	Advertisement in foreign print media for purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by State Govt or its PSUs.	Ministry of Finance (Department of Economic Affairs)

3.	Remittance of Freight of any vessel chartered by PSU.	Ministry of Surface Transport (Chartering Wing)
4.	Payment for import through ocean transport by a Government Dept / PSU on CIF basis (i.e. other than FOB or FAS basis).	Ministry of Surface Transport (Chartering Wing)
5.	Multi—modal transport operators making remittances to their agents abroad.	Registration Certificate from the Director General of Shipping
6.	Remittance of Hiring charge of Transponders — a) TV Channels b) Internet Service Providers	Ministry of Information & Broad—casting, Ministry of Communication & Information Technology.
7.	Remittance of Container Detention Charges exceeding the rates prescribed by Director General of Shipping.	Ministry of Surface Transport (Director General of Shipping)
8.	Remittance of Prize Money / Sponsorship of sports activity abroad by a person other than International / National / State Level Sports Bodies, where the amount exceeds USD 1 Lakh.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
9.	Remittance for membership of P & I Clubs.	Ministry of Finance (Insurance Division)

The above transactions **do not** require Central Government approval if —

- Payment is made out of funds held in **Resident Foreign Currency (RFC)** Account of the remitter.
- Drawal is made out of funds held in **Exchange Earners' Foreign Currency (EEFC)** Account of the remitter except in case of remittance for membership of P & I Clubs. (*item 9 above*)

**Note:** Remittance under technical collaboration agreements is deleted from 16-12-2009 (i.e which earlier provided for payment of royalty on 5% of Local Sales and 8% on Exports, and lumpsum payment exceeds USD 2 Million). Thus the transaction is now permitted without any restriction.

C. **Transactions requiring RBI Approval:** Under Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, the following transactions require prior approval of RBI —

1. **Individuals:** Individuals can avail of Forex facility for the following purposes within the limit of **USD 2,50,000 only**. Any additional remittance in excess of USD 2,50,000 for the following purposes shall require prior approval of RBI:
  - a) Private Visits to any country (except Nepal and Bhutan),
  - b) Gift or Donation,
  - c) Going abroad for employment,
  - d) Emigration,
  - e) Maintenance of close relatives abroad,
  - f) Travel for business, or attending a conference or specialised training or for meeting expenses or for meeting medical expenses, or check—up abroad, or for accompanying as Attendant to a patient going abroad for medical treatment / check—up.
  - g) Expenses in connection with medical treatment abroad,
  - h) Studies abroad,
  - i) Any other current account transaction:

**Notes:**

- For (d), (g) and (h), the Individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme, if it is so required by a country of Emigration, Medical Institute offering treatment or the University, respectively.
  - If an Individual **remits** any amount under the Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 by the amount so remitted.
  - 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 upto his Net Salary (after deduction of Taxes, Contribution to Provident Fund and other deductions). **Explanation:** For this purpose, 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 3 years, is a resident but not permanently resident.
  - A Person **other than an individual** may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the Liberalised Remittance Scheme for the purposes mentioned hereinabove.
2. **Persons other than Individual:** The following remittances by Persons other than Individuals shall require prior approval of RBI —
- a) Donations exceeding 1% of their Foreign Exchange Earnings during the previous 3 financial years or USD 50,00,000, whichever is less, for —
    - Creation of Chairs in reputed Educational Institutes,
    - Contribution to Funds (not being an Investment Fund) promoted by Educational Institutes, and
    - Contribution to a Technical Institution or Body or Association in the field of activity of the Donor Company.
  - b) Commission, per transaction, to Agents abroad for sale of Residential Flats or Commercial Plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is **more**.
  - c) Remittances exceeding USD 10,000,000 per Project for any Consultancy Services in respect of Infrastructure projects and USD 1,000,000 per Project, for other Consultancy Services procured from outside India.
  - d) Remittances exceeding 5% 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.
3. **Procedure:** Procedure for drawal or remit of any Foreign Exchange under Schedule III shall be the same as applicable for remitting any amount under the Liberalised Remittance Scheme.
4. **Exemption for remittance from RFC Account** – No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an Resident Foreign Currency (RFC) account.

5. **Exemption for remittance from EEFC Account** – If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from Exchange Earners' Foreign Currency (EEFC) account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:

- Remittance for membership of P & I Club.
- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. 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.

**Exemption for payment by International Credit Card while on a visit abroad** – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

**Note: Liberalised Remittance Scheme (LRS):** Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. This is inclusive of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of Foreign Exchange Management (CAT) Amendment Rules 2015, dated May 26, 2015.

**In case of remitter being a minor,** the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

**Consolidation of remittance of family members** - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

**Exception:** Clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/investment/property.

#### ❖ Capital account transactions [Section 6]

- ❖ **Capital Account Transactions** 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 persons resident outside India would be a capital account transaction."
- ❖ However, as far as residents are concerned **transactions which alter the contingent liabilities outside India are also capital account transactions**

### Permissibility of Capital Account Transactions [Sec.6]

<b>1. Restriction [Sec. 6(1)]:</b>	<p>Any person may sell or draw foreign exchange to or from an Authorised Person for a Capital Account Transaction, subject to the provisions of Sec.6(2). Sec.6(2) empowers the RBI to specify, in consultation with the Central Government –</p> <ol style="list-style-type: none"> <li>any class or classes of capital account transactions involving debt instruments which are permissible,[CG may consult with RBI shall prescribe for transactions not involving debt instruments as permissible u/s 6(2A)]</li> <li>the limit up to which foreign exchange shall be admissible for such transactions,</li> <li>any conditions which may be placed on such transactions.</li> </ol>
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	However, RBI or the Central Government shall <b>not</b> impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans, or for depreciation of direct investments in the ordinary course of business.
2. <b>Holding etc. of Currency, Security and Property [Sec. 6(4) &amp; 6 (5)]:</b>	<p>a) A person <b>resident in India</b> may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated <b>outside India</b>, if such currency, security or property was —</p> <ul style="list-style-type: none"> <li>• acquired, held or owned by such person when he was resident outside India, or</li> <li>• inherited from a person who was resident outside India.</li> <li>• Foreign Currency Accounts opened and maintained by such a person when he was resident outside India.</li> <li>• Income earned through employment or business or vocation outside India taken up or commenced when such Person was Resident Outside India (PROI), or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India.</li> <li>• Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.</li> <li>• A person resident in India 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, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to FEMA provisions.</li> </ul> <p>b) A person resident <b>outside India</b> may hold, own, transfer or invest in Indian currency, security or any immovable property situated <b>in India</b>, if such currency, security or property was —</p> <ul style="list-style-type: none"> <li>• acquired, held or owned by such person when he was resident in India, or</li> <li>• inherited from a person who was resident in India.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• However, Current Income on such assets like rent, dividend, interest etc. have to be repatriated to India within the prescribed time limit as specified in Regulation 5(i) of FEM (Realisation, Repatriation and Surrender of Foreign Exchange), 2000.</li> <li>• "<b>Debt Instruments</b>" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.</li> </ul>
3. <b>Branches etc. of</b>	Without prejudice to the provisions of Sec.6, the RBI may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business

<b>Non— Residents [Sec. 6(6)]:</b>	by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.
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## Permissible Capital Account Transactions

- A. CAPITAL ACCOUNT TRANSACTIONS WITHOUT ANY RESTRICTION:** As per Sec.6, RBI shall **not** impose any restriction on the drawal of foreign exchange for — (a) payments due on account of amortisation of loans, or (b) for depreciation of direct investments in the ordinary course of business.
- B. PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS:** Under the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, any person may sell or draw foreign exchange in respect of the following transactions, within the prescribed limits, if any, relevant to such transaction —

### 1. Relevant Definitions

<b>Drawal</b>	means Drawal of Foreign Exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM card or any other thing by whatever name called which has the effect of creating Foreign Exchange Liability.
<b>Transferable Development Rights</b>	means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.
<b>Derivative</b>	means a Financial Contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables

### 2. Capital Account Transactions of persons resident in India:

- a) Investment by a person resident in India in Foreign Securities.
- b) Foreign Currency Loans raised in India and abroad by a person resident in India.
- c) Transfer of immovable property outside India by a person resident in India.
- d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- e) Export, import and holding of currency / currency notes.
- f) Loans & Overdrafts (Borrowings) of a person resident in India, from a person resident outside India.
- g) Maintenance of Foreign Currency Accounts in India and outside India by person resident in India.
- h) Taking out of insurance policy by a person resident in India, from an Insurance Company outside India.
- i) Loans and Overdrafts by a person resident in India, to a person resident outside India.
- j) Remittance outside India, of capital assets of a person resident in India.
- k) Undertake Derivative Contracts

**Note:** A Resident Individual may draw from an Authorised Person, foreign exchange not exceeding USD 2,50,000 per financial year or such amount as decided by RBI, for a capital transaction specified above. Where the drawal exceeds USD 2,50,000 per financial year or such amount as decided by RBI

for any capital transaction, the limit specified in the Regulations relevant to the transaction shall apply to such drawal. No part of the foreign exchange of USD 2,50,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non—cooperative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by RBI to all concerned. **[Also refer Liberalised Remittance Scheme given below.]**

### 3. Capital Account Transactions of persons resident outside India:

- a. Investment in India, by a person resident outside India, that is to say —
  - Issue of Security by a Body Corporate or an Entity in India and investment therein by a person resident outside India, and,
  - Investment by way of contribution by a person resident outside India to the capital of a Firm or a Proprietorship Concern or an Association of Persons in India.
- b. Acquisition and transfer of immovable property in India, by a person resident outside India.
- c. Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- d. Import and export of currency / currency notes into / from India, by a person resident outside India.
- e. Deposits between a person resident in India and person resident outside India.
- f. Foreign Currency Account in India of a person resident outside India.
- g. Remittance outside India, of Capital Assets in India of a person resident outside India.
- h. Undertake Derivative Contracts

C. **PROHIBITED CAPITAL ACCOUNT TRANSACTIONS:** Under the FEM (Permissible Capital Account Transactions) Regulations, 2000, no person **resident outside India** shall make investment 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 —

1. in the business of Chit Fund, or
2. as Nidhi Company (**See Note below**), or
3. in agricultural or plantation activities, or
4. in real—estate business (**Note:** "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 SEBI (REITs) Regulations 2014) or construction of farm houses, or
5. in trading in Transferable Development Rights (TDR's). [**Note:** TDR means certificates (which are transferrable in part or whole) issued in respect of category of land acquired for public purpose by Central / State Govt in consideration of surrender of land by the owner, **without** monetary compensation.
6. No person resident in India shall undertake any capital account transaction which is not permissible with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction. The existing investment transactions shall be closed/liquidated/disposed/settled within a period of **180 days** from the date of

issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period.

**Note:** The Registrar of Chits or an officer authorised by the State Government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non—resident Indians. Non—resident Indians shall be eligible to subscribe, through banking channel and on non—repatriation basis, to such chit funds, without limit subject to the conditions stipulated by RBI from time to time

<b>Practical Questions Current vs Capital Account Transactions</b>	
<b>Purpose</b>	<b>Permissibility / Condition to be satisfied</b>
1. Remittance of USD 50,000 out of winnings on a lottery ticket <b>(RTP, M 04, M 08)</b>	Remittance out of Lottery Winnings is <b>totally prohibited</b> under Schedule I of FEM (Current Account Transactions) Regulations.
2. Mr.P has won a big lottery and wants to remit USD 20,000 out of his winnings to his son who is in USA. <b>(N 14)</b>	Remittance out of Lottery Winnings is <b>totally prohibited</b> under Schedule I of FEM (Current Account Transactions) Regulations.
3. USD 1,00,000 for sending a cultural troupe on a tour of USA. <b>(RTP, M 04, M 08)</b>	This is a Schedule II transaction. <b>Prior approval of Central Government</b> , Ministry of HRD (Department of Education and Culture) is required.
4. X, a Film Star, requires USD 20,000 to perform along with his associates in New York on the occasion of Diwali, for Indians residing at New York. <b>(M 06, J 09)</b>	
5. Mr. Gopal, a Cine Artist in India proposes to organize a cultural programme at Dubai and requires to draw foreign exchange USD 1,00,000 for this purpose. <b>(N 13)</b>	This is a Schedule II transaction. <b>Prior approval of Central Government</b> , Ministry of HRD (Department of Education and Culture) is required.
6. USD 3,50,000 for meeting the expenses of his business tour to Europe. <b>(M04, M 08)</b>	This is a Schedule III transaction. For business travel, upto USD 2,50,000 is permissible. However, since the amount is USD 3,50,000 in this case, <b>prior approval from RBI</b> is required.
7. Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange USD 40,000 for meeting expenses. <b>(N 13)</b>	This is a Schedule III transaction — For Business Travel upto USD 2,50,000 is permissible. However, since the amount is USD 40,000, <b>prior approval of RBI</b> is not required.
8. Travel to Nepal <b>(N 02)</b>	Drawal of Foreign Exchange for travel to Nepal and Bhutan is <b>specifically prohibited</b> under the Regulations.
9. Remittance of USD 10,000 for payment of goods purchased from a party in Nepal. <b>(N 04, M 07, 3 09)</b>	Transaction with a person resident in Nepal or Bhutan is <b>not permissible</b> (unless specifically exempted by RBI). Hence, <b>RBI approval</b> will be necessary for this transaction.



10. USD 10,000 for remitting as commission to his agent in USA, for sale of commercial plot situated near Bangalore, consideration in respect of which was received by Atul, by way of foreign currency inward remittance, amounting to USD 1,00,000. <b>(N 04, M 07, 3 09)</b>	Commission to agents abroad for sale of residential flats / commercial plots in India, exceeding USD 25,000 or 5% of the inward remittance whichever is higher, is permissible under Schedule III with RBI approval. In the given case, the commission does not exceed the specified limit of USD 25,000. Hence, prior approval of <b>RBI is not required</b> for drawal of foreign exchange in this case.
11. Payment of USD 10,000 as commission on exports under Rupee State Credit Route. <b>(M 05, N 06)</b>	Payment of Commission on Exports under Rupee State Credit Route, is <b>totally prohibited</b> under Schedule I, except for commission upto 10% of Invoice Value of exports of tea and tobacco.
12. USD 30,000 for a business trip to UK. <b>(M 05)</b>	This is a Schedule III transaction. For business travel, upto USD 2,50,000 is permissible. However, in this case, as the amount is USD 30,000, <b>prior approval from RBI</b> is not required.
13. Remittance of USD 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia. <b>(RTP, M 05)</b>	Remittance of Prize Money / Sponsorship of sports activity abroad by a person other than International / National / State Level Sports Bodies, where the amount <b>exceeds USD 1 Lakh</b> , requires <b>prior approval of Central Govt</b> i.e. Ministry of HRD (Department of Youth Affairs and Sports).
14. Payment of remuneration to Foreign Technician <b>(N 03, M 10, RTP)</b>	This is <b>not</b> specifically prohibited or stated as requiring RBI / Central Government Approval. Hence, the transaction can be permitted since it is a Current Account Transaction.
15. Remittance of Dividend to Non—Residents. <b>(N 03)</b>	Payment of Dividend is a Current Account transaction and is hence <b>freely permissible</b> . However, Remittance of Dividend by any Company to which the requirement of <b>dividend balancing</b> is applicable, is <b>prohibited</b> .
16. Payment related to call back services of telephone. <b>(RTP, 3 09)</b>	Payments related to call back services of telephones are <b>specifically prohibited</b> under FEM Regulations.
17. Remittance under technical collaboration agreements. <b>(RTP)</b>	Remittance under Technical Collaboration Agreements are permitted without any restrictions.
18. Release of Foreign Exchange for attending conferences abroad. <b>(RTP)</b>	Release of Foreign Exchange, <b>upto USD 2,50,000</b> to a person, irrespective of period of stay, for attending a International Conference / Seminar / Study Tour or specialized training / apprentice training, is permissible without RBI approval.
19. Release of Foreign Exchange for medical check—up abroad. <b>(RTP)</b>	Release of exchange for meeting expenses for medical check—up abroad, requires prior approval of RBI only if it exceeds USD 2,50,000.

20. R wants to get his heart surgery done at UK. Upto what limit Foreign Exchange can be drawn by him and what are the approvals required? <b>(M 06)</b>	Release of exchange for meeting expenses for Medical Treatment abroad, requires prior approval of RBI only if it exceeds USD 2,50,000.
21. 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 FOREX for the medical treatment abroad. <b>(N 14)</b>	Release of exchange for meeting expenses for Medical Treatment abroad, requires prior approval of RBI only if it exceeds USD 2,50,000.
22. Release of Foreign Exchange on account of private visit to abroad.(RTP)	Release of exchange <b>exceeding USD 2,50,000</b> in one financial year. on account of private visit to abroad (except Nepal and Bhutan) requires <b>prior approval of RBI.</b>
23. Release of Foreign Exchange for studies abroad.(RTP, 3 09) 24. L wants to pursue a course in Fashion design in Paris. The Foreign Exchange drawal is USD 20,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad.(M <b>06, N10)</b>	Release of exchange for studies abroad exceeding <b>USD 2,50,000</b> per academic year. requires <b>prior approval of RBI.</b>
25. Exchange facilities for persons going abroad for employment.(RTP)	Exchange <b>exceeding USD 2,50,000</b> , for person going abroad for employment requires <b>prior approval of RBI.</b>
26. Exchange facilities for emigration.(RTP)	Exchange facilities for emigration, exceeding <b>USD 2,50,000</b> , or amount prescribed by country of emigration <b>prior approval of RBI.</b>
27. Payment of commission on exports made towards Equity Investment in wholly owned Subsidiary abroad of an Indian Company. <b>(N 01)</b>	Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited under FEM Regulations.
28. Remittance of hiring charges of transponder. <b>(N 01, M 10, RTP)</b>	Drawal of foreign exchange for remittance of hiring charges of transponder, can be made with the <b>prior approval of the Central Government.</b>
29. Remittance for use of trademark in India. <b>(N 01, M 10)</b> 30. F International Ltd has purchased trade marks from a Foreign Company to establish retail business chain in India as a joint venture at a consolidated price of USD 5 Lakhs which is to be paid in foreign currency of that country. <b>(M 06)</b>	Drawal of foreign exchange for remittance for use of trade marks, can be made without any restriction.

31. Gift remittance exceeding USD 10,000. (N 06, M 10)	Gift remittance exceeding <b>USD 2,50,000</b> per Remitter per financial year requires <b>prior approval of RBI</b> .
32. R wants to draw USD 20,000 to make Donation to a Charitable Trust situated in South Korea. (3 09, RTP)	Donation remittance exceeding <b>USD 2,50,000</b> per Donor per financial year requires <b>prior approval of RBI</b> . However resident individual under LRS Scheme can freely donate upto USD 2.50 Lakhs.

**Note:**

- a) In appropriate situations above, students may also add that approval of RBI / Central Government is not required in case of remittance out of RFC Account or EEFC Account.
- b) In all cases where remittance of Forex is allowed, either by general or special permission, the Remitter has to obtain the Foreign Exchange only from an Authorised Person as defined in Sec.2(c) read with Sec.10.

**Module Multiple Choice Questions**

1. 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 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 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.

2. M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25<sup>th</sup> 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 four given 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).
3. 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 in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and 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 be 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 four given 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.**

4. 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:
- 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.
  - 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.
  - 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.
  - 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.**
5. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 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:
- For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
  - 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.
  - For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.**
  - 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.

## Extra MCQs for Practise

1. 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. RTP(N 19)
  - 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
    - d. Only statement (2) is correct
2. \_\_\_\_\_ an Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments, and for promoting the orderly development and maintenance of foreign exchange market in India.
  - a. FCRR
  - b. FCRA
  - c. FEMA
  - d. MRTF
3. The provisions of the Act shall apply to\_\_\_\_\_.
  - a. Whole of India.
  - b. all branches, offices and agencies outside India owned or controlled by a person resident in India Statement
    - c. any contravention there under committed outside India, by any person to whom this Act applies
    - d. all of the above
4. Person in India in India for than 182 days during the resident means a person residing more course of the\_\_\_\_\_
  - a. Preceding Financial year
  - b. Current financial year
  - c. Assessment year
  - d. Calendar year
5. Srihari had resided in India during the financial ye;:r 2017-2018 for less than 183 days. He had come to India on April 1,2018 for employment. What would be his residential status during the Financial Year 2018-2019?
  - a. Person Resident In India
  - b. Person Resident outside India
  - c. Person Ordinary Resident in India
  - d. Person Not Ordinary Resident in India
6. Aruna had resided in India during the Financial Year 2016-2017. She left India on 1st August 2017 for USA for pursuing higher studies for 3 years. What would be her residential status during the Financial Year 2017-2018 and during 2018-2019?
  - a. RFY-2017-18 PRII, RFY-2018-19 PROI
  - b. RFY-2017-18 PROI, RFY-2018-19 PRII
  - c. RFY-2017-18 PRII, RFY-2018-19 PRII
  - d. RFY-2017-18 PROI, RFY-2018-19 PROI
7. Mr. Pankaj born and brought up in India, goes to USA on 10.04.2017 to look after his son, Alok, who is suffering from chronic disease, with the intention to stay over there till his son, Alok recovers completely. Determine his residential status under FEMA for the financial years 2017-2018 and 2018-2019?
  - a. RPY-16-17- PROI, RPY-17-18- PRII

- b. RPY-16-17- PRII, RPY-17-18- PRII  
 c. RPY-16-17- PRII, RPY-17-18- PROI  
 d. RPY-16-17- PROI, RPY-17-18- PROI
8. Daisy, a Canadian Citizen, comes to India for the first time on a tourist visa for a 3 month vacation, on 15th August 2017. After her arrival, she intends to extend her vacation. She left India on 30th April 2018. Is she a resident in India for the year 2017-2018?
- a. RPY-16-17- PROI  
 b. RPY-16-17- PRII
9. Printex Computers 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 FEMA, of the Printer Unit in Pune & that of Dubai Branch?
- a. Person Resident In India  
 b. Person Resident outside India  
 c. Person Ordinary Resident in India  
 d. Person Not Ordinary Resident in India
10. X, a Film Star, requires USD 20,000 to perform along with his associates in New York on the occasion of Diwali, for Indians residing at New York
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
11. Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange USD 40,000 for meeting expenses
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
12. Remittance of USD 10,000 for payment of goods purchased from a party in Nepal
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
13. Payment of commission on exports made towards Equity Investment in wholly owned Subsidiary abroad of an Indian Company
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
14. R wants to draw USD 20,000 to make Donation to a Charitable Trust situated in South Korea.
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
15. Drawal of Foreign Exchange for Payment related to Call Back Services of Telephones
- a. Prior approval of Central Government required  
 b. Prior approval of RBI required  
 c. Prohibited Transaction  
 d. Permissible Transaction
16. Under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of the Central Government is required for drawl of foreign exchange in respect of Remittance of Prize Money | Sponsorship of sports activity abroad by a person other than International | National

I State Level Sports Bodies, where the amount exceeds USD 1 Lakh.

- a. Ministry of Surface Transport (Chartering Wing)
- b. Ministry of Human Resources Development (Department of Youth Affairs and Sports)
- c. Ministry of Human Resource Development (Department of Education and Culture)
- d. Ministry of Finance (Department of Economic Affairs)

17. Under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of the Central Government is required for drawl of foreign exchange in respect of Remittance for membership of P & I Clubs.

- a. Ministry of Finance (Insurance Division)
- b. Ministry of Finance (Department of Economic Affairs)
- c. Ministry of Information & Broad—casting, Ministry of Communication & Information Technology.
- d. Ministry of Human Resource Development (Department of Education and Culture)

18. Lifesys Limited, a billion dollar, Indian Company wishes to create a Chair in a Reputed

University in the U.S. This Chair is for the Department of Computer Science. Is such "Chair" creation permissible?

- a. Prohibited Transactions
- b. Permissible with RBI approval
- c. Permissible with Central Govt. approval
- d. Permissible Transaction

19. Drawal of foreign exchange for payments due on account of amortisation of loans is

- a. Current Account Transactions
- b. Capital Account Transaction with RBI Approval
- c. Permissible Capital Account Transactions
- d. Capital Account Transaction with No RBI restriction

20. Taking out of insurance policy by a person resident in India, from Insurance Company outside India.

- a. Current Account Transactions
- b. Capital Account Transaction with RBI Approval
- c. Permissible Capital Account Transactions
- d. Capital Account Transaction with No RBI restriction

### Practical Questions Others

1. **Payment on behalf of PROI: Can Mr. Pandya, a Resident of Canada instruct his brother staying in Mumbai to make a payment of 5,000 to Mr. Joshi, his close friend? RTP**

**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?**

2. **Current Account Transactions: 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)? M 15**

3. **Current Account Transactions: Lifesys Limited, a billion dollar, Indian Company wishes to create a Chair in a Reputed University in the U.S. This Chair is for the Department of Computer Science. The Company wishes to obtain your advise in regard to the following with reference to FEMA, 1999.**



- i. Is such "Chair" creation permissible?
  - ii. What is the maximum amount that can be donated for such Chair?
  - iii. Any formalities to be complied with? N 16
4. Current Account Transactions: Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes: RTP(N 19)
- 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?
5. Current Account Transactions: Enumerate the given situations in the light of the term defined as Current Account Transaction under FEMA.
- a) An Indian resident imports machinery from a vendor in UK for installing in his factory.
  - b) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.
  - c) 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 brothers bank account in New York. RTP(M 20), N 20
6. Restriction on Immovable Property: Kamala, a resident in India is likely to inherit an immovable property in USA from her father, who is a resident outside India. Advise Kamala about the restrictions, if any, in this regard. Will your answer be different if she is likely to inherit foreign securities? N 06, N 12
7. Assets acquired outside India:Mr. Patel, who was resident of USA for many years, now permanently returns to India. He continues to hold some Immovable Property, Foreign Security and other Foreign Exchange Assets in USA. Can he hold such assets outside India? RTP, N 10
8. Acquisition of Property outside India: Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there. RTP (M 19)
9. Acquisition of Property in India:Mr. V, a person of Indian origin and resident of USA desires to acquire two immovable properties in India comprising.
- i. a Residential Flat in Mumbai and
  - ii. a Farm House on the outskirts of Mumbai.
  - iii. Explain the steps he has to take in this matter having regard to the provisions of FEMA, 1999. M 14
10. Capital Account Transaction:Examine whether the following transactions are permissible under FEMA — RTP, N 07
- a) Investment by person resident in India in Foreign Securities.
  - b) Foreign Currency loans raised in India and abroad by a person resident in India.
  - c) Export, import and holding of currency / currency notes.
  - d) Maintenance of Foreign Currency A/cs in India & outside India by a person resident in India.
  - e) A person resident outside India making investment in a Nidhi Company.

- f) A person resident outside India for making investments in Chit Fund.
- g) A person resident outside India trading in Transferable Development Rights.

**11. Current Vs Capital: State whether there are any restrictions in respect of the following transactions. RTP, N 05, N 06, N 10**

- a) Drawal of Foreign Exchange for payments due on account of amortization of loans in the ordinary course of business.
- b) Purchase by a person resident outside India, of Shares of a Company in India, engaged in plantation activities.
- c) Payments to be made for securing insurance for health from a Company abroad.
- d) XYZ Limited, a Company incorporated in India under the Companies Act wants to withdraw US \$ 5,00,000 for Short Term Credit to its overseas office situated in Australia.

**12. Capital Account Transaction: Ram, a citizen of India, left India for employment in USA on 1st June 2016. Ram purchased a flat at New Delhi for Z15 Lakhs in Sept. 2017. His brother Gopal, employed in New Delhi, also purchased a flat in the same building in Sept. 2017 for Z15 Lakhs. Gopal's flat was financed by a Housing Finance Company and the loan was guaranteed by Ram. Examine whether the purchase of flat and guarantee are "Capital Account Transactions" and also state whether these transactions are permissible. N 03, N 08**

### Hint Answer to Practical Questions

1. Refer to **Point 1** and Explanations for Clause (c) & (d) given in **Para 16.2.1**.

Hence, Pandya cannot direct his brother to make payment **without** a corresponding inward remittance from any place outside India. Such direct payment is not permitted under FEMA.

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.

2. Permissible Current Account Transaction.

RBI's prior approval required. However, remittance may be made under LRS.

3. **Issue (i):** Creation of "Chair" is permissible.

**Issue (ii):** Donations can be made upto 1% of Foreign Exchange Earnings during the previous 3 Financial Years or USD 50,00,000, whichever is less.

**Issue (iii):** Prior Approval of RBI is required for Donations exceeding above limit.

4. 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.

The 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.

5. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country.

For the credit period of 3 months, there is a liability of the Indian importer to the UK vendor, but it shall be treated as short-term banking and credit facilities in the ordinary course of business.

once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transactions is over.

6. **Refer Section 6(4)**

There are no restrictions with regard to inheritance of either immovable property situated outside India or of foreign security, from a person resident outside India. Further, such inheritance does not require approval of RBI. Hence, Kamala can hold the immovable property / foreign security, after such inheritance.

7. **Refer Section 6(5)**

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 property was acquired, held or owned by such person when he was Resident in India.

8. 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.

9. **Issue 1.** It is an admissible Capital Account Transaction. Mr. V, being a Person Resident Outside India can acquire Residential Flat in Mumbai subject to FEMA (Acquisition and Transfer of Immovable Property in India), 2000.

**Issue 2.** Investment in Farm House by a Person Resident Outside India is prohibited under FEMA (Capital Account Transaction) Regulations, 2000.

10. Items (a), (b), (c), (d) are permissible. Items (e), (f), (g) are prohibited.

11.

Transaction	Permissibility
Drawal of Foreign Exchange for payments due on account of amortization of loans in the ordinary course of business.	<ul style="list-style-type: none"> <li>As per Sec. 6, RBI shall <b>not</b> impose any restriction on the drawal of foreign exchange for — (a) payments due on account of amortisation of loans, or (b) for depreciation of direct investments in the ordinary course of business.</li> <li>Hence, this transaction is <b>permissible</b> under FEMA.</li> </ul>
Purchase by a person resident outside India, of Shares of a Company in India, engaged in plantation activities.	<ul style="list-style-type: none"> <li>Under FEM (Permissible Capital Account Transactions) Regulations, 2000, no person <b>resident outside India</b> shall make investment 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 agricultural or plantation activities.</li> <li>Hence, this transaction is <b>prohibited</b> under FEMA Regulations.</li> </ul>
Payments to be made for securing insurance for health from a Company abroad.	Taking out of insurance policy by a person resident in India, from Insurance Company outside India is a <b>permissible</b> Capital Account Transaction. Refer FEM (Insurance) Regulations, 2000
XYZ Limited, a Company incorporated in India under the Companies Act 1956, wants to withdraw US \$ 5,00,000 for Short Term Credit to its overseas office situated in Australia.	XYZ Limited has to take prior approval of the RBI for withdrawing <b>USD 5,00,000</b> for short—term credit to its overseas office situated in Australia.

12.

1) **Residential Status of Ram:** Since Ram has left India in 2016-2017 for employment abroad, he is a "person resident **outside** India" for the financial year 2017-2018.

2) **Nature of Ram's transactions:** Ram has purchased immovable property in India and also guaranteed the loan taken by his brother in India. The nature of these transactions are as under —

Transaction	Nature
Purchase of Flat by Ram	Addition to "Assets" <b>in India</b> , by a person resident outside India. Hence, a " <b>Capital Account Transaction</b> " as per Sec.2(e).
Guarantee of Gopal's Loan	Guarantee is a contingent liability. In this case, the guarantee is given by Ram, a person resident outside India. Hence, it is <b>not</b> a „Capital Account Transaction" u/s

	2(e). However, as per Regulations, guarantee is recognized as a Capital Account transaction.
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- 3) **Permissibility:** Unless otherwise permitted, all Capital Account Transactions are restricted. However, in view of FEM (Permissible Capital Account Transactions) Regulations, 2000, the following transactions, inter alia, by a person resident outside India, are permissible —
- a) Acquisition and transfer of immovable property in India, by a person resident outside India.
  - b) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- 4) **Conclusion:** In the above case, both the transactions of Ram, a person resident outside India, are permitted by the Regulations.

### Module Descriptive Questions

1. '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?
2. 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.
  - (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?
3. 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?
4. 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.
5. Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 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 2021-2022 and 2022-2023?  
Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?
6. (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.

7. 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 to Descriptive Questions

1. 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.

2. 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 and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw 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).

### 3. 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.

4. 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.
5. **Residential Status:** According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8<sup>th</sup> December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2021-2022 till 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further 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.

6. **Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999):** According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

- 1) Transactions for which drawal of foreign exchange is prohibited,
- 2) Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
- 3) Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winningsto 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.

7. **(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 of the RBI is not required.

**(B) Gift remittance exceeding US \$ 10,000:** Under the provisions of section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.