

PAPER 2

Corporate & Other Laws Reviewer

Chapter-wise compilation
RTP, MTP and PYP questions

KEY HIGHLIGHTS



Easy to Hard
Difficulty Level



Importance levels
marked as A, B or C



Reference to
all questions



Quick recap of
important concepts



Exam
Insights



Last Day Revision
Questions Marked

APPLICABLE
FOR MAY'25,
SEPT'25 AND
JAN'26

Corporate & Other Laws REVIEWER

**CA Intermediate
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VIVITSU

STRIVING TOWARDS KNOWLEDGE

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This book belongs to future,

CA Finalist _____

“You become what you believe.”

-Oprah Winfrey



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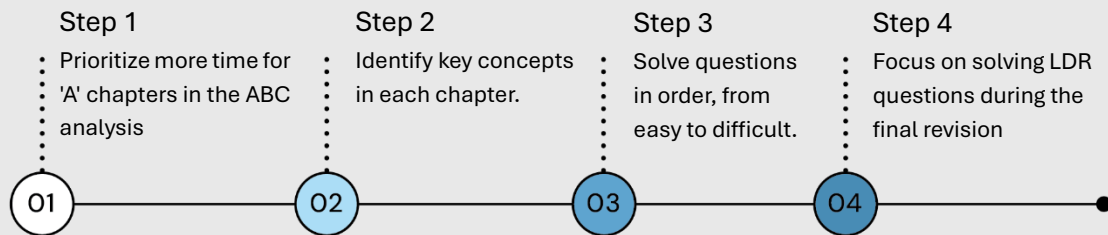
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YOU MUST BE WONDERING

How to Read this book?



Step 1: Prioritize your chapters

Chapters in the index are categorized as A, B, or C based on their importance. Focus more on 'A' chapters, as they carry the most weight, and give adequate attention to 'B' chapters. While all chapters must be covered, this approach helps manage time efficiently for better results.



Step 2: Identify key concept

Identify the key concepts for each chapter using the list provided at the start of the chapter. Ensure you understand them thoroughly. If you struggle with a question, revisit the concepts, review them, and strengthen your understanding before moving forward.



Step 3: Start easy

Start with Question 1, as they progress from easy to difficult, helping you build confidence throughout the chapter. Pay close attention to the "EXAM INSIGHTS" to avoid common mistakes. Questions are segregated topic wise where possible.



Step 4: Last Day Revision (LDR)

Focus on solving LDR questions during the final revision. In the 1.5 days before the exam, prioritize these questions as they cover the most critical concepts from each chapter. You'll find a quick summary of LDR question numbers listed right before each chapter for easy reference.

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ABC Analysis

A Very Important,
Read on priority

B Moderately
Important

C Less critical but still
essential

Ensure you thoroughly read all chapters without skipping any. The ABC analysis is designed to help you prioritize based on past trends, but it should not replace comprehensive preparation.



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CHAPTER 8: DECLARATION AND PAYMENT OF DIVIDEND TRANSFER TO RESERVES

CONCEPTS OF THIS CHAPTER

- Sec 123(1) proviso 2- Declaration of Dividend when there is Immediacy or Absence of Profits
- Prohibition on Declaration of Dividend
- Sec 123(3)- Interim Dividend
- Sec 124- Unpaid Dividend Account
- Sec 127- Punishment for failure to distribute Dividend
- Sec 125- Investor Education & Protection Fund



LDR Questions

- Q 5
- Q10
- Q12
- Q18

QUICK REVIEW OF IMPORTANT CONCEPTS

Provisions regarding Declaration of Dividend

Dividend can be declared out of following sources

Current year profits	after depreciation	Out of both the above sources
Out of the profits of the company for any previous financial year/s	Arrived at after providing for depreciation in accordance with Schedule II and remaining undistributed	
Money provided by the Central Government/ State Government for the payment of dividend by the Co.	in pursuance of a guarantee given by that particular Government	

Depositing amount of Dividend

The amount of dividend shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend

Declaration of Dividend in Case of Inadequate/No Profits

1. Declaring dividend out of past year profits

Where, owing to inadequacy or absence of profits in any financial year

- Company may propose to declare dividend
- out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves
- Such declaration of dividend shall be made in accordance with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014

2. Amounts not treated as free reserves

- Amounts representing unrealised gains



- Notional gains
- Revaluation of assets, whether shown as reserve or otherwise
- Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in P&L Account on measurement of the asset or the liability at fair value

3. Rules to be followed while declaring dividend in case of inadequacy/ absence of profits

Rate of Dividend $\leq (RD1 + RD2 + RD3) / 3$. Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year

However, this condition will not apply if a company has not declared any dividend in each of the 3 preceding financial years

Total amount that can be drawn from accumulated profits

- not exceed 1/10th of its paid up share capital + free reserves
- As per latest audited financial statement

Drawn amount must be first utilized to set off losses incurred in FY in which dividend is declared

Balance of reserves after such withdrawal

- not fall below 15% of its paid up share capital
- As per latest audited financial statement

These rules are not applicable to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments

Prohibition on Declaration of Dividend

In case of any defaulting company

- A company fails to comply with
- provisions of section 73 and 74 of the Companies Act

In case of section 8 companies

- company with licence under section 8
- Its profits are applied only in promoting the objects for which it is formed.

Unpaid Dividend Account (UPA)

- Declared Dividend
- **30 Days** Dividend Not Paid/ Claimed
- **7 Days** Deposit the unpaid/ unclaimed dividend amount in Scheduled Bank (Called Unpaid Dividend Account)
- **If not done** Pay Interest @ 12% p.a. (from the date of default)
- **90 Days** Prepare Statement (Name, Last known address, Unpaid dividend amount)
 - **Website of Company**
 - **Website approved by Government for this purpose**
- **After the expiry of 7 Years** Transfer to IEPF (Unpaid/Unclaimed dividend + interest)
- Any person claiming for the amount transferred in UPA may apply to Co. for the payment of money claimed

Investor Education and Protection Fund (IEPF)

1. Amounts to be credited to the Fund

- Amount given by the Central Government
 - by way of grants after due appropriation made by Parliament
- Donations given by the Central Government, State Governments, companies or any other institution
 - for the purposes of the Fund
- Amount lying in the Unpaid Dividend Account
- Amount in the General Revenue Account of the Central Government
 - that had been transferred to that account under section 205A(5) of the Companies Act, 1956 and remaining unpaid or unclaimed on the commencement of the Companies Act, 2013
- Amount in IEPF
 - as per section 205C of the Companies Act, 1956
- Interest or other income
 - received out of investments made from the Fund



- Amount received through disgorgement or disposal of Securities
 - seized from a person who has been convicted for personation for acquisition of securities
- Application Money
 - for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment)
- Matured Deposits
- Matured Debentures
- Interest
 - accrued on the amounts mentioned as Application money, Matured deposits and matured debentures and interest thereon
- Amount received from Sale Proceeds
 - of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years
- Redemption amount of preference shares
 - remaining unpaid or unclaimed for 7 or more years
- Other amounts
 - (a) amounts payable as mentioned in clause (a) to (n) of section 125 (2)
 - (b) shares in whose case dividends have not been claimed or paid for 7 consecutive years or more
 - (c) all the resultant benefits arising out of shares held by the Authority under clause (b) above
 - (d) all grants, fees and charges received by the Authority
 - (e) all sums received by the Authority from such other sources as may be decided upon by the Central Government
 - (f) all income earned by the Authority in any year
 - (fa) all shares held by the Authority in accordance with proviso of sub-section section 90(9)
 - (g) all amounts payable as mentioned in section 10B(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, section 38A(3) of the State Bank of India Act, 1955 and section 40A of the State Bank of India (Subsidiary Bank) Act, 1959
 - (h) all other sums of money collected by the Authority as envisaged in the Act

2. Utilization of the Fund

- refund of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon
- promotion of investors' education, awareness and protection
- distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures by, 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
- reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal
- any other purpose incidental thereto

Punishment for failure to Distribute Dividends

1. Punishment and liability

Declared Dividend	Dividend not paid/Warrant not Posted (within 30 days from the date of declaration)	1. Every Director (If knowingly a party to default)	<ul style="list-style-type: none"> • Imprisonment ≤ 2 years • Fine ₹ 1,000 per day (during which default continues)
		2. Company	<ul style="list-style-type: none"> • Simple Interest @18% per annum

2. Exceptions under which no offence shall be deemed to have been committed

Exemption from punishment on failure to pay dividend

- Not be paid by reason of operation of any law
- Shareholder gave directions regarding payment but same cannot be complied with and communicated to him



- Dispute regarding right to receive it
- Any other reason- the failure to pay/ post dividend/ warrant within the prescribed time, was not due to any default on the part of the company
- It has been lawfully adjusted against any sum due from shareholder to Co.

Question & Answers

Case based

Question 1

G Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2023-24 out of the profits of current year. The company has earned a profit of ₹ 910 crores during 2023-2024. The company does not intend to transfer any amount to the general reserves out of the profits. Is G Medical Instruments Limited allowed to do so, as per the provisions of the Companies Act, 2013? (MTP 3 Marks Oct'22 SM)

Answer 1

According to section 123 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, G Medical Instruments Limited has earned a profit of ₹ 910 crores for the financial year 2023-2024. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Question 2

(i) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of Rs. 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment (MTP Oct'20, April '19, 3 Marks, PYP Nov '18, 3 Marks)

Answer 2

(i) **Transfer to reserves (Section 123 of the Companies Act, 2013):** A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

Sec 123(1) proviso 2- Declaration of Dividend when there is Immediacy or Absence of Profits

Case based

Question 3



Alex limited is facing loss in business during the financial year 2023-2024. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediate preceding year. Is the act of the Board of Directors valid? (SM)

Answer 3

As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2023-2024. 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 2023-2024 is not valid.

Question 4

Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain. (RTP May '22) (Similar to May'20 but different figures)

Answer 4

As per second proviso to Section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
- The total amount to be drawn from such accumulated profits shall not exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
- The balance of reserves after such withdrawal shall not fall below 15% of its paid -up share capital as appearing in the latest audited financial statement.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

Question 5



A company has accumulated Free Reserves of ₹75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ₹ 12 lakhs. The Board proposes a payment of dividend of ₹30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid? (PYP 6 Marks Nov '22)



Answer 5

In the question given, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions of Rule 3:

Condition 1: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Calculations For Each Condition

Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.

Condition 2: As per the facts, the Board proposes a payment of dividend of ₹ 30 lakhs i.e., 30% on the paid up capital.

So, the Paid up Share Capital of the company = ₹ 100 Lakh

Paid-up Capital + Free Reserves = 100+ 75 = ₹ 175 Lakh

10% thereof = ₹ 17.5 Lakh

Hence the dividend to be declared is to be restricted to ₹ 17.5 Lakh.

Condition 3:

Here, Free Reserves = ₹ 75 Lakh

Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh

Balance of Reserves = ₹75 Lakh- 17.5 Lakh = ₹ 57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ₹ 100 Lakh) i.e. ₹ 15 Lakh.

Thus, the company can declare a dividend of ₹ 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ₹ 100 lakh.

Hence, the proposal of company for payment of dividend of ₹ 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of ₹ 12 lakh, is invalid.

Question 6

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

The dividend thus proposed is to be met partially out of the current year profit of ₹ 16 lakh. Accumulated profits during the past eight years were ₹ 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations. (5 Marks) (PYP 5 Marks May'24)

Answer : 6

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

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

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

CONDITION I



The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

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

CONDITION II

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

CONDITION III

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

CONDITION IV

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

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

Particulars	Amount (in ₹)
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh
Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Fulfilment of Conditions mentioned in Rule 3

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

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

Prohibition on Declaration of Dividend

Theory

Question 7

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:



The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. (SM)

Answer 7

Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

Case based

Question 8

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2024. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013. (MTP 3 Marks Oct 20, RTP May '21, PYP May'18, 2 Marks, SM)

Answer 8

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Sec 123(3)- Interim Dividend

Case based

Question 9

TAT Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. 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 May'20, March'19, Aug'18 6 Marks, PYP May '18 & May '19, 4 Marks)(Similar to MTP Apr'21 & Apr'22 5 Marks but different figures)

Answer 9

Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends



declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Question 10



ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

- (i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?
- (ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend? Justify your answer with reference to provisions of the Companies Act, 2013. (PYP 6 Marks, May '23, MTP 5 Marks July'24)

Answer 10

Interim dividend: As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

- (i) **Interim dividend:** According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates $(15+20+25=60/3)$ at which dividend was declared by it during the immediately preceding three financial years.

Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

- (ii) **Final dividend:** Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.



Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Exam insights: Performance of the examinees was above average. Majority of the examinees have provided the correct provision and answer regarding the rate of declaration of interim dividend but failed to give correct conclusion as regards to the proposal of the shareholders for increasing the rate of final dividend recommended by the Board in accordance with the provisions of the Companies Act, 2013.

Sec 124- Unpaid Dividend Account

Question 11

Mr. R, holder of 1000 equity shares of ₹ 10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of ₹ 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013-14. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.

Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name. (MTP 6 Marks April '23 & Sep '23, PYP 5 Marks Jan 21)

Answer 11

According to section 124 of the Companies Act, 2013:

- (1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account** - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
- (2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)** - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
- (3) **Transfer of Shares to IEPF**- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.
- (4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2014).

In terms of the above stated provisions, Mr. R should be advised as under:

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.



The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act. (MTP 6 Marks Nov 21, RTP Nov'21, & SM, PYP 2 Marks Dec '21)

Answer 12

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

- (i) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
- (ii) The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee one thousand for everyday during which such default continues.
- (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Sec 127- Punishment for failure to distribute Dividend**Question 13**

A Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2024. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice, the dates during which A Ltd. is required to pay the dividend? (MTP 4 Marks Aug'24) (MTP 4 Marks Apr'24)

Answer 13

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any



other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

In the given instance, A Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27th September 2024. 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 28th September 2024 to 27th October 2024. In this series of 30 days, 27th September 2024 will be excluded and last 30th day, i.e. 27th October 2024 will be included. Accordingly, A Ltd. will be required to pay dividend within 28th September 2024 and 27th October 2024 (both days inclusive).

Question 14

Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrants 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? (MTP 2 Marks Mar'24) (PYP 3 Marks Jul'21) (MTP Oct '23)

Answer 14

Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.

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

Exam insights: Majority of the examinees have answered correctly and explained the requisite provisions w.r.t payment of dividend under the Companies Act, 2013.

Question 15

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2023-24, except in the following two cases:

- (i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.
 - (ii) Dividend amount of Rs. 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.
- You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (SM)**

Answer 15

- (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non-compliance was not communicated to him.

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

- (ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.



In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its

directors, etc.

Question 16

Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive. (MTP Mar'21, April '19, 3 Marks, SM, RTP May '21, PYP, 3 Marks Nov '18)

Answer 16

As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. $5,00,000 \times 10/100 = 50,000$. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

Question 17

Vishal Limited declared and paid 10% dividend to all its shareholders except Mr. Ricky, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Ricky doesn't tally with the records of the bank. The company, however, did not inform Mr. Ricky about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend. (MTP 3 Marks March 21, MTP 3 Marks Oct'22, SM, PYP May '19 2 Marks)

Answer 17

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, Vishal Ltd. has failed to communicate to the shareholder Mr. Ricky about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Question 18



The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of ` 10 lakhs has not paid an amount of ` 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him? (MTP 3 Marks Oct 21, RTP May 18) (Same concept different figures PYP 2 Marks May '22)

Answer 18

The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ` 10 Lakhs and has not paid an amount of ` 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ` 1.20 lakh towards dividend, out of which an amount of ` 1 lakh can be adjusted towards call money due on his



shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

Question 19

The Annual General Meeting of ABC Bakers Limited held on 30 th May, 2024, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2024. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act. (MTP 6 Marks Sep'22, MTP 5 Marks Mar'23, MTP 5 Marks Oct'19, SM)

Answer 19

Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

- (1) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and
- (2) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

In the given question, the company was unable to post dividend warrant within 30 days from the date of declaration of dividend. Thus, the directors will be liable as per the above provisions and the company is liable to pay simple interest. However, Mr. Ranjan will not succeed if he claims interest at 20% per annum interest as the limit prescribed under section 127 is 18% per annum.

STRIVING TOWARDS KNOWLEDGE

Question 20

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):-

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

Answer 20

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.

Sec 123(3)- Interim Dividend

Question 21

XYZ Limited is a company having a paid up equity share capital of ₹ 75 crore. Though it was performing well in the recent years it suffered losses in the first and second quarter of the financial year 2023-2024. In order to sustain its image, the Board of Directors declared an interim dividend at the rate of 30 percent on the paid-up equity share capital on 4/10/2023. The following are the additional information extracted from the books of account for the past 5 Financial Years:

Financial year ending 31st March	Rate of Dividend declared
2019	20%
2020	15%
2021	15%
2022	15%
2023	30%

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 30% interim dividend. (PYP 5 Marks Sep'24)



Answer 22

As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, XYZ Ltd. is facing losses in business during the first and second quarter of financial year 2023-2024. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 15% and 30% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates $(15+15+30=60/3)$ 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 30% during the F.Y. 2023-2024 is not valid.

Sec 127- Punishment for failure to distribute Dividend

Question 23

Anoj Limited declared a final dividend to its shareholders at the Annual General Meeting on 1st August, 2024. As per the decision, the dividend payment was to be made within the stipulated 30-day period. However, due to internal financial constraints, the company failed to pay the declared dividend and did not dispatch the dividend warrants to the shareholders within the required timeframe. The default continued until 15th October, 2024, leading to shareholder complaints.

In light of this scenario, what specific punishments and liabilities could the company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013. (MTP 5 Marks Nov'24)

Answer 23

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, following punishments are applicable:

- (i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.
- (ii) The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Transfer to Reserves

MULTIPLE CHOICE QUESTIONS MCQ

1. Amount to be transferred to reserves out of profits before any declaration of dividend is _____
(MTP 1 Mark Oct 21, Apr'22, SM)

- (a) 5%
- (b) 7.5%
- (c) 10%
- (d) at the discretion of the company.

Ans : (d)

Payment of Dividend



2. Dividend once declared, should be paid within _____ days from the date of declaration . (MTP 1 Mark Oct '23)

- (a) 14
- (b) 21
- (c) 30
- (d) 60

Ans: (C)

Sec 123(3)- Interim Dividend

3. When the dividend is declared at the Annual General Meeting of the company, it is known as (MTP 1 Mark Nov 21, Sep'22, SM)

- (a) Final Dividend
- (b) Interim Dividend
- (c) Dividend on preference shares
- (d) Scrip Dividend

Ans: (a)

4. The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2024 but the company has incurred loss during the current financial year up to the end of June, 2024. However, it is noted that during the previous five financial years i.e., 2019-20, 2020-21, 2021-22, 2022-23, 2023-24, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year. (SM, MTP 2 Marks Oct 21)

- (a) Maximum at the rate of 10%.
- (b) Maximum at the rate of 11%.
- (c) Maximum at the rate of 10.5%.
- (d) Maximum at the rate of 11.5%.

Ans: (b)

Sec 125- Investor Education & Protection Fund

5. The amount accumulated in the Investor Education and Protection Fund shall not be used for: (SM, RTP May'23)

- (a) refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.
- (b) reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
- (c) grants or donation to the Central Government for the purpose of investor's education and training.
- (d) distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.

Ans: (c)

Prohibition on Declaration of Dividend

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

- (a) 6% p.a.
- (b) 12% p.a.
- (c) 15% p.a.
- (d) 18% p.a.

Ans: (d)




7. Mr. Guru bought 40,000 shares of Real Consultancy Services (RCS) of face value 10 each out of his savings. On such shares, the final call of Rs. 2 is due but unpaid by Mr. Guru. In the meantime, RCS declared dividend at a rate of 15%. Regarding un-paid call money by Mr. Guru, in light of dividend due to him from RCS, state which of following the statements is correct? (MTP 2 Marks Nov 21)
- (a) Dividend cannot be adjusted against the unpaid call money
 - (b) The dividend of Rs. 48,000 can be adjusted against unpaid call money
 - (c) The dividend of Rs. 48,000 can be adjusted against unpaid call money, only if consent is given by Mr. Guru.
 - (d) The dividend of Rs. 64,000 can be adjusted against unpaid call money, even if consent is not given by Mr. Guru.

Ans: (b)



VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 11: COMPANIES INCORPORATED OUTSIDE INDIA

CONCEPTS OF THIS CHAPTER		 LDR Questions Q 4 Q9 Q14 Q17 Q19
• Sec 2(42)- Foreign Company	• Sec 387- Dating of Prospectus & Particulars to be contained therein	
• Sec 379- Application of the Act to Foreign Companies	• Sec 389- Registration of Prospectus	
• Sec 380- Documents to be delivered to Registrar by Foreign Companies	• Sec 392- Punishment for Contravention	
• Sec 381- Accounts of Foreign Company	• Sec 393- Co's failure to comply with provisions to not affect validity of contracts	
• Sec 382- Display of Name etc of Foreign Company		

QUICK REVIEW OF IMPORTANT CONCEPTS

Foreign Company

Any company or body corporate incorporated outside India

- has a place of business in India whether by itself or through an agent, physically or through electronic mode
- conducts any business activity in India in any other manner

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

- business to business and business to consumer transactions, data interchange and other digital supply transactions.
- offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- all related data communication services

whether conducted by:

- e-mail
- cloud computing
- mobile devices
- document management
- social media
- voice or data transmission or otherwise

Documents, etc., to be delivered to Registrar by Foreign Companies

Every foreign company within 30 days of establishment of place of business in India, deliver to the Registrar for registration

- certified copy of the charter, statutes or memorandum and articles (in English language)
- full address of the registered office
- list of the directors and secretary of the company



- name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company any notices or other documents required to be served on the company
- full address of principal place of business in India
- particulars of opening and closing of a place of business in India on earlier occasion/s
- declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad

Other Points

- Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi
- If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India
- Any alteration in the documents is to be delivered to the Registrar within 30 days of such alteration (a return containing the particulars of the alteration)

Display of name, etc., of foreign company

1. NAME of foreign company and the country in which it is incorporated

- Conspicuously exhibit on outside of every office or place where it carries on business in India in letters easily legible in English characters
- And one of the languages in general use in the locality in which the office or place is situate

2. Name of Co. in Business Letters, bill-heads and letter paper, and in all notices, and other official publications

- Name of the company and of the country in which the company is incorporated
- It is to be stated in legible English characters

3. When liability of the members of the company is limited

- cause notice of that fact: - stated in point 1. and 2.

Service on foreign company

- Any process, notice, or other document required to be served on a foreign company
- Be sufficiently served
- if addressed to any person whose name and address have been delivered to the Registrar under section 380, and
- left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode

Registration of prospectus

1. Signing and delivery of prospectus

- No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;
- copy of prospectus certified by the chairperson of the company and 2 other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and
- states on the face of it that a copy has been so delivered, and
- there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

2. Documents to be annexed to the prospectus

- any consent to the issue of the prospectus required from any person as an expert;
- copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;



- a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
- a copy of underwriting agreement; and
- a copy of power of attorney, if prospectus is signed through duly authorized agent of directors

Punishment in case of failure to comply with provisions of this Chapter

Defaulting foreign company	In case of continuing default Additional fine	Every defaulting officer of the foreign company
₹ 1 Lakh to ₹ 3 Lakh	₹ 50,000 per day after the first during which the contravention continues	₹ 25,000 to ₹ 5 Lakh

Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

Not affecting the validity of

- any contract, dealing or transaction entered into by the company
- its liability to be sued in respect thereof

The Co. shall not be entitled to

- bring any suit,
- claim any set-off,
- make any counter-claim
- institute any legal proceeding in respect of any such contract, dealing or transaction
- until the company has complied with the provisions of the Companies Act, 2013, applicable to it

Question & Answers

Sec 2(42)- Foreign Company

Case based

Question 1

In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company':

- 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.
- 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. (SM)

Answer 1

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- business to business and business to consumer transactions, data interchange and other digital supply transactions;
- offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- online services such as telemarketing, telecommuting, telemedicine, education and information research;



- and
- (e) all related data communication services,
Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.
- (f) 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.
- (g) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question 2

- (i) In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server located outside India.
- (j) (ii) In continuance of (i) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. (RTP Sep'24)

Answer 2

- (i) According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –
- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - conducts any business activity in India in any other manner.
- According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to, online services such as telemarketing, telecommuting, telemedicine, education and information research.
- In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in online business of telemarketing services in India having its main server outside India, Gram Pte will be treated as foreign company.
- (ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.
- Here, Prism Ltd. is advised to follow the above procedure accordingly.

Question 3

As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai? (MTP 2 Marks Mar 19, Oct'19, May'20, MTP 4 Marks Apr'21, RTP May'18)

Answer 3

- (i) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:



- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner
- According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

Question 4



- I. **Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013. (3 Marks April '23)**
- II. **Arica is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:**
- (1) **Whether branch office will be considered as a company incorporated outside India.**
 - (2) **If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai. (MTP 5 Marks April '23, SM)**

Answer 4

- (i) Yes, as per 2(42) of the Companies Act, 2013, any company or body corporate incorporated outside India which-
- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (b) conducts any business activity in India in any other manner shall be considered as a foreign company. Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.
- (ii) (1) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-
- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (b) conducts any business activity in India in any other manner. Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.
- (2) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:
- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company.
 - (b) the full address of the registered or principal office of the company;
 - (c) a list of the directors and secretary of the company containing their respective details as per the rules.
 - (d) the name/s and address/s of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
 - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
 - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
 - (g) declaration that none of the directors of the company / the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and



(h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 5

Analyze under the provisions of the Companies Act, 2013, whether the following Companies can be considered as a Foreign Company:

- (i) A Company incorporated outside India and registered in Moscow, Russia has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India.
- (ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.
- (iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company.
- (iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the Board Meetings held only in India.
(PYP 4 Marks Jan '21)

Answer 5

- (i) As per the facts, a company is registered in Moscow, Russia and has installed its main server in Moscow for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that this company has a place of business in India through electronic mode and is conducting business activity in India. Hence, the above company is a foreign company by taking into account the provisions of Section 2(42) of the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014.
- (ii) In this case, a company is incorporated outside India and employs agents in India but does not have a place of business in India. As per section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode. Since, the company though employed agent in India but have no place of business in India, so it cannot be termed as foreign company.
- (iii) In the given situation, a company is registered in Australia. It has authorised Mr. X in India to source customers and enter into contract on behalf of the company. Thus, it can be said that this company has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, this company is a foreign company as per the Companies Act, 2013.
- (iv) In the given situation, a company is registered in Mauritius. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business models, financial strategies and important decisions in India cannot be termed as conducting business activity in India. Hence, the above company is not a foreign company as per the Companies Act, 2013.

Sec 379- Application of the Act to Foreign Companies

Case based

Question 6

Elegant Educations Ltd. is a UK based company, engaged in the business of providing on-line education. It has introduced some certificate courses having duration of 4 to 6 months and any person can enrol in the courses. The education is provided through on-line classes, webinars and study materials are supplied through e-mails to the registered candidates. The company is not having any place of business in India. It is mentioned that all the candidates who have enrolled in the course are the Indian Citizens residing in India.

- (i) Based on the above facts of procuring 100% business from India, whether the company will be treated as



foreign company or an Indian company.

- (ii) What will be your answer if in the above question, more than 55% of that foreign company's paid-up share capital is held by Indian Companies or Indian Citizens. (MTP 3 Marks Oct 22)

Answer 6

- (i) In terms of Section 2(42) "Foreign Company" means any company or body corporate incorporated outside India which—
- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - conducts any business activity in India in any other manner.

Further Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014 provides that for the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Thus, from the above provisions the company is treated as foreign company irrespective of the fact that its 100% business comes from India.

- (ii) Section 379(2) provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by-
- one or more citizens of India; or
 - one or more companies; or
 - bodies corporate incorporated in India;
 - one or more citizens of India and one or more companies or bodies corporate incorporated in India,
- whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. Thus, in the given case, if more than 50% of the paid-up share capital is held by Indian Companies / Citizen it shall be treated as a company incorporated in India and such company shall abide by the provisions of Section 380 to 386 (both inclusive) and Section 392 and 393 shall be applicable.

Question 7

Tokushima Motors Ltd. was incorporated in Japan. Its share capital is held by the following persons—Citizens of India – 10% Indian Companies— 40%

The company has opened its representative office in Mumbai on 15 th January, 2021, in order to receive orders from the Indian Market and make available the delivery of Japanese luxury cars to the Indian purchasers.

The company was not aware of the Indian Company Law, hence could not file the required documents to the Registrar. The company could file all the required documents only on 28th February, 2021.

Based on the above facts, answer the following questions:

- Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Tokushia Motors Ltd?**
- What documents are required to be filed by Tokushia Motors Ltd to the Registrar of Companies?**
- By what time all the requisite documents shall be filed? (RTP Nov 21)**

Answer 7

- (i) Section 379(2) of the Companies Act, 2013, provides that where not less than fifty per cent of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

In the given case, although the company was incorporated in Japan, however its share capital of not less than 50% is held by the Indian citizens and Indian companies, hence in terms of section 379(2) all the provisions pertaining to Chapter XXII of the Companies Act, 2013, shall be applicable on it.

- (ii) In terms of section 380(1) every foreign company shall, within thirty days of the establishment of its place



of business in India, deliver to the Registrar for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
- (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

Further its sub-section (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

- (iii) In the given, case the company had established its representative office in India on 15.01.2021, it was required to file the documents latest by 14.02.2021 with the Registrar.

Question 8

Zell Power LLC (ZPL), is foreign company as per definition provided in the Companies Act 2013, carrying business in India also. It is strictly observing the provisions stated for foreign companies in Companies Act 2013, while Registrar (ROC, Delhi) is of opinion that ZPL apart from observing the provision prescribed for foreign companies (section 380 to 386 along section 392 and 393) ZPL also need to observe other provisions of the Companies Act, 2013 with regard to the business carried on by it in India as if it were a company incorporated in India.

ZPL is not agreed to opinion of Registrar and continue to observe only those provisions which are applicable to foreign companies. ZPL also furnish the following details to ROC. ZPL capital includes;

Ordinary Share (6 Million @ Face Value £ 5 with £ 2 Paid-up) – £12 Million Preference Stock (1.2 Million @ £10 fully Paid-Up) - £ 12 Million

Debt Fund - £ 21.25 Million

Out of which;

Mr. Trishi who is an Indian citizen and Residing in India being part of promoter group own 2,932,780 ordinary shares of ZPL

Mr. Nirav who is an Indian citizen but residing in UAE own 109,205 preference stock of ZPL

Modern Engineering Limited that an Indian Company own 67,220 ordinary shares and 142,320 preference stocks of ZPL Raj Investment Limited, which is an Indian Company holds 393,475 preference stocks of ZPL

You are required to evaluate the facts, and determine whose opinion hold legal validity in the light of the relevant provisions of the Companies Act, 2013. (RTP May 23)

Answer 8

Section 379 of the Companies Act 2013 deals with application of Act to foreign companies.

Sub-section 2 to section 379 provides where not less than fifty percent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is held by

- (i) one or more citizens of India or
- (ii) one or more companies or bodies corporate incorporated in India, or
- (iii) one or more citizens of India and one or more companies or bodies corporate incorporated in India,

Whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.



Total of ordinary shares held by Indian citizen or corporation in aggregate are 3 million (i.e. 2932780 and 67220) whose paid-up value is £6 million

Total of preference stock held by Indian citizen or corporation in aggregate are 0.645 million (i.e. 109,205, 142,320, and 393,475) whose paid-up value is £6.45 million

Since out of paid-up capital of £24 (i.e. £12 million ordinary share capital + £12 million preference share capital) of ZPL, £12.45 million held by citizens of India along with companies incorporated in India, in aggregate hence ZPL shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. Opinion of Registrar is legally valid and shall prevail.

Question 9



RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid.

RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid- up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.

The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.

The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies.

Answer the following, referring to the provisions of the Companies Act, 2013:

- (i) **Whether RFC Limited is a foreign company?**
- (ii) **Whether service of notice by the Registrar of companies valid? (PYP 4 Marks May '22)**

Answer 9

(i) **Whether RFC Limited is a Foreign Company ? Definition of a Foreign Company**

As per Section 2(42) of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India.

Provision of Section 379(2): Requirement of holding of paid up share capital of Foreign Company:

Further, in the light of the inputs given in the problem, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

In the given case, RFC Limited, incorporated in Singapore has a business place in Mumbai. The Company has issued 5,00,000 shares of USD 100 each i.e. of USD 5,00,00,000 comprising of USD 4,00,00,000 equity share capital (i.e. 4 lac* USD 100) and USD 1,00,00,000 preference share capital (i.e.,1 lac * USD 100).

As the issued capital was fully paid up except 5,000 preferences shares (i.e., 5000* 50= USD 2,50,000), so, total paid up share capital of the RFC limited is:

Equity Share Capital	USD 4,00,00,000
Preference Share Capital (Full Paid)	USD 95,00,000
Preference Share Capital (Partly Paid)	USD 2,50,000
Total Paid up Share Capital	USD 4,97,50,000

As per facts, shareholding by RJW, an Indian citizen is USD 25,45,000 preference share capital (i.e. 26,000 shares *USD 100- 1100 shares * USD 50) and Ronte Limited incorporated in New-Delhi (India) is holding USD 2,23,50,000 equity share capital (i.e., 2,23,500 *USD 100) in RFC Limited. Aggregate shareholding is USD 2,48,95,000.

As per requirement of Section 379(2), RJW, an Indian citizen and Ronte Limited incorporated (an Indian Company) were holding more than 50% of the shareholding (i.e. 50%* USD 4,97,50,000 = 2,48,75,000) in RFC Limited.

Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the



provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .

(ii) Whether service of notice by the RoC is valid?

Yes, the service of notice by the Registrar of Companies is valid in the light of Section 383 of the Companies Act, 2013. According to the provision any process, notice, or other document required to be served on a foreign company, shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Sec 380- Documents to be delivered to Registrar by Foreign Companies

Question 10

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. (SM)

Answer 10

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.

Question 11

Fine Publishers, registered in Tokyo, began operating in India during the financial year 2016. The company has duly submitted all necessary documents to the registrar within the specified due date. On 1st March, 2024, Fine Publishers has shifted its principal office in Tokyo. Is Fine Publishers required to undertake any steps due to change in address of principal office. Give your answer in reference to the provisions of the Companies Act, 2013. (RTP May '24, New SM)

Answer 11

Section 380 (3) of the Companies Act, 2013, provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed along with prescribed fees. Accordingly, Fine Publishers is required to submit to the Registrar the full address of the new registered or principal office of the company by March 30, 2024.

Question 12

CNC Limited is a foreign company having its places of business in Mumbai and Ahmedabad in India. It has amended its Memorandum of Association on 1 st June, 2022 and closed branch office situated at Mumbai. Referring to the provisions of the Companies Act, 2013 advise the company on the following matters:

- (i) Compliance procedure as regards to amendment of Memorandum of Association.**
- (ii) Compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the Registrar of Companies afterwards. (PYP 4 Marks Nov 22)**

Answer 12

According to section 380 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014, following shall be the compliances duly required to be fulfilled by the CNC Limited, a foreign company, for closure of one of its branch of Mumbai office.

- (i) W.r.t. Compliance procedure as regards to amendment of Memorandum of Association**



According to Section 380 (3) of the Act which provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. As in the instance, the CNC Limited has amended its Memorandum of Association on 1st of June 2022 and closed its branch office of Mumbai. This altered document is required to be delivered to Registrar by CNC Limited within 30 days i.e. latest by 1st of July 2022.

(ii) W.E.T.T. compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the registrar of companies afterwards

If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

Here, in the given case, CNC Limited has still Ahmedabad as a place of business in India. So, will continue the submission of document to the Registrar even after the closure of Mumbai office.

Exam insights: Majority of the examinees have attempted this question in a generalized manner without referring the provisions of section 380 of the Companies Act, 2013 for filing of documents by foreign companies read with Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014 for compliance procedure as regards to amendment of memorandum of association and closure of office and discontinuance of submission of documents to the Registrar of Companies afterwards.

Question 13

ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents. (MTP 2 Marks Mar 19, Oct'19, SM)

Answer 13

The Companies Act, 2013 vide section 380 provides that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to *the Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 14



Delegate Limited, incorporated in Singapore desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai. (MTP 8 Marks, Mar'21, RTP May'19, SM)

Answer 14

Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

- a **certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;
- the full **address of the registered or principal office** of the company;
- a **list of the directors and secretary** of the company containing such particulars as prescribed under the Companies (Registration of Foreign Companies) Rules, 2014,



- (1) personal name and surname in full;
 - (2) any former name or names and surname or surnames in full;
 - (3) father's name or mother's name and spouse's name;
 - (4) date of birth;
 - (5) residential address;
 - (6) nationality;
 - (7) if the present nationality is not the nationality of origin, his nationality of origin;
 - (8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
 - (9) income-tax permanent account number (PAN), if applicable;
 - (10) occupation, if any;
 - (11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - (12) other directorship or directorships held by him;
 - (13) Membership Number (for Secretary only); and
 - (14) e-mail ID.
- (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Sec 381- Accounts of Foreign Company

Question 15

Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'.(MTP 5 Marks July'24)

Answer 15

Audit of accounts of foreign company

According to the Companies (Registration of Foreign Companies) Rules, 2014,

- (i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
- (ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company.

Case based

Question 16

MNO Ltd., a foreign Joint Venture Company having its established place of business in India and following International Financial Reporting Standards (IFRS) and its financial statement being prepared in German language desires to know the following with regard to submission of its financial statements to the Registrar of Companies in India. Its area office is located at Mumbai:



- (i) Submission of financial statements in German Language;
- (ii) Format of financial statements as per IFRS;
- (iii) How authentication of its financial statements is to be done?
- (iv) Whether the documents can be submitted at the Registrar's office at Mumbai? (PYP 4 Marks July 21)

Answer 16

In the light of the given facts, following are the answers:

- (i) All the documents required to be filed with the Registrar by the foreign companies shall be in **English language**. If the financial statements are in German language and not in the English language, a certified translation thereof in the English language shall be annexed and submitted to Registrar [Section 381 (2)]
- (ii) Format of Financial statement as per IFRS:
Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:
Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.
- (iii) Authentication of translated financial statements [Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014]:
 - (1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.
 - (2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of—
 - (a) the official having custody of the original; or
 - (b) a Notary (Public) of the country (or part of the country) where the company is incorporated: **Provided** that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.
 - (3) Where such translation is made within India, it shall be authenticated by—
 - (a) an advocate, attorney or pleader entitled to appear before any High Court; or
 - (b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.
- (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi. Hence, the documents of MNO Ltd. cannot be submitted at the Registrar's office at Mumbai.

[Following assumptions drawn within the provided informations:

1. With respect to part (iii), an answer has been given in reference to part (i) of the question. Here, authentication is being considered to be asked of translated financial statements (from German language to English Language) as nothing is specified in the question.
2. In order to answer part (iii) of the question, it may be considered in independent situation, then only the authentication of its financial statement can be answered according to the Companies (Registration of Foreign Companies) Rules, 2014. According to which every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.]

EXAM INSIGHTS: The Performance of the examinees was average. Majority of the examinees have answered this question in a generalized manner without referring the provisions of section 381(2) of the Companies Act, 2013 for filing of documents by foreign companies and Rule 6 of the Companies (Accounts) Rules, 2014 for consolidation of accounts and Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014 for authentication of translated financial statements.



Phil Heath Systems Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the Indian business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the Companies Act, 2013, advise the Company on the following matters:

- (i) Whether the accounts of the Company pertaining to Indian business operations shall be audited? If yes, by whom?
- (ii) What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?
- (iii) What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?
- (iv) In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies? (PYP 4 Marks Jan '21)

Answer 17

Phil Health Systems Incorporated (PHSI), a foreign company, is registered outside India and has a place of business in India. As it has prepared financial statements pertaining to the Indian business operations, it reflects conducts of business activity in India. Therefore, provisions related to companies incorporated outside India shall be applicable to it. Following are the answer in line with said nature of the company:

- (i) According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered Accountants.
- (ii) The audited financial statements of Indian business operations of PHSI shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate i.e., latest by 30th September 2020.
Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months i.e. latest by 31st December 2020.
- (iii) According to Section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013 (chapter XXII deals with 'Companies incorporated Outside India'), shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.
In the instant case, non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI.
However, PHSI shall not be entitled to bring in any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract until the company has filed the financial statements.
- (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year i.e. by 30th May 2020, to the Registrar containing the particulars as they stood on the close of the financial year.

Question 18

Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company. (MTP 5 Marks Mar'24, New SM)

Answer 18

Preparation and filing of financial statements by a foreign company According to section 381 of the Companies Act, 2013:

- (i) Every foreign company shall, in every calendar year, —
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and



including or having attached or annexed thereto such documents as may be prescribed, and

(b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

- (1) documents that with Chapter IX i.e. Accounts of Companies.
- (2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
- (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.
- (iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
- (iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

Sec 382- Display of Name etc of Foreign Company

Case based

Question 19

A company incorporated in France, with limited liability, established an office in Baroda, and started conducting business activity from its place of business. In compliance of Section 382 of the Companies Act, 2013, it conspicuously exhibited a name board outside its office, with the name of the company in English in big block letters. In three days, the company received a notice from the Registrar stating that it had not properly complied with the requirements of Section 382 of the Companies Act, 2013. Mention the areas of lapses of the foreign company, which would be mentioned in the notice. (MTP 4 Marks Sep '22)

Answer 19

According to Section 382 of the Companies Act, 2013,

- every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- if the liability of the members of the company is limited, cause notice of that fact—
 - (I) to be stated in every such prospectus issued and in all business letters, bill -heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (II) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:
 - (i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated, name of the country. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated. i.e. Baroda.
 - (ii) Further the company is one where the liability of members is limited. The fact that the members



liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda

The above lapses would have given rise to the notice from the Registrar.

Sec 387- Dating of Prospectus & Particulars to be contained therein

Case based

Question 20

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

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

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

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

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

- Whether the expert's statement can be considered to be included in the prospectus?
- What copy of contracts would have been annexed with the prospectus by Mr. Berry?
- Whether it is valid on the part of Blue Star Inc. for issuing few application forms without prospectus?
(RTP May 22)

Answer 20

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

In the given case, the reference of expert's consent statement was given in the prospectus. Thus, the expert's statement shall be deemed to be included in a prospectus.

- (ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely:-

- a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.

In the given case, during the preceding 2 years, i.e. F.Y. 2019 -20 and F.Y. 2020-21, respectively, the material contracts entered into by Blue Star Inc. are 3 + 4 = 7 and apart from it, one contract has been entered into with its manager. So, in total 8 copies of contracts would have been annexed with the prospectus by Mr. Berry.

- (iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388:

Exception: If it is shown that the form of application was issued in connection with a bona fide invitation



to a person to enter into an underwriting agreement with respect to securities.

Blue Star Inc. has, thus, violated provisions of section 387(3) by issuing few application forms without prospectus. However, the application form issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc. can be considered as valid as such a case is covered by the exception to the said sub-section.

Sec 389- Registration of Prospectus

Theory

Question 21

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? (MTP 5 Marks Apr'24)

Answer 21

According to section 389 of the Companies Act, 2013:

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

- ✓ a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and
- ✓ the prospectus states on the face of it that a copy has been so delivered, and
- ✓ there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

- (1) any consent to the issue of the prospectus required from any person as an expert;
- (2) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (3) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
- (4) a copy of underwriting agreement; and
- (5) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Case based

Question 22

Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India. As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India. (MTP 5 Marks Aug'24, SM)

Answer 22

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified



by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Question 23

- (i) **Tokyo Ferro Alloys Limited, a company registered in Japan, started its operations in India by establishing a Marketing Division in Mumbai on 1st April, 2021. Recently, the Company decided to issue certain securities in India and therefore, is planning to circulate in India, a prospectus offering for subscription in securities of the Company. Assuming that all the other formalities in this respect have been complied with, advise the person in-charge of Indian operations regarding the other documents required to be annexed to the prospectus in order to registered the same, referring to the relevant provisions of the Companies Act, 2013 and the rules made thereunder,**
- (ii) **Vibav Pte, a company incorporated in Singapore is having a liaison office in Delhi. The Liaison office seeks your advice regarding the documents to be filed with the Registrar along with the financial statement under the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014. (PYP 4 Marks Dec '21)**

Answer 23

- (i) According to this Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014,
The Following documents shall be annexed to the prospectus, namely:
- any consent to the issue of the prospectus required from any person as an expert;
 - a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
 - a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
 - A copy of underwriting agreement; and
 - A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.
- Accordingly, the person in charge of the Indian operations shall be advised in accordance with the above provisions.
- (ii) According to Rule 4 of the Foreign Companies (Registration of Foreign Companies) Rules, 2014, every foreign company, shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-
- Statement of related party transaction
 - Statement of repatriation of profits
 - Statement of transfer of funds (including dividends, if any).
- The above statement shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

Exam Insights: The Performance of the examinees was poor. Most of the examinees have not answered correctly the provisions of Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules 2014 regarding the documents to be annexed with the prospectus and Rule 4 of the Foreign Companies (Registration of Foreign Companies) Rules 2014 regarding documents to be annexed with the financial statement. They have answered in general the documents to be delivered on establishment of foreign companies in India. This had a negative impact on the performance of the examinees.

Sec 392- Punishment for Contravention

Theory



Question 24

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.

Answer 24

The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non-filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 but which may extend to 5,00,000.

Sec 379- Application of the Act to Foreign Companies

Question 25

Beauty Cosmetics, a company incorporated in Korea has established its branch office in Chennai for conducting its business in India. The structure of paid-up share capital of Beauty Cosmetics as at 31st March 2024 is as below:

The company does not have any Preference Share Capital.

Equity share capital held by Mr. L, an Indian citizen: 10%

Equity share capital held by Mr. R, an Indian Citizen: 20%

Equity share capital held by Fairness Cosmetics Limited, an Indian company: 20%

You being a Chartered Accountant are asked to explain with reference to the provisions of the Companies Act, 2013:

- (i) Whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India, and
- (ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company? (PYP 5 Marks Sep'24)

Answer 25

- (i) **Whether Beauty Cosmetics shall be deemed to be a foreign company or an Indian company?**

As per section 2(42) of the Companies Act, 2013, a 'foreign company' means any company or a body corporate incorporated outside India which has:

- (a) 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.

In the given question, Beauty Cosmetics, a Korean company has established a place of business in India (branch office in Chennai) and also carries on the business in India. Hence, Beauty Cosmetics shall be deemed to be a foreign company under the Companies Act, 2013 for the business carried on by it in India.

Further, according to section 379(2) of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:

- (i) one or more citizens of India; or
- (ii) by one or more companies or bodies corporate incorporated in India; or
- (iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and other prescribed provisions of the Companies Act, 2013, with regard to the business carried on



by it in India as if it were a company incorporated in India.

In the given question, 50% (10% + 20% + 20%) of the share capital of Beauty Cosmetics (incorporated in Korea) is held by Mr. L (Indian Citizen), Mr. R (Indian Citizen) and Fairness Cosmetics Limited (Indian Company) respectively.

Hence, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India.

(ii) Whether Beauty Cosmetics, for the business carried on by it in India, be required to comply with the provisions of the Act?

Since, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India, it is required to comply with the relevant provisions of the Companies Act, 2013, as if it is an Indian company.

Sec 381- Accounts of Foreign Company

Question 26

Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'. (MTP 5 Marks Nov'24)

Answer 26

Audit of accounts of foreign company

According to the Companies (Registration of Foreign Companies) Rules, 2014,

- (i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
- (ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

STRIVING TOWARDS KNOWLEDGE

Sec 393- Co's failure to comply with provisions to not affect validity of contracts

Question 27

XYZ Limited, a company incorporated outside India and to which provisions of Chapter XXII of the Companies Act, 2013 are applicable, entered into a contract with ABC Limited, an Indian company, for the supply of machinery. After the machinery was delivered, ABC Limited failed to make the payment citing defects in the machinery.

XYZ Limited discovered that it had failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, relating to the registration of foreign companies in India. Despite this, XYZ Limited intends to file a suit against ABC Limited for payment.

Discuss whether XYZ Limited can initiate legal proceedings against ABC Limited in light of the non-compliance with Chapter XXII of the Companies Act, 2013.

Give your answer as per the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014]. (MTP 5 Marks Dec'24) (Chapter Companies Incorporated Outside India).

Answer 27

According to section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013, 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. However, the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Companies Act, 2013, applicable to it.

In this given question, XYZ Limited, a company incorporated outside India, has failed to comply with certain



provisions of Chapter XXII of the Companies Act, 2013, which governs the registration and compliance requirements for foreign companies operating in India.

According to the Companies Act, 2013, non-compliance with Chapter XXII does not affect the validity of any contract, dealing, or transaction entered into by the company. Therefore, the contract between XYZ Limited and ABC Limited remains valid, and ABC Limited is still legally bound to fulfill its contractual obligations, including the payment for the machinery supplied.

Further, XYZ Limited cannot bring a suit, claim any set-off, make any counter-claim, or institute any legal proceeding related to the contract as it has not complied with certain provisions of Chapter XXII.

MULTIPLE CHOICE QUESTIONS MCQ

Sec 2(42)- Foreign Company

1. 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.

Ans: (a)

2. Modern Books Publishers plc., a company incorporated in United Kingdom (UK) has a wholly owned subsidiary by the name Beta Periodicals Limited whose Registered Office is situated at Mumbai and which is engaged in publishing scientific, technical and specialty magazines, periodicals and journals. Beta Periodicals Limited considers itself to be a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company. From the four options given below, you are required choose the one which appropriately indicates whether Beta Periodicals Limited can be considered as a foreign company: .(MTP 2 Marks, March'22)

- (a) Beta Periodicals Limited cannot be considered as a foreign company even if it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.
- (b) Beta Periodicals Limited shall be considered as a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.
- (c) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the Regional Director having jurisdiction over New Delhi for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.
- (d) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the New Delhi Bench of National Company Law Tribunal for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company

Ans: (a)

Sec 380- Documents to be delivered to Registrar by Foreign Companies

3. 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.

Ans: (d)



4. Druk 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. Arun – Managing Director, (ii) Mr. Ranveer – Director, (iii) Mr. Ramesh Malik - Director and (iv) Mr. Navaaz - Director. Ms. Lavina has been appointed as the Secretary of Druk Software Company Inc. It is to be noted that Mr. Ramesh Malik and Mr. Navaaz, resident in India, are the persons who have been authorised by Druk Software Company Inc. to accept on behalf of the company service of process, notices or other documents required to be served on Druk Software Company Inc. In relation to the company's establishment, you are required to enlighten the Druk Company Inc. with respect to whose, a declaration will be required to be submitted to the Registrar of Companies by Druk Software Company Inc. for not being convicted or debarred from formation of companies in or outside India. (RTP May '24, SM, MTP 1 Mark Nov 21)

- (a) Mr. Arun, Mr. Ranveer, Mr. Ramesh Malik, Mr. Navaaz and Ms. Lavina
- (b) Mr. Arun, Mr. Ramesh Malik, Mr. Navaaz and Ms. Lavina
- (c) Mr. Ramesh Malik and Mr. Navaaz
- (d) Mr. Arun, Mr. Ranveer, Mr. Ramesh Malik and Mr. Navaaz

Ans: (d)

5. 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.

Ans: (c)

Sec 381- Accounts of Foreign Company

6. Lavender International Entertainment Inc., headquartered and registered in New York City and a prominent name in lifestyle audio innovations, professional audio and lighting solutions, and digital transformation, is present in more than seventy countries including India. Due to certain mis- happenings, the company was unable to file its financial statements along with necessary documents for the year 2023 with the Registrar of Companies (in India) within the stipulated time as permitted by the Companies Act, 2013. It is observed that the ROC may, for any special reason and on an application made in writing by Lavender International Entertainment, extend the 'filing time' maximum up to a certain period. From the following options, choose the correct one in this respect: (MTP 2 Marks Jul'24)

- (a) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by one month beyond the stipulated time period.
- (b) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by two months beyond the stipulated time period.
- (c) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by three months beyond the stipulated time period.
- (d) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by six months beyond the stipulated time period.

Ans: (c)



7. 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.

Ans: (d)

