1 Preliminary

Question 1:

The paid-up share capital of Saras Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs.10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

[RTP – May 18, May 19]

Answer

Relevant Provisions

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

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

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

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

Explanation—For the purposes of this clause—

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

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

Analysis and Conclusion

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e., controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Question 2:

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:-
(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.

[RTP May 23]

OR

What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement?

[May 2018, Nov'22]

Answer

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

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

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

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(40) of the Companies Act, 2013:

(i) One person company – It is given that the company is having 40 members and also its name does not contain the words 'OPC', so it is not a one person company.
(ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.
(iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.
(iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a start- up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

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

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(40) of the Companies Act, 2013.

Question 3:

The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

[RTP Nov 21]

Answer

As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

Question 4:

SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

[Nov 2019, RTP Sept 2024]

Answer

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.

SKP Limited is advised to follow the above procedure accordingly.

[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part (i) of the question]

Question 5:

(i) Paid-up equity share capital Rs. 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs. 10 each. There is no change in the paid-up share capital thereafter.
(ii) The turnover is Rs. 2,00,00,000.

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

You are to advise on the following points explaining the provisions of the Companies Act, 2013:
(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?

[July 2021, MTP May 24 – 5 marks]

Answer

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

a) paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; **and**
b) turnover as per profit and loss account for the immediately preceding financial year not exceeding Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs. 100 crores.

Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs. 10 totalling Rs. 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company Further, the paid up share capital (Rs. 50 lakhs) and turnover (Rs. 2 crores) is within the limit as prescribed under section 2(85), hence, Smart Solutions Private Limited can be categorised as a small company.

Part (ii)

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

a) a balance sheet as at the end of the financial year;
b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
c) cash flow statement for the financial year;
d) a statement of changes in equity, if applicable; and
e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

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

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

Question 6: *(partially related to chapter 3)*

Johnson Limited goes for public issue of its shares. The issue was oversubscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013. Examine who will be considered in default in the instant case?

[July 2021]

Answer

Relevant Provisions

As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or Rs. 1 lakh, whichever is less.

As per section 2(60) of the Act, Officer who is in default, has been described as:
For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

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

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

Question 7:

New Private Ltd. is a company registered under the Companies Act, 2013 with a paid -up share capital of Rs. 70 lakh and turnover of Rs. 60 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
(i) Whether the New Private Ltd. can avail the status of small company?
(ii) What will be your answer if turnover of company is Rs. 35 crore and the capital is same as Rs. 70 lakh?
[MTP Oct 2021]

OR

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, paid up share capital of Rs. 45 lakh and turnover of Rs. 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
(i) Whether the MNP Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is Rs. 1.50 crore?
[May 18, MTP Oct, 2020, ICAI Module]

Answer

Relevant Provisions

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

(i) paid-up share capital of which does not exceed Rs. 50 lakhs or such higher amount as may be prescribed which shall not be more than ten crore rupees; **and**
(ii) turnover of which as per its last profit and loss account does not exceed Rs. 2 crores or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to:
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed Rs. 4 crores **and** Rs. 40 crores respectively.

Conclusions

(i) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of Rs. 70 lakh and having turnover of Rs. 60 crore. Since, only one criteria of share capital not exceeding Rs. 4 crores is met, but the second criteria of turnover not exceeding Rs. 40 crores is not met, and the provisions require both the criteria to be met in order to avail the status of a small company, New Private Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is Rs. 35 crore, then both the criteria will be fulfilled, and New Private Ltd. can avail the status of small company.

Question 8:

MNP Limited is a registered public company having the following:

(a)	Directors and their Relatives	18
(b)	Employees	26
(c)	Ex-Employees (Shares were allotted during employment)	15
(d)	Members holding shares jointly (7 x 2)	14
(e)	Other Members	137

The Board of Directors of MNP Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, Advise:

i. Whether the company can be converted into a private company?

ii. Whether existing number of members need to be reduced for the proposed private company?

[ICAI Module, May 2022]

Answer

According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having prescribed minimum paid-up share capital, and which by its articles, limits number of its members to 200

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

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

a) persons who are in the employment of the company; and

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

Accordingly, total number of members in MNP Limited are:

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

(i) MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.

(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

Question 9:

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

[May 2022]

Answer

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

a) a holding, subsidiary or an associate company of such company;
b) a subsidiary of a holding company to which it is also a subsidiary; or
c) an investing company or the venturer of the company;

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

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

Alternate Answer:

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

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

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

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

Question 10:

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

(i) ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
(ii) CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013
(iii) PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013.

[Nov 22]

Answer:

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

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

(a) Public cos. which have not listed their equity shares on a recognized stock exchange but have listed their:
    (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
    (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;

or

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

(b) Public cos. which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Act.

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.
(ii) CHG Limited is an unlisted company.
(iii) PRS Limited is an unlisted company.

Question 11:

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31 March, 2022 of S Pvt. Ltd., its turnover was Rs. 1.80 crores; and paid up share capital was 80 lakhs. The Board of Directors wants to avail the status of a small company. The company secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of practicing company secretary is correct, explaining the relevant provisions of the Act.

[May 2023, RTP May'24, Nov'22 – 5 marks]

Answer:

As per section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company —

(i) paid-up share capital of which does not exceed four crore rupees, **and**
(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees.

Provided that nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of Rs. 1.80 crore, and paid-up share capital was Rs. 80 lakh. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.)

Question 12:

Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued Rs. 1,00,000 convertible preference shares (carrying right to vote) of Rs. 100 each and 10,00,000 equity shares of Rs. 10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:

(i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?
(ii) XYZ Private Limited is a public company as per the Companies Act, 2013?

[MTP May'24 – 5 marks]

Answer:

(i) Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.
(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

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

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

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

In the given question, total voting power in XYZ Private Limited is:

Particulars	Amount in Rs.
Convertible Preference Shares (carrying voting rights)	1,00,00,000
Equity Shares	1,00,00,000
Total Voting Power	2,00,00,000

Cross Limited holds more than one- half of the total voting power [(Rs. 10,00,000 equity shares+ Rs. 1,00,00,000 preference shares)/ Rs 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited.

Further, in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

Note

2 Incorporation of Company and Matters Incidental Thereto

Question 1:

The Articles of Association of XYZ Ltd. provides the Board of Directors authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.

[Nov 2016]

Answer

Relevant Provisions

Doctrine of Indoor Management:

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

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

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

The company is bound to Mr. X:

(i) since the lender, Mr. X, had lent the money to the company assuming that the company was authorized to borrow money after obtaining authorization from the members in GM;

(ii) since, on the same facts, the Court held in "Royal British Bank v Turquand" that the outsiders dealing with the company were not required to inquire into the internal management of the company, and the outsiders were entitled to assume that as far as internal proceedings of the company were concerned, everything had been done regularly (termed as doctrine of indoor management).

Conclusion

In the present case, XYZ Ltd. will be bound to return the money to Mr. X.

Question 2

Repeated question. Hence, merged with other question.

Question 3

The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.

[January 2021]

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

[Nov 2018, ICAI Module, MTP Nov'22, MTP 1 Nov'23- 6 marks]

OR

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

[MTP May 2020 – 6 marks]

Answer

According to this doctrine, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. They can simply assume that all the required things were done properly in the company.

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

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

The doctrine of indoor management was evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management

(i) What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

(ii) If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

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

Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available in the circumstances where company does not make proper inquiry.

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

Conclusion relevant for the Alternate question of Smart computers:

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

Question 4

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

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

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

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

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

[November 2020]

Answer

Relevant provisions

As per section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

The other person (nominee) whose name is given in the memorandum shall give his prior written consent in Form INC-3 and the same shall be filed with Registrar of companies in Form INC-4 at the time of incorporation along with its Memorandum of Association and Articles of Association.

Such other person (nominee) may withdraw his consent in the following manner:

- Nominee may withdraw consent by giving a notice in writing to the sole member and to OPC.
- Sole member shall nominate another person within 15 days of such withdrawal.
- Send intimation of such nomination along with written consent (Form INC 3)
- OPC to inform RoC in Form INC-4 within 30 days of withdrawal of nomination.

Analysis:

Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

Conclusion:

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

(i) No minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

(ii) Only a natural person who is an Indian citizen whether resident in India or otherwise, shall be a nominee or the sole member of a One Person Company. The term "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year.

Here Ms. Devaki though an Indian Citizen and a resident in India. So, she is eligible for being nominated as nominee of OPC. Even if she was not a resident, she can still be nominated as nominee.

(iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than 1 OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

Question 5

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

[RTP Nov 2019, MTP Nov 2021]

Answer

Relevant Provisions

According to section 3A of the Companies Act, 2013, if at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Conclusion

Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Question 6

Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.

[RTP May 2020, ICAI Module]

OR

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

[Nov 2020, MTP Nov'22, MTP 2 – Nov'23 – 6 marks]

Answer

Relevant Provisions

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to Registrar of such provisions in prescribed manner [SPICE+ or MGT-14]

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

Question 7

Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime.

Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director.

Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013.

[MTP April 2021]

Answer

Relevant provisions

As per the provisions of sub-section (3) of section 5 of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution, are met or complied with.

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

Manner of inclusion of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Notice to the Registrar of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Conclusion

In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Question 8

Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013?

[MTP-2 May 23, Nov 2019, MTP May'24, RTP Sept 24]

Answer

Order of the Tribunal:

According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:

(i) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company

and its members and creditors; or
(ii) direct that liability of the members shall be unlimited; or
(iii) direct removal of the name of the company from the register of companies; or
(iv) pass an order for the winding up of the company; or
(v) pass such other orders as it may deem fit.

However before making any order-.
(i) the company shall be given a reasonable opportunity of being heard in the matter; and
(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Also the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.

Question 9

Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.

[RTP May 2021]

Answer

Relevant Provisions

According to Section 8(1) of the Companies Act, 2013, the companies licensed 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.

Conclusions

Hence, in the instant case, the proposed act of Bio safe Herbals, a company licensed under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not in accordance to the provisions of the Companies Act, 2013.

Question 10

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.
However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid.
Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company?

[RTP May 2022]

Answer

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

Also, a firm may be a member of the company registered under section 8. Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid. Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Question 11

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

[MTP Aug 2018, MTP March 2019, ICAI Module]

OR

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

[MTP Oct 2018]

OR

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

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

(ii) Whether the Company may be wound up?

(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?

[July 2021, MTP Nov'22, MTP Nov'23 – 5 marks]

Answer

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

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

(i) The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

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

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

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

Conclusion of the alternative question (Mr. X, in association with …)

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

Question 12

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

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

[MTP Oct 2020, May 2019, ICAI Module, Nov 23 – 5 marks]

Answer

Relevant provision

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

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

the Central Government may, by issue of license, allow that person or association of persons to be registered as a limited liability company.

Conclusion

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects.

Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Sec 8 of the Companies Act, 2013.

Therefore, the proposal is not feasible.

Author's Note:

Depending on the marks of the question, student may include the provision of Sec 8(9) in the Relevant provision section of this answer. Sec 8(9) is as stated below:

If on winding up/dissolution, there remains any assets, after satisfaction of its liabilities, they may be:
a. transferred to another section 8 co. having similar objects subject to T&C imposed by Tribunal, or
b. sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed u/s 224 of IBC, 2016

Question 13

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

[MTP April 2021]

Answer

As per Section 10A of the Companies Act, 2013, a company having a share capital shall not commence any business or exercise any borrowing powers unless:

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

(ii) The company has filed with the Registrar a verification of it registered office as provided in sub-section (2) of section 12.

Mr. Dinesh has to comply with the above requirements and procedure for commencing business of company.

Question 14

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

[MTP April 2019,MTP Oct 2019,ICAI Module]

Answer

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

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company.

Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director.

Question 15

Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.

(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

[July 2021, MTP 1 May'23]

Answer

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

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

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

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

Question 16

Vintage security equipment's limited is a manufacturer of CCTV cameras. It has raised Rs. 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

[RTP Nov 2019, ICAI Module]

Answer

Relevant Provisions

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

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

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

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

Question 17

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

[ICAI Module]

Answer

Relevant provision

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to

the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company.

Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Question 18

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

[ICAI Module, RTP May'23]

Answer

Relevant provision

According to section 16 of the Companies Act, 2013 if a company is registered by a name which—

(i) in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.

(ii) is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

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

In the given case, owner of registered trade- mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of sec 13.

Question 19

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

[RTP Nov 2018]

Answer

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

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

(ii) Filing of alteration with the registrar: Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy

of the altered articles, within 15 days in such manner as may be prescribed, who shall register the same.

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

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

Question 20

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

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

(ii) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

[Nov 19, RTP May 2021, RTP Sept 2024]

Answer

As per the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a One Person Company or shall be a nominee for the sole member of a One Person Company.

In line with the above provision:

(i) No, it is not mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as residential status is not relevant. A natural person who is an Indian citizen whether resident in India or otherwise can be a nominee in OPC.

(ii) Navita can continue her nomination in the said OPC irrespective of her residential status as she is a natural person with Indian citizenship.

Question 21

S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholder of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. And 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way?

[RTP Nov 2019, ICAI Module, MTP Nov'22, MTP 1 May'23, MTP 1 Nov'23 – 6 marks]

OR

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

[ICAI Module]

Answer

Relevant Provisions

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

Following are the exceptions to the above rule—

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

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

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

Conclusion

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

Question 22

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

[MTP March 2021]

Answer

Relevant provision

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

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

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

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

Since, Anjali ltd. is holding more than one half (50 crores out of 80 crores) of the total voting power of Kavya Ltd., it (Anjali Ltd.) is holding of Kavya Ltd.

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

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

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

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

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

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

Question 23

AB Limited issued equity shares of Rs. 1,00,000 (10000 shares of Rs. 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:

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

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

(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?

[RTP Nov 2021, May 2019, Nov'23]

Answer

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

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

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

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

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

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

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

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

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e., 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd..

Following are the answers to the questions:

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

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01 08.2020), according to the exception to section 19.

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

Question 24

Give answer in the following cases as per the Companies Act, 2013:

(i) X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) In continuation of above facts, Mr. R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the director of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd.

[MTP Oct 2018]

Answer

Relevant provisions

As per section 2(87) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.

Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
b) where the subsidiary company holds such shares as a trustee; or
c) where subsidiary co. is a shareholder even before it became a subsidiary company of the holding co.

Conclusion

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

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

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

Question 25

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

(i) the validity of holding of shares by S Ltd. in H Ltd.
(ii) allotment of Bonus shares by H Ltd. to S Ltd.

[November 2020]

Answer

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

However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

(i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-section (1) of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

Question 26

Repeated question. Hence, merged with other question

Question 27

Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.
Decide:

(i) Whether the contention of Vijay is valid.
(ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

[RTP Nov 2020, ICAI Module]

Answer

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

(i) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.
(ii) In the given circumstances, the company is bound to serve a valid notice to Vijay by registered post at his residential address at Kanpur and not outside India.

Question 28

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

[MTP Mar 2021, ICAI Module, MTP Nov'22, MTP 1 Nov'23, MTP May 24 – 5 marks]

Answer

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Question 29

Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai. Mr. Parag signed partnership deed with Firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

[ICAI Module]

Answer

Relevant provision

As per section 22 of the Companies Act, 2013 a company may authorize any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

Conclusion

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

Question 30:

Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

[May 2022]

Answer

As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company:

(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.

(2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.

(3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of memorandum and of the articles.

(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Question 31

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

[RTP Nov 2022]

Answer

As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-

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

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

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

Question 32

The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(i) Whether refusal of document by the company is valid?

(ii) Whether Suresh can claim damages for it?

[Nov 22]

Answer

Serving of document to Company

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

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

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

Taking into account the above provision,

(i) Refusal of documents by AB Ltd. is not valid as sending of documents by courier to AB Ltd. is complying with the provisions given under section 20(1) of the Act.

(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, YES, he can claim the damages for any loss occurred to him.

3 Prospectus and Allotment of Securities

Question 1

Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013 :
The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the concerned Registrar of Companies. Explain the remedy available to the investors in this regard.

[MTP- Aug 2018]

Answer

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue.

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 of the Act.

Question 2

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

[Nov- 2019, RTP- Nov 2020, RTP May 2022]

Answer

Relevant Provision:

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

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

Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Conclusion:

Accordingly, the Board of Directors of Chandra Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

[Dec- 2021]

Answer

Relevant Provision:

According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.

Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in section 35(1), shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Conclusion:

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

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

Question 10

Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

[RTP and MTP May 2020 - 5 marks]

Answer

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

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

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

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

- Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
- Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

In the instant case, c
not make an allotmen
company is liable to r
60th day.

Therefore, the obje
application money wit
valid.

Also, the application

Question 22

Referring to the prov
(i) What is the type
placement in a fin
(ii) Explain the conse
(iii) In case the share
the funds receive

Answer:

Check suggested answ

4 Share Capital and Debentures

Question 1:

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued?

[May 2018]

Solution

Conditions for the issue of equity shares with differential rights (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014):

No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

a. the articles of association of the company authorizes the issue of shares with differential rights;
b. the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
   However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
c. the voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
d. omitted
e. the company has not defaulted in filing financial statements and annual returns for 3 financial years immediately preceding the financial year in which it is decided to issue such shares;
f. the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
g. the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
   However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
h. the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Question 2:

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

[MTP May 2020, RTP Nov 2021]

Answer

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (*Barton v. North Staffordshire Railway Co.*).

In the above case, therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C

Author's Note - ICAI has assumed in the answer that Mr. A is the perpetrator in this forgery. Student may choose to assume otherwise i.e.; student may write that - Any person who is the perpetrator of the forgery will be liable both criminally and for compensation to Mr. B and Mr. C

Question 3:

Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

OR [RTP Nov 2018]

MNO Limited has the following equity share capital -

Class-1: Equity Share Capital - 3,00,000 equity shares of Rs.10 each (1 voting right for every 1 share)	Rs. 30,00,000
Class-2: Equity Share Capital - 50,000 equity shares of Rs.10 each (1 voting right for every 5 shares)	Rs. 5,00,000

At the time of issue, the company had fulfilled all the conditions related to the issue of equity share capital. The company wants to vary the voting rights of class 2 equity share capital - 1 voting right for every 5 shares to 1 voting right for every 10 shares.

The company's Memorandum and Articles of Association have given the company the power to make the variation. The holders of 40,000 equity shares have given their consent in writing for this variation.

Out of dissenting shareholders, the holders of 4,500 equity shares want to apply to the Tribunal against the company's action.

Examine, with reference to the relevant provisions of the Companies Act, 2013 -

(i) Whether a company can change the rights of its shareholders?

(ii) Whether the dissenting shareholders can apply to the Tribunal?

[May 24

Answer

According to section 48 of the Companies Act, 2013-

1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:
   a. if provision with respect to such variation is contained in the memorandum or articles of the company; or
   b. in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

   Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

2) Cancellation of variation: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

   Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Question 4:

Walnut Limited has an authorized share capital of 1,00,000 equity shares of Rs. 100 per share and an amount of Rs. 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice

[RTP May 2019, ICAI Module, MTP May 2019]

Answer

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
b) in writing off the preliminary expenses of the company;
c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
e) for the purchase of its own shares or other securities under section 68

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with accounting standards prescribed for such class of companies u/s 133

a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
c) for the purchase of its own shares or other securities under section 68.

Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of SPA.

Question 5:

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized?

Answer [Jan 2021, MTP 1 May'23]

When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issues shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount. However, as per the provisions of section 53 of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.

As per the provisions of section 52 (1) of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account".

Application of Securities Premium Account: Same as mentioned in previous question

Question 6

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

Answer [Nov 2020, MTP Nov'22, MTP 2 Nov'23 - 5 marks]

According to section 53 of the Companies Act, 2013, except as provided in section 54, a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

According to section 54 of the Companies Act, 2013, notwithstanding anything contained in section 53, a co. may issue sweat equity shares of a class of shares already issued, if prescribed conditions are fulfilled.

(1) In terms of above provisions, issue of shares by ABC Limited at a discount of Rs. 1 is not valid.

(2) In case the above shares have been issued to employees as Sweat equity shares, then the issue of shares at discount is valid. [Section 54(1) of the Companies Act, 2013]

Question 7

Trisha Data Security Limited was incorporated on 1st August, 2019 with a paid- up share capital of Rs. 200 crores. Within such a small period of about one year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just about a year old.

[ICAI Module, MTP May 2019, May 2020, RTP May 2019 - 6 marks]

Answer

Sweat equity shares of a class of shares already issued.

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

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

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

(iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Given case and analysis:

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just about a year old because no such minimum time limit of 2 years in operations is specified under Section 54.

Question 8:

Repeated question. Hence, merged with other question

Question 9:

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs. 10,00,000 (10,000 preference shares of Rs. 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

[ICAI Module]

OR

SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013? Can the company include the dividend unpaid in the above issue of redeemable preference shares?

[May 2022]

Answer

According to Section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may:

- with the consent of the holders of three-fourths in value of such preference shares, and
- with the approval of the Tribunal on a petition made by it in this behalf,

issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Given case and conclusion:

In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e., Rs. 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition.

In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares.

Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Question 10:

Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to act in the said matter? Moreover, is there any liability of company and officer in default in the said matter?

[ICAI Module]

Answer

According to Section 56 (4) of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further, as per Section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

In this case, the jurisdiction binding on the company is that of the State in which the registered office of the company is situated i.e., Mumbai. Hence, the Court at Delhi is not competent to act in the matter.

Question 11:

Mr. Nilesh has transferred 1000 equity shares of Perfect Vision Private Limited to his sister Ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nilesh or Ms. Mukta within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

OR

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

[ICAI Module, MTP March, 2019, RTP May 2018, MTP May 2019]

Answer

The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Question 12

The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

[ICAI Module]

Answer

Alteration of Capital:

Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

(i) increase its authorized share capital by such amount as it thinks expedient;

(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination.

(iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;

(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within 30 days of alteration.

The capital clause of memorandum, if authorised by the articles, shall be altered by passing ordinary resolution as per Section 61 (1) of the Companies Act, 2013.

Question 13:

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders except VRS Company Ltd.

Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

[ICAI Module]

Answer

Relevant provision:

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

Given case:

As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Analysis and conclusion:

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of Section 62 (1) (a) as well as Articles of the issuing company.

Question 14:

Shilpi Developers India Limited owed to Sunil Rs. 10,000. On becoming this debt payable, the company offered Sunil 100 shares of Rs. 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013.

[ICAI Module, MTP 1 May'23]

Answer

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

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Question 15:

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Ravi is a shareholder of X Ltd.?

[Nov 2019]

Answer

Relevant provision:

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

Given case:

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

Analysis and conclusion:

As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Question 16

Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

[MTP March 2018]

OR

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

[RTP Nov 2018]

Answer

Issue of Further Shares:

According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should be offered to

(i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

(ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

(iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Since, in the given case Dhyan Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, Dhyan Dairy Ltd., if it is authorised by a special resolution, may issues shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

About Preference Shareholders (check the alternative question above):

From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well, provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Question 17

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

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

Directors of the company seeks your advice in following cases:

(i) Whether company can give bonus shares in the ratio of 1:3?

(ii) What if company decide to give bonus shares in the ratio of 1:2?

[Nov 2018]

Answer

Issue of bonus shares [Section 63]:

As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

a. its free reserves;
b. the securities premium account; or
c. the capital redemption reserve account

Provided that no issue of bonus share shall be made by capitalising reserves created by revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of INR 12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is INR 30.00 lakhs. Accordingly:

(i) For issue of 1:3 bonus shares, there will be a requirement of INR 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of INR 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.

(ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of INR 15 lakhs (i.e., $\frac{1}{2}$ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of INR 15 Lakhs is exceeding the available eligible amount of INR 12 lakhs.

Question 18

Repeated question. Hence, merged with other question

Question 19:

The Authorized share capital of SSP Limited is Rs. 5 crores divided into 50 Lakhs equity shares of Rs. 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far Rs. 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from Rs. 10 each to Rs. 8 each and to carry out the following proposals:

(i) Reduction in Authorized Capital from Rs. 5 crore divided into 50 Lakhs equity shares of Rs. 10 each to Rs. 4 crore divided into 50 Lakhs equity shares of Rs. 8 each.

(ii) Conversion of 30 Lakhs partly paid up equity shares of Rs. 8 each to fully paid up equity shares of Rs. 8 each there by relieving the shareholders from making further payment of Rs. 2 per share.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

[Nov 2020]

Answer

(i) In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital.

Procedure

1) Reduction of share capital by special resolution: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may:
   a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
   b) either with or without extinguishing or reducing liability on any of its shares,—
      (i) cancel any paid-up share capital which is lost or unrepresented by available assets;
      (ii) pay off any paid-up share capital which is in excess of the wants of the company,

      alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

2) Issue of Notice from the Tribunal: The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.

3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(ii) Alteration of Share Capital:

SSP Limited proposes to alter its share capital. The Present authorized share capital Rs. 5 Crore will be altered to Rs. 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum.

A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to -

1) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
2) A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of Companies Act, 2013].

The Company has to follow the above procedures to alter its authorized share capital.

Question 20:

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of Rs. 40,000 per month, to buy 500 partly paid-up equity shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

[ICAI Module, RTP May 2020, MTP Nov 2020]

Answer

Restrictions on purchase by company or giving of loans by it for purchase of its share:

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

(a) The employee must not be a director or Key Managerial Personnel;
(b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
(c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of Rs. 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of Rs. 1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, decision of OLAF Limited in granting a loan of Rs. 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to following reasons:

a. The amount of loan is more than 6 months' salary of Mr. Surya Nayan, the HR Manager. It should have been restricted to Rs. 2,40,000 only.
b. The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of partly paid shares.

Question 21

Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

[MTP April 2021]

Answer

Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, section 67(3) of the Companies Act, 2013, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership.

Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

Purchasing in order to redeem its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of section 68 of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and upto specified limits and only after following the prescribed procedure.

Question 22

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

[RTP Nov 2018]

Answers

Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance up to the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them. However, the directors or key managerial personnel will not be eligible for such assistance.

Question 23

State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

[ICAI Module]

Answer

According to Section 68 (6), where an unlisted public company has passed a special resolution under Section 68 or the Board has passed a resolution under item (ii) of the proviso to Section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with RoC a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board.

The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

Question 24

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether above buy back of equity shares by company is possible. Also, state sources out of which buy-back of shares can be financed?

Answers

[RTP May 2018]

In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies sources of funding buy back as under:

a) Free reserves or
b) Security Premium account or
c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

Question 25

London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:

A. Whether company's proposal is in order?
B. Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?

[Jan 2021]

Answer

According to the provisions of section 68 (2) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub- section (1), unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:
Provided that nothing contained in this clause shall apply to a case where—
(i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company:
Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that FY.

In the instant case, London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.

Conclusion

(A) the Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.

Author's Note: ICAI's answer seems to be incorrect. Even if SR was passed instead of OR, still 30% buy back exceeds the limit of 25% and hence is not allowed u/s 68.

(B) if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our answer will not change. This proposal of the company will also be not in order.

Question 26:

Xgen Limited has a paid-up equity capital and free reserves to the extent of Rs. 50,00,000. The company is planning to buy-back shares to the extent of Rs. 4,50,000. The company approaches you for advice with regard to the following:

(a) Is special resolution required to be passed?
(b) What is the time limit for completion of buy-back?
(c) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

[May 2018]

Answer

According to the provisions of section 68 (2) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub- section (1), unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:
Provided that nothing contained in this clause shall apply to a case where—
(i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of Rs. 50,00,000. The company planned to buy back shares to the extent of Rs. 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

The above buy-back is possible when backed by the authorization by the articles of the company.

Question 27

"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

[July 2021, MTP May 2024 - 5 marks]

Answer

According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy- back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

Question 28:

Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

[May 2019]

Answers

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

i) its free reserves; or
ii) the securities premium account; or
iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
   (a) through any subsidiary company including its own subsidiary companies; or
   (b) through any investment company or group of investment companies; or
   (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of term loan or interest thereon, to any financial institutions or banking company;
   But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Question 29:

XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

(i) Decide, whether the company's proposal is in order.

(ii) What will be your answer if buy back offer date is revised from January 5 th, 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

[Nov 2019]

Answer

(i) In the instant case, the company's proposal is not in order due to the following reasons:

a. Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

b. The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

c. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to section 68(2)]

d. The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Question 30:

What are the provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

(i) A shareholder who has no beneficial interest.

(ii) A creditor whom the company owes Rs. 499 only.
(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company?
[ICAI Module, Nov 2016, RTP Nov22]

Answer

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014 framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he-
(i) beneficially holds shares in the company;
(ii) is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(v) has furnished any guarantee in respect of principal debts secured by debentures or interest thereon;
(vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vii) is a relative of any promoter or any person who is in the employment of the company as director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are as follows:
(i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
(ii) A creditor whom company owes Rs. 499 cannot be appointed as a debenture trustee. The amount owed is immaterial.
(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Question 31:

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹ 10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.
In light of above facts & in accordance with the provisions of Companies Act, 2013, you are requested to
(i) Examine the validity of the decision of Company and contention of the practicing Company Secretary
(ii) State, the type of resolution required to be passed for amending the capital clause of the MoA.
[May 2022]

Answer

According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.

Accordingly, in the light of the stated facts, following shall be the answers:

(i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.

(ii) According to section 13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a ordinary resolution.

Question 32:

Following is the extract of the Balance sheet ABC Ltd. as on 31st March, 2022:

Particulars		Amount (₹)
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹ 10 each	1,00,000	
1,00,000 equity shares of ₹ 10 each	10,00,000	11,00,000
Issued & Subscribed Capital:		
8000,12% Preference Shares of ₹ 10 each fully paid up		80,000
90,000 equity shares of ₹ 10 each, ₹ 8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		
Long-term borrowings:		
Secured Loan: 12% partly convertible		
Debenture @ ₹ 100 each		5,00,000

On 1st April 2022 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April 2022. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

(a) Which of the above-mentioned sources can be used by company to issue bonus shares?

(b) Calculate the amount to be capitalized from free reserves to issue bonus shares?

[MTP Nov 22, MTP -1 Nov23 - 5 marks]

OR

"A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." In reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013.

Answer

[May 24]

Issue of Bonus Shares

According to section 63 (1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Section 63 (2) provides that the company can issue bonus shares only when the partly paid -up shares, if any outstanding on the date of allotment, are made fully paid-up.

(a) The following sources can be used by the company to issue bonus shares:

1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

(b)

Particulars	Amount
Amount of bonus shares to be issued	90,000 shares x 1/4 = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	22,500 x ₹ 10 per share = ₹ 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+ 25,000+ 2,00,000 = ₹ 3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	₹ 2,25,000

Question 33

The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March 2022:

Authorised Share Capital:	
1,00,000 Nos. of Equity Shares of ₹100 each	1,00,00,000
Subscribed and Paid-up Share Capital:	
40,000 Nos. of Equity Shares of ₹ 100 each, fully paid-up.	40,00,000
Share Premium Reserve	50,00,000
General Reserve	30,00,000

Balance in Profit and Loss Account	20,00,000
Capital Reserve (profit on sale of Fixed Assets)	30,00,000
8% Non-Convertible Debentures	30,00,000
9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period)	20,00,000
Short-term Cash Credit Loan from XYZ Bank Limited (On hypothecation of stock and receivables of the Company, repayable on demand)	50,00,000

Referring to and analysing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

(i) The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?

(ii) What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?

[Nov 22]

Answer

(i) The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount.

Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures:

In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	1,40,00,000

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	50,00,000

Here, Short- term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹ 90,00,000.

(ii) Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

Question 34:

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to ₹10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

[Nov 22, RTP Nov'23]

Answer

According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in Section 61 (1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to ₹ 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

How the company can alter its Share Capital

The company has to alter its memorandum in its general meeting as per the procedure contained in Section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Question 35:

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The balance sheet of M/s Frontline Limited showed the following positions as at 31 March 2022:

(i) Authorized Share Capital (Rs. 50,00,000 equity shares of 10 each)
(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of 10 each, fully paid-up) Rs. 2,00,00,000
(iii) Free Reserves Rs. 50,00,000
(iv) Securities premium account Rs. 25,00,000
(v) Capital Redemption Reserve Rs. 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provision of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue.

[May 2023, ICAI Module, MTP Nov 2020, MTP 2 May'23]

Answer:

Conditions for bonus shares:

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares [Section 63(2)]:

No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;
(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of Rs. 1,00,00,000 (i.e. half of Rs. 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. Rs. 1,00,00,000 (Rs. 50,00,000+ Rs. 25,00,000 + Rs. 25,00,000). Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 36:

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

Particulars	Rs. (Crores)
Authorised Share Capital 100,00,000 Equity Shares of Rs. 10 each	10
Issued, Subscribes and Paid-up Share Capital 50,00,000 Equity Share of Rs. 10 each	5

Share Premium	1
General Reserve	3.52
Profit & Loss Account	1.58

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

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

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

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

[May 2023, RTP May 2019, MTP March 19, May 2020, MTP 1 Nov'23 - 5 marks]

Answer:

Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

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

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

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Question 37:

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance. However, in the August 2023, the need was felt to amend the articles with respect to retention

of calls-in-advance. Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void?

[RTP Nov 23]

Answer

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.

According to section 6 of the Companies Act, 2013,

'Save as otherwise expressly provided in this Act—

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

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

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

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

5 Acceptance of Deposit by Company

Question 1:

Ashish Ltd. having a net-worth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members.

[RTP May'19]

Answer:

Acceptance of deposit from public:

Relevant Provisions: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety, and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Conclusion

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Question 2:

State true or false

i. XYZ Private Limited may accept the deposits from its members to the extent of ₹ 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 60.00 Lakh

ii. A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

[RTP Nov'20, May'19, ICAI Module, MTP April 2022]

OR

NIM Private Limited is engaged in the business of manufacturing household plastic goods. The books of accounts of the company provides that aggregate of its paid-up capital, free reserves and security premium account is Rs. 35.00 lacs. The company intends to accept deposits from its members to the extent of Rs. 35.00 lacs. Advise the company whether it can do so. Support your answer as per the provisions of the Companies Act, 2013.

[MTP March 2021]

Answer:

i. As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of XYZ Private Ltd. to accept deposits from its members to the extent of ₹ 60.00 lakh is True.

ii. A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False

Question 3:

Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹ 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit?

Answer:

[May-18/May-17-Old]

As per sub-clause (ixa) of Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

₹ 1 crore raised by Vrinda Limited will not be considered as deposit in terms of Rule 2 (1) (c) (ixa)

Question 4:

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits

Answer:

[ICAI Module, MTP 1 May'23]

According to Rule 2 (1) (c) (xii), following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

(i) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of 365 days from date of acceptance of such advance:
However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.

(ii) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement.

However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

(iii) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;

(iv) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;

(v) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

(vi) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(vii) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

Question 5:

State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

[ICAI Module, Nov 2018]

Answer

Acceptance of deposits by a company from its members:

As per section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:

(a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;

(c) Depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

(d) Omitted

(e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and

(f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Exemption to certain private companies:

Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

(A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:

(a) which is not an associate or a subsidiary company of any other company;

(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e., in Form DPT-3).

Question 6:

Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

[ICAI Module, May 2018]

Answer:

Appointment of Trustee for Depositors: In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

- One or more trustees for depositors need to be appointed by the company for creating security for deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

No person (including a company) that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any material pecuniary relationship with the company

(d) has entered into any guarantee arrangement in respect of principal debts secured by deposits or interest

(e) is related to any person specified in clause (a) above.

No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the

board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Question 7:

What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

[ICAI Module]

Answer

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time.

Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

Question 8: *[Good question]*

Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company ₹ 30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Polestar Traders Limited received a loan of ₹ 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.

[RTP May'24]

(iii) City Bakers Limited failed to repay deposits of ₹ 50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

(iv) Shringaar Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?

(v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

[ICAI Module, MTP May 20, Dec 2021]

Answer

(i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Zarr Technology Private Limited, a start-up company, received ₹ 30 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within

a period of ten years from the date of its issue, the amount of ₹ 30 lacs shall not be considered as deposit.

(ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. If these conditions are satisfied ₹ 30.00 lacs shall not be treated as deposit.

(iii) By not repaying the deposit of ₹ 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crores.

- Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakhs but which may extend to rupees two crores.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

(iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(i) such deposits shall not exceed ten per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(ii) such deposits are repayable only on or after three months from date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs 50 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(v) According to section 73 (1) of the Act, no company can accept or renewal of deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from public from time to time without following the prescribed manner.

Question 9:

ABC Limited having a net worth of ₹ 120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'.

[ICAI Module, Jan 2021, May 24]

Answer

According to section 76 (1) of the Act, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'. Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Question 10:

Define the term 'deposit' under provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) ₹ 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) ₹ 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.

[May'23, MTP May'24 - 5 marks]

(iii) ₹ 3,00,000 received by a private company from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

[ICAI Module, Nov 19, May 2022, MTP-1 Nov 23 - 4 marks]

Answer

Deposit: According to Section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) ₹ 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹ 1,50,000.

(iii) ₹ 3,00,000 received by a private company from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c).

In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'. As an additional requirement, the company shall disclose details of money so accepted in Board's report.

Question 11:

The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not?

[MTP March 2022, July 2021, MTP May 24]

Answer

According to Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfilment of following conditions:

a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
b) the loan is provided by the promoters themselves or by their relatives or by both; and
c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

Question 12:

Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time.

The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital	Rs. 70 Crores
Securities Premium	Rs. 20 Crores
Free Reserves	Rs. 20 Crores,
Long-term borrowings	Rs. 50 Crores

The Company in the advertisement invited public deposit for a period of 4 Months Plan A & Plan B for 36 Months.

(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.

(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.

[Nov 2020]

OR

NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was Rs. 90 crore and turnover for the year 2022-23 was Rs. 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of Rs. 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions:

(i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?

[RTP May 24]

Answer

(i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits. Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital:	Rs. 70 crores
Free Reserves:	Rs. 20 crores
Securities premium:	Rs. 20 crores
Total:	Rs. 110 crores

Hence, Viki Limited is an eligible company, since its Net worth is in excess of Rs. 100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (outstanding deposit under plan A) = 16.5 crores.

(ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account. For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Question 13:

RS Ltd. received share application money of Rs. 50 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit. The share application money of Rs. 5 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of Rs. 50 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount. You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

Answer [Jan 2021, MTP Nov'22, MTP-2 Nov 23 - 4 marks]

According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money

or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of amount for any other purpose shall not be treated as refund.

In the given question, RS Limited has received Rs. 50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30.07.2019 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit.

In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit.

Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of Rs. 50 Lac as 'Deposits' on 31.07.2019.

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Question 14:

Answer the following citing relevant provisions of the Companies Act, 2013:

(a) Wire Electricals Limited having paid-up capital of ₹ 1.00 crore availed a term loan of ₹ 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

(b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?

[RTP May 23]

Answer

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Taar that the term loan of ₹ 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

(b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.

Question 15:

Perfect Limited Company raised the secured deposit of ₹100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land and Building	Rs. 60 crores
Plant and Machinery	Rs. 20 crores
Factory Shed	Rs. 20 crores
Trade Mark	Rs. 20 crores
Goodwill	Rs. 25 crores

Explain the validity of charges created with reference to Companies (Acceptance of Deposit) Rules, 2014. [Nov 22, Nov 23]

Answer

As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e., goodwill, trade-marks, etc.).
- Total value of security should not be less than amount of deposits accepted & interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- Security shall be created in favour of a depositors trustee

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 crore

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

6 Registration of Charges

Question 1:

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

[ICAI Module]

Answer

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Question 2:

Briefly explain the provisions enforced by the Companies (Amendment) Second Ordinance, 2019 when a charge created before 02-11-2018 is not registered within the prescribed period of thirty days as provided in Section 77 (1)

[ICAI Module]

Answer

As per section 77(1) of the companies Act, 2013 every company creating a charge:

a) within or outside India,

b) on its property or assets or any of its undertakings,

c) whether tangible or otherwise, and

d) situated in or outside India,

is required to register the particular of the charge with the registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 and it was not registered within the prescribed period of thirty of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

Question 3:

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

[ICAI Module, MTP May 2019]

Answer

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

According to section 86 of the Companies Act, 2013, if any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

Question 4:

Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

[ICAI Module, MTP Nov 19]

Answer

Relevant Provisions

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)].

In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e., sixty days from the date of creation) on payment of prescribed additional fee.

Analysis

Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees. Since the first sixty days from creation of charge have expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed ad valorem fees.

Conclusion

The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Question 5:

Whether this statement is true or false: ROC is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

[May 2019]

Answer

According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

Question 6:

Mr Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

[ICAI Module, MTP Nov 2019]

Answer

Notice of Charge: According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct.

Question 7:

DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

[Nov 19, Nov 22]

Answer

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

Question 8:

What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company? Discuss as per the provisions of the Companies Act, 2013

[ICAI Module, RTP Nov 19]

OR

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the

Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of the provisions of the Companies Act, 2013.

[ICAI Module, MTP Nov 20, MTP Nov22, MTP-1 Nov 23- 5 marks]

Answer

Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of certificate: As per rule 8 (2), in case the registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in form no. CHG-5.

Therefore, Mr. Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

Question 9:

ABC Limited created a charge in favour of OK Bank. The charge was duly registered. Later, the Bank enhanced the facility by another Rs 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

Answer

[MTP Nov 20]

The company is advised to immediately file an application for rectification of the Register of Charges in Form No. CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

a. when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

b. when there was omission or mis-statement of any particulars in any filing previously made to the Registrar.

Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Question 10:

Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:

(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
(2) When can the Registrar refuse to register the charges the present scenario?

[May 2022]

Answer

(1) Registration by charge holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so. Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.

(2) Registrars refuse to register the charges: However, the Registrar shall not allow such registration by the charge-holder if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Question 11:

Krish (Private) Limited on 7th May 2022 obtained ₹ 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

[MTP Nov 22, MTP-2 Nov 23- 4 marks]

Answer

As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender.

Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it. Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

Question 12:

Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation.

[MTP Nov 22, MTP-2 Nov 23 - 5 marks]

Answer

As per the provisions of Section 77 of the Companies Act, 2013, in case the charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make application to the Registrar in the prescribed form. It should be supported by a declaration from company signed by its company secretary or a director that such belated filing shall not adversely affe the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing particulars and the instrument of charge, if any, within the original period of thirty days. Only then he allow registration of charge within the extended period. Further, requisite additional fee or advalorem fe as applicable, must also be paid.

Question 13

Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets the foreign establishment. The company received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013.

Answer [MTP-2 May 2

According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e., the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

Question 14

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

Answer:

[MTP May'24 - 5 3 marks]

Inspection of Register of Charges and Instrument of Charges

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

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

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

Question 15:

City Bakers Limited obtained a term loan of 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies

[May 2023]

Answer:

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013):

Section 80 provides that where any charge is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Alternate Answer to this part of question (Extension of Time Limit)

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. Provisions relating to extension of time limit as under:

(i) Charges created before 02-11-2018: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.
Further, if the charge is not registered within the extended period of 300 days, it shall be done within six months from 02-11-2018 on payment of prescribed additional fees.

(ii) Charges created on or after 02-11-2018: In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.
If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

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

7 Management and Administration

Question 1

Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors- first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

[RTP Nov 21, Nov 23 - 4 marks]

OR

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

[May 2018, MTP Oct 2020]

Answer

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Section 92(5) also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

In the above case, the annual general meeting of Nutty Buddy Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Question 2

M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

i. Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

ii. Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? [May 2018]

OR

Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members? [MTP Mar 19]

Answer

i. Maintenance of the Register of Members etc.:
As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

ii. Inspection of Register of Members: As per section 94(2) of the Companies Act, the inspection of the records, i.e., registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

Author's Note: As per Sec 94(2), it is clear that person other than shareholders also may inspect such registers but it can be done only after payment of prescribed fees. Here, ICAI has mentioned that the director has NO right. The answer seems to be unclear. Still, please stick to ICAI's answer unless we come across any similar question in future.

Question 3

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it.

Answer [May 2018]

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT - 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows-

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed.

Question 4

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

[MTP March 21, MTP May 24 - 5 marks]

Answer

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Shambhu Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December 2019.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company.

Question 5

Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Biwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ.

[RTP Nov 19]

Answer

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

Question 6

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

i. The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
ii. The Registrar may, for any special reason, extend the time within which the first AGM shall be held.
iii. Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.
iv. There shall be a maximum interval of 15 months between two AGMs.

Answer [July 2021]

(i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.
Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

(ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.
Hence, the given statement is correct.

(iv) According to section 96, the gap between two AGMs should not exceed 15 months.
Hence, the given statement is correct - There shall be a maximum interval of 15m between 2 AGMs.

Question 7:

Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

(i) EGM be held in India
(ii) EGM be held in Netherlands

Answer [RTP May 19]

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.
Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

(i) The Board of Directors can call the EGM in India.
(ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Question 8

Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th Nov 2018. The notice was posted to the members on 16th October 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

a. Whether the meeting has been validly called?
b. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
c. Can the delay in giving notice be condoned?

[May 19, RTP Nov 20]

OR

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the Validity of the notice of the Annual General Meeting as per the Companies Act, 2013

Answer

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
(ii) As explained in (i) above, notice falls short by 2 days.
(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Question 9

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

(i) Resolution to increase the Authorised share capital of the company.
(ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

[Nov 19, RTP Sept 2024]

Answer

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
  (i) every director and the manager, if any;
  (ii) every other key managerial personnel; and
  (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.
Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 10

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email.
In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

Answer [MTP Apr 21]

As per Rule 18 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized. A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice. The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email id s are already registered.

In the light of the above provisions of the Act, the company's obligation shall be satisfied when it transmits the e-mail, and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

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

Question 11

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

(a) Quorum for the general meeting if the company has 800 members.

(b) Quorum for the general meeting if the company has 6500 members.

(c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

[MTP April 2022]

OR

Samayak Limited is a company engaged in the business of manufacturing papers. Kindly explain the provisions related to quorum in meeting as per the provisions of the Companies Act, 2013.

[MTP May 24 - 5 marks]

Answer

According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

(1) 5 members personally present if number of members as on the date of meeting is not more than 1,000,

(2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,

(3) 30 members personally present if number of members as on the date of the meeting exceeds 5,000.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Thus,

(a) If the company has 800 members, quorum shall be 5 members personally present.

(b) If the company has 6500 members, quorum shall be 30 members personally present.

(c) If the company has 5500 members, quorum shall be 30 members personally present. However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50.

Question 12

(i) The Articles of Association of DJA Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider appointment of Managing Director:

(1) A, the representative of Governor of Uttar Pradesh.4

(2) D, representing Y Ltd. and Z Ltd.

(3) E, F, G and H as proxies of shareholders.

Determine whether the quorum was present in the meeting?

(ii) Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)?

[MTP Aug 2018, RTP May 20]

OR

The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Karnataka.

(ii) B and C, shareholders of preference shares,

(iii) D, representing Green Limited and Blue Limited

(iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

[MTP Nov 22, MTP-1 Nov 23- 6 marks]

Answer

(i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum

Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present. 'A' will be included for the purpose of quorum. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

(ii) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Sirhj has given proper notice. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Question 13

The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

[RTP Nov 18, MTP Mar 19, April 21

Answer

According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Question 14

KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.

- P1, P2 & P3 shareholders
- P4 representing ABC Ltd.
- P5 representing DEF Ltd.
- P6 & P7 as proxies of the shareholders

(1) Examine whether quorum was present in the meeting.
(2) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
(3) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
(4) What happens if there is no Quorum in the Adjourned meeting?

[Nov 18, MTP Nov 21]

Answer

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

- P1, P2 and P3 will be counted as three members.
- If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

1) In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

2) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

3) In case of lack of quorum, the meeting will be adjourned as provided in section 103. In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

4) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Question 15

PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.

On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a Private company?

[Nov 20]

Answer

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of section 103(1)(b), in case of a private company, two members personally present shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

Question 16

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in case of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.
According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

[May'23, MTP Oct 18, April 19, RTP May 21 - 4 marks]

Answer

A Proxy form is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy.

It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Question 17

Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.

OR

Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

[May 2019]

Answer

According to section 103(1)(a)(i) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company.

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

In the said company, two members are bodies corporate and one member is the President of India.

Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

As per section 113 of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

Question 18

A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

[Jan 2021, MTP 1 May'23]

Answer

Section 105 of the Companies Act, 2013 deals with the provisions of proxy for meetings.

Section 105(1) of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, Section 105(4) of the Act provides that a proxy form received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Question 19

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer

[MTP Mar 18, May 20, RTP Nov 18]

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Order of demand for poll by the chairman of meeting:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. Subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question 20

Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances, he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

[RTP Nov 19]

Answer

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

Question 21

'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.

[Nov 18]

Answer

Restriction on voting rights [Section 106 of the Companies Act, 2013] According to the said Section:

(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

Question 22

If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

[May 2019]

Answer

According to Rule - 20(4)(iii)(C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Question 23

Miraj Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. S and Mr. P as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

[May 18, MTP Oct 18, ICAI Module]

Answer:

For the sake of avoiding confusion and mixing up each resolution in the general meeting should be moved separately. However, it would not be illegal if the company decides to move multiple resolutions together.

As per section 162, each director of the Company shall be appointed by a separate resolution. However, where the shareholder agree by the way of unanimous resolution has multiple directors can be appointed by a single resolution.

In the given case, the company proposes to move nine resolutions together, out of which two relates to appointment of directors.

Considering the above provision, the company will have to appoint each director by a separate resolution. Besides the store resolutions, the other seven resolutions can be moved together.

Question 24

At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

Answer

[MTP Oct 2019]

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
2) The notice required under the Companies Act must have been duly given of the general meeting;
3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

Question 25

Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.

Answer

[Nov 18]

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum of not less than Rs. 5,00,000/- has been paid-up.

In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e., the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Question 26

Give the points of distinction between ordinary resolution and special resolution

Answer [May 2019]

Difference between ordinary resolution and Special resolution Ordinary Resolution:

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution:

As per Section 114(2) of the Act, a resolution shall be a special resolution, when-

(a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
(b) The notice required under this Act has been duly given; and
(c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Question 27

In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?
Also state the maximum time allowed for entering minutes of proceedings.

[MTP May'24, RTP May 18, MTP Oct, 19]

Answer

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;
(ii) is irrelevant or immaterial to the proceeding; or
(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub- section (5) above.
Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

Question 28

Veena Ltd. held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Mohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Mohan Rao, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Mohan Rao and by whom?

[MTP Oct 18, April 19, Jan 21, MTP 2 May'23]

Answer

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules, 2014 read with section 118 of the Companies Act, 2013, each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of Veena Ltd. can be signed in the absence of Mr. Mohan Rao, by any director, authorized by the Board in this respect.

Question 29

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?
(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

[July 21]

OR

Mr. Ram, a shareholder of PQR Ltd., has made a request to the company for providing a copy of minutes book of general meeting. Whether the shareholder of a company is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013.

[May 2022, MTP-2 May'23]

Answer

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.

(ii) As provision does not specify anything on authorizing anyone else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him.

Question 30

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

[RTP May 21, MTP 2 May'23]

Answer

According to Section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder.

A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee. If the company does not file such report on Annual General Meeting within 30 days of the conclusion of the Annual General Meeting then the company and defaulting officers are liable for prescribed penalties.
Since, Pristine Ltd. is a listed company, hence it has to file a copy of Annual Report with the Registrar within 30 days from 31st August, 2020.

Question 31

State with reason whether the following statement is correct or incorrect:

(i) An annual general meeting can be held on a national holiday.

(ii) A company should file its annual return within six months of the closing of the financial year

[MTP April 21]

Answer

(i) An annual general meeting cannot be held on a national holiday. Under section 96 (2) of the Companies Act, 2013 every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.

A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.

Thus, the statement 'An annual general meeting can be held on a national holiday' is incorrect.

(ii) The statement is incorrect in terms of section 92 (4) of the Companies Act, 2013.

Section 92 (4) states that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Question 32:

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

[May 2022]

Answer

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

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

(ii) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.

Effect of non-disclosure: As per section 102(4), if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him. If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [Section 102(5)].

Question 33

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

Answer

[RTP Nov 22, May 24]

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

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

Question 34

Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e- voting period and the time of closing of remote e-voting.

Answer

[RTP Nov 22]

Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

Question 35

With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ₹ 30 crores divided into 3 crores shares of ₹ 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss the possibility of calling a general meeting by giving shorter notice.

[MTP-1 May 23]

Answer

Normally, general meetings are to be called by giving at least 21 clear days' notice as required by section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of section 101, if consent, in writing or by electronic mode, is accorded thereto in the case of any other general meeting (i.e. other than annual general meeting), by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting.

Second proviso to section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Thus, if the meeting is called after obtaining the consent from members holding at least ninety- five per cent of the paid-up share capital of the company, the meeting can be validly called at shorter notice.

Question 36

TST Limited has Equity Share Capital of 10000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.

[Nov 22]

Answer

Validity of Resolution passed in the EGM called by the Requisitionists

As per Section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting. The requisition made u/ss 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days of the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.

Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be re-imbursed to the requisitionists by the company.

In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ₹ 30,000 (each holding ₹ 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

Question 37

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:-

Sr. No.	Particulars
1	A member individually holding shares with face value of ₹ 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ₹ 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid- up share capital of the company.

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

[RTP May 23]

Answer

In case of Nidhi company:

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be suffi

with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ₹ 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

(i) Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital

(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Question 38

The paid-up share capital of Golden Shoes Limited is Rs. 25,00,000 divided into 2,50,000 equity shares of Rs. 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

[RTP Nov 2023]

Answer

Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

Question 39

Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of Rs. 1 crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

[RTP May 2024]

Answer

(i) In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under:

"In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting."

Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. Rs.10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.

(ii) The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:

(a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.

(b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.

(c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.

(d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.

(e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition

Question 40

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

Answer [MTP May'24 - 5 marks]

(i) Abridged Form of Annual Return

In terms of Second Proviso to Section 92(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1), OPC and small company shall file the annual return in Form No. MGT-7A.

(ii) Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

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

Question 41

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

8 Declaration and Payment of Dividend

Question 1:

(i) YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2018-19 out of the profits of current year. The company has earned a profit of Rs. 910 crores during 2018-19. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment.

[MTP-2 Nov23- 3 marks]

(ii) Karan, holder of 5,000 equity shares of Rs. 100 each of M/s. Rachit Leather Shoes Limited did not pay final call of Rs. 10 per share. M/s. Rachit Leather Shoes Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

[ICAI Module, RTP May 21, MTP Oct 20, MTP Oct 19, Nov 18, RTP Nov22]

OR

ABC Ltd. has declared dividend of ₹ 2/- per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ₹ 10 face value each, on which ₹ 10,000 towards call money is due. Whether the dividend amount payable to him be adjusted against such dues as per the provisions of the Companies Act, 2013? Give reasons for your answer.

[May 2022]

Answer:

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

As per the given facts, YZ Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors.

Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

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

Thus, as per the given facts, M/s. Rachit Leather Shoes Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e., 5,00,000 x 10/100 = 50,000.

Hence, call money of Rs. 50,000 not paid by Karan can be adjusted fully from the entitled dividend amount of Rs. 50,000 payable to him.

Question 2:

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

OR

Whether a Company can declare dividend for the financial year in which it incurred loss. [Nov 19]

Answer:

As per Second Proviso to Section 123 (1), in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves.

However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014

(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.

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

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

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

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

(iii) 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.

(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

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

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

Question 3:

Alex limited is facing loss in business during the financial year 2018-2019. In the immediately 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 immediately preceding year. Is the act of the Board of Directors valid?
[ICAI Mod, MTP M'18, MTP M'19, MTP M'20 and MTP M'22, MTP April 21, May 19, May 18- 6 marks]

Answer:

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.

Conclusion:

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediately 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= 10%) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

Question 4:

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

[ICAI Module, Nov 19]

Answer:

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.

Conclusion:

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013.

Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

Question 5:

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.

[ICAI Module, RTP Nov 21, MTP Nov 21, Dec 21]

Answer:

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.

1. 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.

2. 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 rupees one thousand for every day during which such default continues.
b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Question 6:

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made RST Ltd. liable for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

Answer: [RTP May 2019]

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013.

Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

Question 7:

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

[ICAI Module, MTP March 21, MTP Oct 19, May 19, MTP Nov 22, MTP-2 Nov23 -3 marks]

Answer:

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time.

One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

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

Question 8:

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018-19, except in the following two cases:

(i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt 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.

[ICAI Module, MTP Nov 19]

Answer:

i. Sec 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 9:

The Annual General Meeting of ABC Bakers Limited held on 30th May 2019, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July 2019. Mr. Ranjan filed a suit against the 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 Act. [ICAI Module, MTP May 19, MTP Oct 19, Nov 20, RTP Nov22, MTP 1 May'23, MTP-1 Nov'23 - 6 marks]

Answer:

Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days.

According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

(a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

Question 10:

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2019. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

[ICAI Module, RTP May 21, MTP Oct 20,Nov 20, May 19, May 18]

Answer:

According to Sec 8(1) of the Companies Act, 2013, the companies licenced under Sec 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members.

Their profits are intended to be applied only in promoting the objects for which they are formed.

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

Question 11:

The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends.

Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

i. Mr. A, holding equity shares of face value of Rs. 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?

ii. Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

[RTP May 2018, MTP Oct 21, MTP Nov 18, May 19]

Answer

i. The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013.

As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder

As per the facts given in the question, Mr. A is holding equity shares of face value of 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 Rs. 1.20 lakh towards dividend, out of which an amount of 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.

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

ii. According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker.

Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017.

Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Question 12:

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

Whether the Company has complied due diligence in declaring interim dividend?

[Nov 2020]

Answer:

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.

In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting.

Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

Question 13:

ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under provisions of Companies Act, 2013?

[July 2021, MTP May 24 - 2 marks]

Answer:

Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time.

Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not. In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021).

It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

Question 14:

Mr. R, holder of 1000 equity shares of Rs. 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of Rs. 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. 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.

Answer:

[Jan 2021, MTP 2 May'23]

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 section 125(3) 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 31.08.2011 to last week of September 2019).

As a result, his unclaimed dividend (Rs. 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 Rs. 2,000 (declared in Annual General Meeting on 31.8.2011).

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

Question 15:

AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of Rs. 20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:

1. Equity Share Capital (Rs. 10 each) - 100 lakhs
2. General Reserve - 150 lakhs
3. Debenture redemption Reserve - 50 lakhs

The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard. If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

[Nov 20]

Answer:

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

According to the said rule, the required conditions are:

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

Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

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

Paid-up capital + Free reserves = Rs. (100+150) Lakhs (General reserves are free reserves) = Rs. 250 Lakhs
10% thereof = Rs. 25 Lakhs

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

The amount drawn as stated above = Rs. 25 Lakhs Less: loss for the FY 2019-2020 = Rs. 20 Lakhs

Amount available = Rs. 5 Lakhs. Hence, the quantum of dividend is further restricted to Rs. 5 lakhs.

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

Accumulated Reserves Rs. 150 Lakhs

Proposed withdrawal declaration of dividend Rs. 5 Lakhs
Balance of Reserves Rs. 145 Lakhs.
This is more than 15% of paid-up capital (i.e. 15% of Rs. 100 Lakhs) i.e. Rs. 15 lakhs.
Thus, the company can declare a dividend of Rs. 5 lakhs.

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

Question 16

Repeated question. Hence, merged with other question.

Question 17

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% of the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?

[Nov 22]

Answer

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

Conditions of Rule 3:

- Condition 1: The rate of dividend declared shall not exceed the average of the rates at which 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 = 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.

Author's Note – Max dividend that co. can pay in this case shall be Rs. 29.5 lakhs (Rs. 17.5 lakhs from free reserve and Rs. 12 lakhs from CY profits)

Question 18

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 FY 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 FY 2021-22 in its meeting held on 5 August, 2022, and recommended a final dividend of 15% in this board meeting

The general meeting of the shareholders was convened on 31 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 of 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. [May 2023]

Answer:

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.

Question 19

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 Rs. 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?

Answer

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 Rs. 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	800×18%×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 Rs.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.

Question 20

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

The dividend thus proposed is to met partially out of the current year profit of Rs. 16 lakhs. Accumulated profits during the past eight years were Rs 170 lakhs which is 25% of the total share capital of the company.

of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

Answer [May 24 - 5 marks]

Check suggested answer if released. It was not released till the date this question was included here.

9 Accounts of Companies

Question 1

(a) Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

(b) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.

(c) Whether a Company can keep books of Accounts in electronic mode accessible only outside India.

[MTP March 21, Oct. 20, Nov 19, MTP Oct 20, RTP Nov22]

OR

Green Limited is a company dealing in trading of spices. It has maintained its books of accounts under Single Entry System of Accounting. The company has recently hired a new account. The new accountant, Mr. Dubey, is doubtful that the accounts can be maintained under Single Entry System. Advise the company whether it is allowed to do so?

[MTP March 21, MTP March 2022, RTP Sept 2024]

Answer

(i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.
These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books must be kept on accrual basis and according to double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

(ii) Persons responsible to maintain books
As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

(a) Managing Director,
(b) Whole-Time Director, in charge of finance
(c) Chief Financial Officer
(d) Any other person of company charged by Board with duty of complying with provisions of sec 128.

(iii) A Company have the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Question 1A

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of accounts

Answer [MTP April 2022

(i) Inspection by Directors

As per Section 128(3) of the Companies Act, 2013, any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

Assistance by officers and Employees

As per Section 128(4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(ii) Period for preservation of books

According to section 128(5) of the Companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Question 2:

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

[May'23, May 19, MTP Oct 20, MTP 2 May'23- 3 marks]

OR

The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re- opening of accounts on court's or Tribunal's order.

Answer

[MTP Oct 2018, May 24]

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that:

(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.
In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

Question 3

The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

[MTP March 18]

Answer

(1) Preparation of revised financial statement or revised report on the approval of Tribunal:
If it appears to the directors of a company that—
(a) the financial statement of the company; or
(b) the report of the Board,
do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in Form NCLT-1 and a copy of the order passed by the Tribunal shall be filed with the Registrar

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year.

Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in Board's report in the relevant financial year in which such revision is being made.

(2) Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
(a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
(b) the making of any necessary consequential alternation.

(3) Framing of rules by the CG in relation to revised financial statement or director's report:
The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
(b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
(c) require the directors to take such steps as may be prescribed

Question 4

Explain the following in brief with reference to Companies Act 2013: National Financial Reporting Authority [Nov 20, Jan 2

Answer

National Financial Reporting Authority (NFRA)

According to section 132 of the Companies Act, 2013, the Central Government may, by notificatio constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be

(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed

(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

Question 5

Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

Answer

[RTP May 2018, MTP May 2020 – 6 marks]

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

1) the chairperson of the company where he is authorised by the Board or by two Directors out of which one shall be managing director, if any, and
2) the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or
3) in the case of One Person Company, only by one director, for submission to the auditor for his report thereon

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Question 6

The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement.

[MTP Aug 2018, May 18, MTP Nov 22, MTP-2 Nov23, MTP May 24]- 6 marks

Answer

Section 134(3)(c) of the Companies Act, 2013 provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a number of statements as prescribed in the sub section including Directors' Responsibility Statement.

Further section 134(5) states that the Directors Responsibility Statement shall state that:

i. In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
ii. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;
iii. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
iv. that the directors had prepared the annual accounts on a going concern basis; and
v. the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and
vi. the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Question 7

Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Prateek has approached you advise him regarding his responsibility for signing the financial statement. Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more information:

1. The Board as a policy does not authorise the chairperson of the company to sign the financial statements
2. The company has appointed Ms. Sunanina as its Company Secretary

[RTP Nov 19]

Answer

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

Author's Note -
In the conclusion, you can also mention that in addition to these 2 directors, the CEO, CFO and CS, if any, in the company will also sign such financial statements.

Question 8

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), M Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full tim Secretary. The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshya and Mr. Hyder. Examine whether the authentication of financial statements of the company was accordance with the provisions of the Companies Act, 2013?

Answer

[RTP May 2020, Jan 21]

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidate financial statement, if any, shall be approved by the Board of Directors before they are signed on beha of the Board by the chairperson of the company where he is authorised by the Board or by two director out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financi Officer and the company secretary of the company, wherever they are appointed, or in the case of On Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors.

Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Hence, the financial statement is not properly authenticated as per the provision of this Act

Question 9

Repeated question. Hence, merged with other question

Question 10

Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013

Financial year	Amount (Rs. In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
(ii) State the composition of the CSR committee unlisted company and a private company.

Answer

[RTP May 2018]

Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations:

(i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately

preceding financial years, in pursuance of its CSR Policy. Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

(ii) Composition of CSR Committee: The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Question 11

Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of Rs. 100 crore, net profit Rs. 3 crore, accumulated loss of Rs. 50 crore and securities premium Rs. 300 crore as per the audited accounts of the company for the Financial Year 2016 -17.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.

[May 18]

Answer:

According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -

(1) net worth of rupees 500 crore or more, or
(2) turnover of rupees 1000 crore or more or
(3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,
- turnover of Rera Ltd. is Rs. 100 crore,
- net profit of Rs. 3 crore and
- net worth of Rs. 253 crore (Net profit + securities premium - accumulated loss= 3 + 300 - 50 = 253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

Note 1: It can also by presumed that net profit of the current year has already been considered while calculating accumulated losses.

Note 2: Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital

Question 12

Mary Ltd is a listed company having turnover of Rs. 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.

Answer [RTP Nov 2018]

In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR policy.

As per Rule 4: CSR Expenditure:

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that -

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

Hence, such excess expense can be set off in immediately succeeding 3 financial years subject to above conditions.

Question 13

Explain the following in brief with reference to Companies Act 2013: Corporate Social Responsibility (CSR) Committee

Answer [Nov 2020]

Corporate Social Responsibility (CSR) Committee: According to section 135(1) of the Companies Act, 2013, every company having:

1) net worth of rupees 500 crore or more, or
2) turnover of rupees 1000 crore or more or
3) a net profit of rupees 5 crore or more

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

Duties of CSR Committee [Section 135(3)]:

The CSR Committee shall-

(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the CSR Policy of the company from time to time.

Question 14

The balances extracted from the financial statement of ABC Limited are as below:

Sr. No.	Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (Rs. in Cr)	Balances as on 30-09-2020 (Provisional Rs. in crore)
1.	Net Worth	100	100
2.	Turnover	500	1000
3.	Net Profit	1	5

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21.

[July 2021, MTP May 24 - 3 marks]

Answer

According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of Board consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020).

Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

Question 15

A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of Rs. 11 crores and a turnover of Rs. 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode

[Nov 18]

Answer

Filing of financial statements in XBRL Mode

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, the following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-

(i) companies listed with stock exchanges in India and their Indian subsidiaries
(ii) companies having paid up capital of five crore rupees or above
(iii) companies having turnover of one hundred crore rupees or above
(iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Provided that the companies in Banking, insurance, and Non-Banking Financial companies are exempted from XBRL filing.

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies *(Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015* .

Question 16

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG)

on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CA's comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 wherein the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar? [May 19, Nov 22, RTP May 24]

Answer

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM. However, Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August, 2023.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Question 17

Natraj Limited is an unlisted Public company having paid up share capital of Rs. 80 crores during the preceding financial year 2016-17. The turnover of the company was Rs. 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, discuss the answer to the following:

(i) Is it mandatory for the above company to appoint an internal auditor for the financial year 2017-18?

(ii) What are the qualifications of the Internal Auditor?

[MTP March 18]

OR

The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor.

Answer [MTP Nov 22, MTP-1 Nov'23 - 4 marks]

(i) Class of companies required to appoint Internal Auditor:

Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor.

According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:

1. Every listed company;
2. Every unlisted public company having –
   (a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or
   (b) Turnover of 200 crore rupees or more during the preceding financial year; or
   (c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
   (d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding

financial year; and

3. Every private company having -
   (a) Turnover of 200 crore rupees or more during the preceding financial year; or
   (b) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

As per the facts given in the question, Natraj Limited is an unlisted public company with the paid up share capital of Rs. 80 cores during the preceding financial year with the turnover of Rs. 110 crores. Since, Natraj Limited fulfills one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is mandatory for the Natraj Limited to appoint an internal auditor for the financial year 2017-18.

Part (ii) Qualifications of Internal Auditor

(a) Internal Auditor shall either be a chartered accountant or a cost accountant or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
Here, the term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

Question 18

PQR Private Limited operates as a manufacturing company, generating a turnover of Rs. 150 crore and holds an outstanding loan of Rs. 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of Rs. 110 crore, but Rs. 35 crore were repaid during the same year). The company's Board has delegated the authority to Chief Executive Officer (CEO) to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Mr. Nagendra (an ex- employee who is a qualified Chartered Accountant) as an internal auditor?

[RTP May'24, RTP Nov 2021]

Answer

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having:

(a) turnover of 200 crore rupees or more during the preceding financial year; or
(b) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The internal auditor may or may not be an employee of the company.

Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded 100 crores (irrespective of the fact that the outstanding loan during the year is 75 crore rupees). Hence, the advice of CEO is not correct.

Internal Auditor may be any professional as decided by the Board and may be even an employee of the company. Hence, the Board of Directors may appoint Mr. Nagendra, an ex- employee who is a qualified Chartered Accountant, as an internal auditor.

Question 19

X Ltd. is a listed company having a paid-up share capital of Rs. 25 crore as at 31st March, 2019 and turnover of Rs. 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013

[Jan 2021, MTP May'24]

Answer

According to the provisions of Section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;

(2) every unlisted public company having-

(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year; or

(C) outstanding loans or borrowings from banks or financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, X limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company).

Hence, the advice of the Company Secretary is not correct.

Question 20

Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws. Advise, how would Dhiman Limited deal with the consolidation of such financial statements.

[RTP Nov 22]

Answer

According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Question 21

XYZ Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

[May 2022, RTP May'23, MTP May'24]

Answer

Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed—

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as XYZ Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Question 22

Repeated question. Hence, merged with other question

Question 23:

Explain the following as per the provisions of the Companies Act, 2013:

(i) Who shall sign Board's Report?

(ii) Filing of financial statements with the Registrar when AGM is not held.

[MTP-1 May 23]

Answer

(i) Signing of Board's Report [Section 134(6)]:

The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by director where there is one director.

(ii) Annual General meeting not held [Section 137(2)]:
Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for non holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

Question 24

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	₹ 5.00 crore	₹ 3.75 crore
2021-22	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23 if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Answer [RTP May 23, MTP May'24]

According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ₹ 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹ 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (₹ 5 crore + ₹ 7 crore)/ 2 = ₹ 6 crore
Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs

Author's Note - ICAI forgot to mention that where CSR expense is <Rs. 50 lakhs, CSR committee is not required. If this question is asked in exam, students are advised to mention the Rs. 50 lakhs point and answer accordingly.

Question 25

The aggregate value of the paid-up share capital of ABC Security Services, was 200 crores divided into 20 crore equity shares of 10/- each at the end of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of 300 crore divided into 30 crore equity shares of 10/- each.

The extract of Balance Sheet of the company as on 31 March, 2022 showed the following figures:

Particulars	Rs. (Crores)
Authorised Share Capital	300
Issued, Subscribes and Paid-up Share Capital	200
Free Reserves Created out of profits	200
Securities Premium Account	80
Profit & Loss Account (Cr.)	50
Reserves out of Revaluation of assets	25
Misc. Expenditure not written off	10

Turnover of the company during the Financial Year 2021-22 was Rs. 800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was 4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provisions of Corporate Social Responsibility.

The Board of Directors of the company constituted of the following persons as its directors:

Mohan Singh	Managing Director
Rohit and Bhavna	Independent Directors
Venkatesh, Isha, Mohit and Muskaan	Directors

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following:

(i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to form a CSR committee is correct? Support your answer with the applicable provision and the required calculation.

(ii) It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

[May 2023, Nov 23]

Answer:

(i) Correctness of the contention and required calculations: According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee (CSR) of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, "Net worth" in the light of the provided particulars calculated as Rs. 520 crore [aggregate value of the paid-up share capital (Rs. 200 crore), all reserves created out of the profits (Rs. 200 crore), securities premium account (Rs. 80 crore) and debit or credit balance of the profit and loss account (Rs. 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off (Rs. 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation], Turn over given as Rs. 800 crore and Net profits Rs. 4 crore. Since the net worth is not less than Rs. 500 crore section 135(1) is attracted.

maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis.

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

[May 24 - 5 marks]

Answer:

Check suggested answer if released. It was not released till the date this question was included here.

10 Audit and Auditors

Question 1

Explain how the auditor will be appointed in the following case:
The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017

[MTP Oct 2019, Oct 21]

Answer

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 2

Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.
CA. M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants.
Advise under the provisions of the Companies Act, 2013 :

(1) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?
(2) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
(3) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
(4) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?

[RTP Nov 2018]

Answer

According to Section 139 (2) of the Companies Act, 2013,

i. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
ii. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
iii. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
iv. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

1. Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018. (Author's note - transition provision, can be ignored)
2. The cooling- off period shall be of 5 years.
3. Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling - off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling - off period.
4. As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

   Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

Question 3

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

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

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

[RTP Sept 2024]

Answer

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

In this scenario:

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

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

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

Question 4

Repeated question. Hence, merged with other question

Question 5

PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)? [May 2018]

Answer

As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

a. the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
b. the proposed appointment is as per the term provided under the Act;
c. the proposed appointment is within the limits laid down by or under the authority of the Act;
d. the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Question 6

CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?
(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company? [Nov 18]

Answer

(1) As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

(2) Section 139(2) states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

Question 7

Repeated question. Hence, merged with other question.

Question 8

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) Appointment of Mr. Tel by the Board of Directors.
(ii) Re-appointment of Mr. Tel at the first AGM in the above situation.
(iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. i.e.., 4 years tenure.

[Nov 2020, MTP 1 May'23]

OR

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.

[MTP March 2021, MTP Mar 2022]

OR

Rupa Limited, a listed company appointed M/s. VG & Associates an audit firm as Company's auditor in the Annual General Meeting held on 30 -09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

[May 18]

Answer

As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

(i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of section 139(6).
(ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.
(iii) As per law, auditor appointed shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

Question 9

Repeated question. Hence, merged with other question

Question 10

Shiv Limited is incorporated on 3.10.2020. The company is having a paid- up share capital of Rs. 5 crores. Following are key shareholders of the company:

Name of the Party holding shares	Amount (in Rs.)
Central Government	1.50
Punjab Government	1.23
Others	2.27

The first auditor of the company has been appointed by the Board of Directors on 31.10.2020. The members of the company have objected to such an appointment by the Board of Directors. According to the members its only the members who can appoint the first auditor.

Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct.

[MTP April 2021]

OR

Explain the provision relating to appointment of auditor in case of a Government Company.

[RTP May 18, MTP March 2019]

OR

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Vikas, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2020 by an ordinary resolution. Mr. Mukesh, a shareholder of the Company, objects to the manner of appointment of Mr. Vikas on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Mukesh is tenable? Also examine the consequences of the above appointment under the said Act.

[MTP Oct 2020]

Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

As per section 139(7), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company and in case the Comptroller and Auditor - General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting .

In the given question, Shiv Limited is a government company as 54.6% [(1.5+1.23)/ 5= 54.6%] of the share capital is held by Central government and State Government (Punjab Government).

Thus, the first auditor of Shiv Limited shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration.

Thus, the appointment of first auditor by Board of Directors on 31.10.2020 is not valid. The Board of Directors can appoint the first auditor in case the Comptroller and Auditor-General of India does not

appoint such auditor within the said period of period 60 days. The Board of Directors of the company shall appoint such auditor within the next 30 days.

In the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

Thus, the contention of members that its only the members who can appoint the first auditor of the Government company, is not correct.

Question 11

Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:

(i) First auditor
(ii) Subsequent auditor

[July 2021]

OR

A Public Company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company

[MTP March 2018]

OR

A company includes the following shareholders also:

1) Bank of Baroda (A nationalized Bank) holding 12% of the subscribed capital in the company.
2) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
3) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

[MTP Oct 2019]

Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

(i) According to section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first AGM.

(ii) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed (Form ADT-1).

Question 12

Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place?

[MTP Aug 2018]

Answer

Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened provision of the Act.

Question 13

Mr. Honest, an auditor of MM company ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner.

[MTP Aug 18]

Answer

Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5)]

(i) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

(ii) Requirement for change of auditor: If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Question 14

AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.

[July 2021, MTP Nov'22, MTP-2 Nov 23, MTP May 24- 5 marks]

Answer

Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

- The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
- The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
- The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of X Ltd. to remove AB & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Question 15

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra

(i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of Rs. 2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.

(ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of Rs. 99,000

(iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

OR

[MTP April 2022]

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

(1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.

(2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh.

[MTP Nov 22, MTP-1 Nov'23 - 5 marks]

Answer

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Hence, Maninder is disqualified to be appointed as an auditor in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)

(ii) As per section 141(3)(d)(ii) a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lacs.
Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only Rs. 99,000.

(iii) As per section 141(3)(h), a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.
Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.

Question 16

Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

(i) "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of Rs. 900/-. Whether Mr. A is qualified for appointment as an Auditor of "XYZ Ltd."?

(ii) "Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of Rs. 90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."?

[MTP Oct, 2018]

OR

Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of Rs. 1,20,000 (face value Rs. 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd.

[Nov 18, MTP Oct, 2021]

Answer

(i) According to section 141 (3)(d) (i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. A. is holding security of Rs. 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

(ii) As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs. 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd

Question 17

Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd."?

[MTP March 19, May 20, RTP May 19]

Answer

Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub- section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

Answer to Part (ii) covered in prior questions.

Question 18

New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013.

[MTP Aug 18, April 19, RTP May 20, Nov 20]

OR

Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of Rs.75,000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been Rs. 1,50000/- (market value Rs. 95,000/-)

[RTP Nov 18]

Answer

Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company or a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Reena, his wife held equity shares of New Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of New Limited.

Answer to part (ii) of the question in OR part (Mrs. Sita):

Yes, answer will be different in case where the face value of acquired shares is Rs. 1,50,000. Then in that case:

(i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or

(ii) Failure to take such corrective action shall lead to auditor has to vacate his office.

Question 19

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

i. "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of Rs. 70,000/- (market value Rs. 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:

ii. Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for Rs. 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.

iii. Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

[Nov 19, MTP Nov 2021]

Answer

i. Already covered in previous questions

ii. Already covered in previous questions

iii. As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Question 20

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company. Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013.

[Jan 2021]

Answer

As per the provisions of Section 141 (3) of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.

In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

Question 21

State the provisions of the Companies Act, 2013 regarding the signing of the Audit report by the Auditors of the company.

[MTP March 18]

OR

Who will sign the audit report in case of a proprietorship concern or the firm of the auditors and how the qualification/s in the audit report will be dealt with by the auditor at the annual general meeting of the company as per the provisions of the Companies Act, 2013?

[May 24]

Answer

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

(i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).

(ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read

before the company in general meeting and shall be open to inspection by any member of the company.

Question 22

What are the rights of the auditor of a company in respect of attending the General Meeting. [MTP Oct 18]

Answer

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

(i) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.

(ii) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting.

(iii) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Question 23

The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

[May 19, RTP May 2021, MTP 2 May'23]

OR

SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd. requested them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of Rs.10 lakhs plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

Answer

[May 2023]

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the as above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Consequences as regards to Audit firm

Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall

be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Note: Accepting such assignment may also lead to vacation of office of auditor u/s 141.

Question 24

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

[May 2022]

Answer

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly & severally liable for the fine.

With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.

Question 25

Mr. Govind Ram is a partner and in- charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

[RTP Nov 22]

Answer

According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years. Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

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

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years.

Question 26

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh.

(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹ 1,50,000.

(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

Answer [Nov 22]

Already covered in prior questions.

Question 27

L Ltd. having 2,000 members with paid-up capital of 1 crore, decided to hold its Annual General Meeting (AGM) on 21 August, 2022. On 2nd July, 2022, 50 members holding paid-up capital of 6 lakhs in aggregate, has given notice of their intension for a resolution to be passed at the AGM for appointing Dawar & Co., as its Statutory auditor from FY 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term. When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company. In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co?

Answer: [May 2023 - 4 marks]

(i) Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding Rs. 5 lakhs, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of Rs.1 crore, and it received a notice from its 50 members holding paid-up capital of Rs. 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than Rs. 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st Aug, 2022, and notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[Note: In the given question 50 members are holding paid-up share capital of Rs.6 lakh. In fact they are holding more than 1% of total voting power as the paid -up share capital of the company is Rs.1 crore. This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

(ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall —

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.

However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

Question 28

Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013.

[RTP Nov 23]

Answer

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.

Question 29

Stallworth Ltd. a listed company having a paid-up share capital of Rs.11 crores with a turnover of Rs. 100 crores had appointed an Audit Committee which recommended M/S ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the Chartered Accountants.
Discuss in the light of the Companies Act, 2013:

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

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

Answer

[May 24 - 5 marks]

Check suggested answer if released. It was not released till the date this question was included here.

11 Companies Incorporate Outside India

Question 1:

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

(ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.

[ICAI Module]

Answer:

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

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

Question 2:

DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:

(i) Whether branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

[ICAI Module, CA Final MTP March 2021]

Answer:

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

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

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

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are 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;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(a) personal name and surname in full;
(b) any former name or names and surname or surnames in full;
(c) father's name or mother's name or spouse's name;
(d) date of birth;
(e) residential address;
(f) nationality;

If the present nationality is not the nationality of origin, his nationality of origin;
(a) 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)
(b) income-tax permanent account number (PAN), if applicable;
(c) occupation, if any;
(d) 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);
(e) other directorship or directorships held by him;
(f) Membership Number (for Secretary only); and
(g) e-mail ID.
(h) the name and address or the names and address of one or more person's resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(i) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(j) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
(k) declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
(l) any other information as may be prescribed.
(m) According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 3:

Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.

[ICAI Module, MTP May 24 - 5 marks]

Answer:

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 are required to be annexed should be in accordance with Chapter IX i.e., Accounts.

(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.

According to the Companies (Registration of Foreign Companies) Rules, 2014, 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 as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

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

(a) Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -

1. Statement of related party transaction
2. Statement of repatriation of profits
3. Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Question 4:

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

i. M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.

ii. M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the Company.

iii. M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

Answer: [CA Final Nov 2019 - New/ ICAI Module]

Relevant provision:

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

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner

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

a. business to business and business to consumer transactions, data interchange and other digital supply transactions;

b. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

c. financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

d. online services such as telemarketing, telecommuting, telemedicine, education and information research; and

e. all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Given Case and Analysis:

1. In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

2. In the given situation, M/s Blue Star is registered in Thailand. It has authorized Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.

3. In the given situation, M/s Xex Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in

India. Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question 5:

Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.

[ICAI Module]

Answer:

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 Abroad 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 6:

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.

[ICAI Module]

Answer:

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 7:

Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

[ICAI Module, RTP May'24]

Answer:

Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

Question 8:

Z Limited, a Foreign Company, incorporated in Japan has a branch office in Hyderabad in India. Mr. Bhartiya, the Indian Citizen holds preference shares of Z Limited which comprises 10% of the paid-up share capital

of the company. Deshi Limited, a company incorporated in India holds equity shares of Z Limited which comprises 45% of the paid-up share capital of the company. During the financial year 2019-20, there has been alteration in the particulars of the documents mentioned under section 380 of the Act and the company has failed to submit the alterations to the Registrar within 30 days. Analyze in the light of the applicable laws the consequences of failure on the validity of any contracts entered into by the foreign company?

[CA Final MTP April 2021 - New]

Answer:

Relevant provision:

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

As per section 393 of the Act, any failure by a company to comply with the provisions of Chapter XXII of the Act shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Given case, Analysis and Conclusion:

In the above question, the provisions of the Companies Act, 2013 are applicable on Z Limited because an aggregate of 55% of the paid-up share capital of the company are held by an Indian citizen and Indian company.

Therefore, Provisions of the Companies Act, 2013 apply on the company.

However, there has been violation of section 380 of the Act, so as per section 393 of the Act, the validity of any contract entered into by the foreign company shall not be affected, the company may be sued in respect of such contract but shall not be entitled to bring any suit in respect of such contract until it has complied with the relevant provisions related to the companies incorporated outside India under the Companies Act, 2013.

Question 9: *[Controversial Question]*

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

i. A Company which has no place of business established in India yet is doing online business through telemarketing in India.
ii. A Company which is incorporated outside India employs agents in India but has no place of business in India.
iii. A Company incorporated outside India having shareholders who are all Indian citizens.

[CA Final Nov 2018 New]

OR

Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.

Answer:

[CA Final May 2015, RTP Sept 2024]

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

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

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

i. business to business and business to consumer transactions, data interchange and other digital supply transactions;
ii. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
iii. financial settlements, web-based marketing, advisory and transactional services, data base services and products, supply chain management;
iv. online services such as telemarketing, telecommuting, telemedicine, education and information research; and
v. all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise

In the light of the said provisions of the Companies Act, 2013, as enumerated above:

i. A company which has no place of business in India but is doing online business through telemarketing in India, will be considered as a 'Foreign Company'.
ii. A company incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode, will be considered as foreign company.
Thus, a company incorporated outside India which does not have a place of business in India, will not be considered a 'Foreign Company'

> Author's Note:
> The answer of ICAI seems to be based on some literal interpretation which sounds illogical to the Author. Student may also consider that - Employing an agent in India would technically establish Place of Business of India and hence this company will become a Foreign Company as per Sec 2(42).

iii. A company incorporated outside India having shareholders who are all Indian citizens shall be a 'Foreign Company'
(It is presumed that the company in question is incorporated outside India, so that provisions of section 2(42) of the Companies Act, 2013 can be applied on it)

> Author's Note:
> Yet again a controversial answer. The definition of foreign company in no way depends on the citizenship except to the extent provided u/s 379. In this case, the co. having shareholders as Indian Citizen will not make it a Foreign Company. The answer of ICAI is incorrect.

Question 10:

Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Trans Asia Limited carries on business in India describing itself as a foreign company. Can it do so? State the actions that can be taken against the company for improper use or description as foreign company under the provisions of the Companies Act, 2013.?

[CA Final Nov 2018-Old]

Answer:

Foreign Company [Section 2(42)]: "Foreign company" means any company or body corporate incorporated outside India which:

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

In the instant case, Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Though Trans Asia Limited is a subsidiary of a foreign company but since it is registered in India, it is not a foreign company. Hence, it cannot describe itself as a foreign company.

Action against the improper use/description as foreign co:

As per Rule 12 of the Companies (Registration of Foreign Co.) Rules, 2014, if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

Question 11:

Mr. Ziyan an Indian citizen holds 25% of the paid-up capital of Laurel Steven Limited, a company which was incorporated in Singapore with a paid-up capital of 10 million Singapore Dollars. Swaraj Limited a company registered in India holds 30% of the paid-up capital of Laurel Steven Limited. Laurel Steven Limited has recently established a share transfer office at New Delhi. The Company seeks your advice as to what formalities it should observe as a foreign company under the Companies Act, 2013.

Answer:

[CA Final Nov 2017]

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:

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

According to Section 386 of the Companies Act, 2013, "Place of business" includes a share transfer or registration office.

Further, Section 379 states 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 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, in respect of its Indian Business, comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed as if it were a company incorporated in India.

In the case given in the question, the following facts are given:

a. Laurel Steven Ltd. was incorporated in Singapore and has a place of business (share transfer office) in New Delhi; hence, it is a foreign company.

b. Its shareholding comprises of 25% held by Mr. Ziyan who is a citizen of India and 30% by Swaraj Limited which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Laurel Steven Ltd.

Therefore, although Laurel Steven Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company.

However, it may be noted that under section 379, the application of the Companies Act, 2013 on Laurel Steven Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.

Under Section 380 of the Act, a foreign company is required to file for registration within 30 days of the establishment of a place of business in India the following documents with the Registrar:

i. a certified copy of the instrument constituting or defining the constitution of the company.
ii. the full address of the registered or principal office of the company;
iii. a list of the directors and secretary of the company containing such particulars as prescribed under Companies (Registration of Foreign Companies) Rules, 2014;
iv. the name and address or the names and address of one or more person's resident in India who is authorized for correspondence on behalf of the company.;
v. the full address of the office of the company in India which is deemed to be its principal place of business in India;
vi. particulars of opening and closing of a place of business in India on earlier occasion or occasions;
vii. declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
viii. any other information as may be prescribed.

Question 12:

Tokushia Motors Ltd. was incorporated in Japan. Its share capital is held by the following persons:

(a) Citizens of India - 10%;
(b) Indian Companies- 40%

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

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

Based on the above facts, answer the following questions:

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

[CA Final RTP Nov 2021 -New]

Answer:

(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 address of one or more person's resident in India authorized 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 authorized 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 13: *[Extra-ordinary question]*

Qinghai Huading Industrial Company Ltd., incorporated in China es ablished a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarian Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?

Answer: [CA Final May 2018]

According to Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014,

i. All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

ii. Where such translation is made within India, it shall be authenticated by-
   a. an advocate, attorney or pleader entitled to appear before any High Court; or
   b. an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India, and they shall be authenticated by the persons mentioned under the above Rules.

Question 14:

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.

Answer: [CA Final Jan 2021 -New]

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 authorized 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.

Question 15:

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?

[CA Final Jan 21 - New]

Answer:

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 16:

X Inc is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the GST Officer having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the GST Officer on valid service of notice.

Answer: [CA Final Nov 2014]

Service of notice on foreign company (Section 383 of the Companies Act, 2013):

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode. Hence, the GST Officer may serve the show cause notice by following the above provisions.

Assumption: It is assumed that X Inc is a foreign company within meaning of sec 379 of the Companies Act, 2013.

Question 17:

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?

[CA Final May 21 - New]

Answer:

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 [Sec 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

Question 18:

Identify which among the following companies can be categorized as foreign companies:

Case	Incorporated	Registered	Additional Condition
1	Malaysia	Malaysia	Developed patient's database for a hospital in India. Server in Malaysia
2	Dubai	Dubai	No Place of business in India but employs agents in India
3	California	California	Board meetings held in India
4	Australia	Australia	59% of the shareholding held by an India company
5	Washington	Washington	Offers & invites deposits from citizens of India but has no place of business In India
6	Germany	Germany	49% of the shareholding held by an Indian Company

[CA Final MTP - Dec 21]

Answer:

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 &

b. Conducts any business activity in India in any other manner

For the purposes of clause (42) of section 2 of the Act," electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:

i. business to business and business to consumer transactions, data interchange and other digital supply transactions;

ii. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

iii. financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

iv. online services such as telemarketing, telecommuting, telemedicine, education and information research; and

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

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

Based on the above provisions, analyzing each case as below:

Case	Incorporated	Registered	Additional Condition	Reasons
1	Malaysia	Malaysia	Developed patient's database for a hospital in India, Server in Malaysia	Though incorporated outside India, it is involved in transacting business in India and having place of Business through electronic mode. Hence it is a foreign company.
2	Dubai	Dubai	No Place of business in India but employs agents in India	Since the company, though employed agent in India, but have no place of business in India. Hence not a foreign company.
3	California	California	Board meetings held in India	Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence not a foreign company.

4	Australia	Australia	59% of the shareholding held by an Indian company	As per the provisions, if not less than 50% of shareholding of a foreign company is held by Indian citizens. It is treated as an Indian Company. Hence this is not a foreign company.
5	Washington	Washington	Offers & invite deposits from citizens of India but has no place of business India	This is one of the ways of transacting business through electronic modes. However, this company doesn't have a place of business in India. Hence it cannot be called as a Foreign Company
6	Germany	Germany	49% of the shareholding held by an Indian Company	As per the provisions, if not less than 50% of shareholding of a foreign company is held by Indian citizens, it is treated as an Indian Company. Here only 49% is held by Indian company. Hence this is a foreign company.

Author's Note:
In case 4 and 6 - Where ICAI says - "It is treated as an Indian Company. Hence this is not a foreign company". In this case, the Author believes that the intention of ICAI is to say that - By virtue of Sec 379, the provisions applicable to Indian companies will become applicable to these companies but whether or not it is a foreign company depends on whether it complies both the conditions mentioned u/s 2(42).

Moreover, in the opinion of Author, the answer of ICAI for Part 2 and Part 5 seems incorrect to me. In case where a company incorporated outside employed agent in India, it ideally should be considered as foreign company despite not having a place of business in India. Similar argument for Part 5. I am hopeful that ICAI corrects its answers when this MTP question actually comes in exam. I request student to stick to the viewpoint that they agree with. I have already stated mine 😊 Keep going!

Question 19:

1) 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. Based on the above facts of procuring 100% business from India, whether the company will be treated as foreign company or an Indian company.
2) What will be your answer if in the above question, more that 55% of that foreign company's paid-up share capital is held by Indian Companies or Indian Citizens.

[CA Final MTP2- Nov22]

Answer:

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

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

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

2) 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 that 50% of the paid-up share capital is held by Indian Companies / Citizen it shall be treated as a company incorporate in India and such company shall abide by the provisions of Section 380 to 386 (both inclusive) and Section 392 and 393 shall be applicable.

Question 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 Christan prepared the prospectus along with annexing the required documents and got it registered. Expert's consent was issued in a separate statement, the reference of which was given in the prospectus.

Few application forms for securities of Blue Star Inc. were issued to prospective investors without the prospectus out of which one such form was issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc.
In the context of aforesaid case, please answer to the following questions: -
(i) Whether the expert's statement can be considered to be included in the prospectus?
(ii) What copy of contracts would have been annexed with the prospectus by Mr. Berry?
(iii) Whether it is valid on the part of Blue Star Inc. for issuing few application forms without prospectus?

[CA Final RTP, May 22]

Answer:

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

(ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely: -
   a) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

b) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.

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

(iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388:
Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

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

Question 21:

(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

[CA Final - Dec 21, MTP May'24]

Answer:

(i) According to this Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014,

The Following documents shall be annexed to the prospectus, namely:

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

Accordingly, the person in charge of the Indian operations shall be advised in accordance with 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: -

1. Statement of related party transaction
2. Statement of repatriation of profits

3. 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.

Question 22:

RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid. RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid- up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.
The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.
The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies.
Answer the following, referring to the provisions of the Companies Act, 2013:
(i) Whether RFC Limited is a foreign company?
(ii) Whether service of notice by the Registrar of companies is valid?

Answer: [CA Final May 22]

(i) Whether RFC Limited is 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.

Question 23:

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.

[CA Final MTP1- Nov 22]

Answer:

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. 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.

12 The General Clauses Act, 1897

Question 1

Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.

[RTP May 21]

OR

What is "Financial Year" under the General Clauses Act, 1897?

[ICAI Module]

OR

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

[MTP Nov 22, MTP-2 Nov 23, MTP May 24- 4 marks]

Answer

Financial Year: According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April. The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

Question 2

Vyas owned a land with acknowledgment due. He sold his land and the timber (obtained after cutting the fifty trees) to Yash. Vyas wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

[May 18, RTP Nov 19, MTP April 19, Oct 19, March 21, March 22, RTP May'23, RTP May'24]

OR

What is "Immovable Property" under the General Clauses Act, 1897?

[ICAI Module]

Answer

"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, Vyas sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Extra note - Trees are benefits arise out of land & attached to earth, hence are immovable property.

Question 3

What is a Document as per the Indian Evidence Act, 1872?

Answer [MTP March 18]

As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form.

As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. For Example: A writing is a document, any words printed, photographed are documents.

Question 4

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by....." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

Answer [RTP May 22]

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling.

However, sometimes Word 'may' has a mandatory force if directory force will defeat object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory. In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

Question 5

Define the following term Affidavit with reference to the General Clauses Act, 1897

Answer [Nov 19, Nov 20]

"Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Question 6

Mrs. K went to a jewellery shop to purchase diamond ornaments. The owners of jewellery shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?

[Nov 20]

Answer

In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellary Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per section 3 (22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Indian Contract Act, 1872 is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Question 7

"The act done negligently shall be deemed to be done in good faith." Comment with the help of the provisions of the General Clauses Act, 1897.

[Jan 21, MTP-2 May 23]

OR

What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.

[Nov 19]

OR

What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act.

[MTP Aug 18, March 19, Nov 20]

Answer

In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

Question 8

Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

[Jan 21, MTP-1 May 23]

Answer

According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Question 9

Elucidate the term "Commencement" as per the General Clauses Act, 1897

[MTP April 21]

Answer

Section 3(13) of the General Clauses Act, 1897, defines the term "Commencement". "Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation, regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai — AIR 1970 SC 398).

Question 10

When does an enactment is said to have come into operation if the Act has not specified any particular date of its enforcement. Explain with help of an example as per provisions of the General Clauses Act, 1897

[MTP March 18]

Answer

"Coming into operation of enactment": According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Example: The Companies Act, 2013 received assent of President of India on 29 th August, 2013 and was notified in official gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

Question 11

"Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897.

Explain the provision related to 'Effect of Repeal' as per the General Clauses Act, 1897.

[May 2023]

[May 2022]

Answer

"Effect of Repeal": According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted

Question 12

Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897

[May 18]

Answer

According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

i. Revive anything not enforced or prevailed during the period at which repeal is effected or;
ii. Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
iii. Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
iv. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Question 13

As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

[RTP Nov 20, MTP Aug 18, Nov 23, May 24 - 4 marks]

Answer

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Question 14

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

i. The dates during which Komal Ltd. is required to pay the dividend?
ii. The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

[Nov 18, MTP May 20, MTP May'24]

OR

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7

days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

[May 19]

OR

Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30/09/2017. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend.

Answer [MTP March 18, Oct 18]

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

i. Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day i.e. 27/10/2018 will be included.

Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive)

ii. Transfer of unpaid or unclaimed divided: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA).

Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

Question 15:

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

(1) An Act of Parliament which has not specifically mentioned a particular date.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Answer [ICAI Module]

(1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Question 16:

'Repeal' of provision is different from 'deletion' of provision. Explain.

[Nov 18, MTP Oct 19, Nov 20]

Answer

In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Question 17

There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897?

[Nov 20]

Answer

"Measurement of Distances" [Section 11]: In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Question 18

PK and VK had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2018, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?

[Jan 21, MTP-1 May 23]

OR

Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

[July 21]

Answer

According to Section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the given question, the court fixed the date of hearing of dispute between PK and VK, on 29.04.2018, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the hearing date of 29.04.2018, shall be extended to the next working day.

Question 19

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

i. Insurance Policies covering immovable property have been held to be immovable property
ii. The word "bullocks" could be interpreted to include "cows".

[July 21, MTP-2 May 23]

Answer

i. Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid.
Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

ii. The word 'bullocks' could be interpreted to include 'cows': This statement is not valid.
Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Question 20:

Examine the validity of the following statements with reference to the General Clauses Act, 1897:
Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

Answer [MTP April 22, May 24]

As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Question 21

What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment. Explain as per the provisions of the General Clauses Act, 1897.

Answer [MTP Oct 18]

"Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22]
Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Question 22

Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897.

[Nov 18]

Answer

Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:

(i) Publish of proposed draft rules/ bye - laws: The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(ii) To publish in the prescribed manner: The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(iii) Notice annexed with the published draft: There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(iv) Consideration on suggestions/objections received from other authorities: The authority having power to make the rules or bye-laws, and, where the rules or bye- laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(v) Notified in the official gazette: The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye- laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Question 23

Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

[RTP Nov 18, MTP April 21]

Answer

"Provision as to offence punishable under two or more enactments" [Section 26]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

Question 24

What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

[Nov 22]

Answer

"Official Gazette" [Section 3(39) of the General Clauses Act, 1897]: 'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of India, or
(ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

Question 25

A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case. [RTP May 18, May 19]

OR

What is the meaning of service by post as per provisions of the General Clauses Act, 1897? [May 18, MTP April 19, May 20, RTP May 21, MTP Nov 22, MTP-1 Nov 23- 3 marks]

Answer

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) properly addressing,
(ii) pre-paying, and
(iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

Question 26

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

OR [Nov 22]

Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement

of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise.

[MTP Aug 18]

Answer

As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, service shall be deemed to be effected by:

(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.

Case Laws

(i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post. Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

Question 27

Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice? Give your answer with reference to the provisions of the General Clauses Act, 1897.

[MTP May 24 - 4 marks]

OR

A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation.

[MTP April 19]

Answer

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.

Further, on the basis of decision taken by the apex court in case of Jagdish Singh vs Natthu Singh, where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In the given case, the Income Tax Department sent the show cause notice properly by a registered post at the address which was in the records of the department. Hence, it was a proper service of notice. Further, refusal by current owner of house to accept the notice, will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address. Therefore, Income Tax Department is correct in its decision.

Question 28:

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?
(ii) In case of any irregularities in the publication of the draft, can it be questioned?
(iii) Is MCA entitled to make suitable changes in the draft?
(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

Answer

[May 2022]

The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:

(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.
(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Question 29:

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Answer

[RTP Nov 22]

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

Question 30:

Mr. Sridhar has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2022 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2022 or 21st August 2022?

[MTP Nov 22, MTP-1 Nov 23- 4 marks]

Answer

Section 10 of the General Clauses Act, 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sridhar to Mr. Mohan on 17th May 2022 which was payable 3 months after date. After that, a sudden holiday was declared on 20 th August 2022 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2022. Three days of grace are to be added. It falls due on 20th August 2022 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of section 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e., 21st August 2022.

Question 31

"No person shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of Section 26 of the General Clauses Act, 1897.

[May 2023 - 3 marks]

Answer:

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Even Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Question 32

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to

pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable. In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

[RTP Nov 23, May'24]

Answer

By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

Question 33

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

Answer

[MTP May'24 - 4 marks]

(i) Movable Property

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

(ii) Oath

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

Question 34

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

Answer

[RTP Sept 2024]

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

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

13 Interpretation of Statutes

Question 1

Give the difference between interpretation and construction

[MTP March 18, March 21, May 24]

Answer

Difference between Interpretation and Construction-

Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

When the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used in the same sense.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called 'construction'.

However, the two terms - 'interpretation' and 'construction'- overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

It would also be worthwhile to note, at this stage itself, the difference between the terms 'Interpretation' and Construction. While more often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood. It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T,(2001)]

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co. AIR 1958)

Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law. In practice, construction includes interpretation and the terms are frequently used synonymously.

Question 2

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

[May 18]

Answer

Grammatical Interpretation and its exceptions:

'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

(1) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness.

As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature.
In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

(2) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Question 3

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

[ICAI Module, MTP March 19, March 21, MTP Nov 22, Nov'22, MTP-1 Nov 23- 3 marks]

Answer

Principles of Grammatical Interpretation and Logical Interpretation:
In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Question 4

How will you interpret the term "Instrument" used in a statutes?

Answer

[Nov 19]

'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form.

It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

on 5
how does 'natural and grammatical meaning' helps in the interpretation of a statute?
[MTP March18]

r
al and grammatical meaning: Statute are to be first understood in their natural, ordinary, or popular
and must be construed according to their plain, literal and grammatical meaning. If there is an
sistency with any express intention or declared purpose of the statute, or it involves any absurdity,
gnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to
such an inconvenience, but no further. [(State of HP v. Pawan Kumar (2005)]

mple: In a question before the court whether the sale of betel leaves was subject to sales tax. In this
ter the Supreme Court held that betel leaves could not be given the dictionary, technical or botanical
ning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use,
ust be understood in its popular sense by which people are conversant with it as also the meaning which
statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to
e tax. (Ramavtar V. Assistant Sales Tax Officer).

uestion 6
iefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation
statutes?
[MTP Aug 18]

nswer
Meaning of rule of Harmonious Construction:
When there is doubt about the meaning of the words of a statute, these should be understood in the sense
in which they harmonise with the subject of the enactment and the object which the legislature had in
view.

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they
should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the
Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be
assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the
parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the
intent of the legislature, not overriding it.

Application of the Rule: The Rule of Harmonious Construction is applicable only when there is a real and
not merely apparent conflict between the provisions of an Act, and one of them has not been made subject
to the other. When after having construed their context the words are capable of only a single meaning,
the rule of harmonious construction disappears and is replaced by the rule of literal construction.

Question 7
Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example.
[ICAI Module, MTP March 21]

OR

Explain 'Mischieve Rule' for interpretation of statute. Also, give 4 matters it considers in construing an
Act

Answer
Where the language used in a statute is capable of more than one interpretation, the most firmly
established rule for construction is the principle laid down in the Heydon's case. This rule enables,
consideration of four matters in constituting an act:

(1) what was the law before making of the Act,
(2) what was the mischief or defect for which the law did not provide,
(3) what is the remedy that the Act has provided, and
(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.

If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957)]

Question 8

Repeated question. Hence merged with other question.

Question 9

'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.

OR [MTP May 20]

"Associate words to be understood in common sense manner". Explain this statement with reference to rules of interpretation statutes.

Answer [Nov 20, MTP Nov 22, MTP-2 Nov 23- 3 marks]

Associated Words to be Understood in Common Sense Manner:

Concept of 'Noscitur A Sociis' ('it is known by its associates') - that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take their colour from each other, i.e., the more general is restricted to a sense analogous to the less general.

It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (Devendra M. Surti (Dr.) vs. State of Gujrat).

Question 10

Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of

his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Sohel is correct?

[Jan 21, MTP-1 May 23]

Answer

Rule of Literal Construction:

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "*absoluta sententia expositore non indeget*" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations - one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.

What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Sohel (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest

Question 11

Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

[RTP May 18]

Answer

Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Exception	Proviso	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, or privileges already existing

Question 12

How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment?

[MTP Aug 18]

Answer

i) Title: An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it. The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

ii) Preamble: It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to the remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Question 13

How far are 'marginal notes' in an enactment helpful in interpreting any of the parts of an enactment?

[MTP Oct 18]

Answer

Marginal Notes: Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section.

In C.I.T. vs. Ahmedbhai Umarbhai & Co. (SC), Patanjali Shastri, J., had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases. Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. [Deewan Singh v. Rajendra Pd. Ardevi, (2007), Sarabjit Rick Singh v. Union of India, (2008)]

However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.

Example: Article 286 of the constitution furnishing "prima facie", some clue as to the m
f the Article [Bengal Immunity Co. Ltd. v. State of Bihar (SC)]

Question 14
Does an explanation added to a section widen the ambit of a section?
[ICAI Module, May 2022, MTP 2 May'23, Nov'18]

Answer
Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up any ambiguity in the main section. Something may be added to (or something may be excluded from) the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 15
What does the principle of "reading the statute as a whole" imply in the interpretation of statutes? Explain with the help of an example
[RTP May'24, RTP Nov 18, MTP May'24]

Answer
Read the Statute as a Whole': It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions - if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

Question 16
Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?
[ICAI Module]

Answer
The rules regarding interpretation of deeds and documents are as follows:
First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document. It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole.

The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the

same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Question 17

How will you interpret the definitions in a statute, if the following words are used in a statute?
(i) Means
(ii) Includes
Give one illustration for each of the above from statutes you are familiar with.
[ICAI Module, RTP Nov 22, MTP Nov 22, MTP-2 Nov 23, MTP May 24- 3 marks]

Answer

Interpretation of the words "Means" and "Includes" in the definitions:
The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same. When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:
Definition of Director [section 2(34) of the Companies Act, 2013] Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole-time director [Section 2(94) of the Companies Act, 2013]: Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Question 18

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Answer

[ICAI Module]

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with.

However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory.

Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or not so would depend on such consideration as: -the nature of the thing empowered to be done,

- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

Question 19

Repeated question

Question 20

Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.

[ICAI Module, Nov 18, MTP Oct 18, April 19, Oct 19]

Answer

Dictionary Definitions: First, we refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.

It is the fundamental rule that the meanings of words and expressions used in an Act must take their color from the context in which they appear.

Further, judicial decisions laying down the meaning of words in construing statutes in "pari materia" (i.e., on the same matter) will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries

Question 21

Preamble does not over-ride the plain provision of the Act. Comment. Also give suitable example.

[ICAI Module]

Answer

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act.

But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindu" has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [GullipoliSowria Raj V. BandaruPavani, (2009)].

Question 22

When can the Preamble be used as an aid to interpretation of a statute?

[May'23, ICAI Module, MTP-2 May 23, RTP May 23- 3 marks]

Answer

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act.

A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails. The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Question 23

At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

[ICAI Module, Nov 23 - 3 marks]

Answer

Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and

(ii) Contemporanea Expositio est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written. Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Question 24

Repeated question. Merged with other question.

Question 25

If it is defined as:

(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".

(ii) "Person" includes, _____ under the Consumer Protection Act,1986.

How would you interpret/construct the nature and scope of the above definitions?

[Nov 19, MTP Oct 20, RTP May 21]

Answer

Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Thus,

(i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall deemed to be company.

(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Question 26

In what way are the following terms considered as external aid in the interpretation of statutes:

(i) Historical Setting

(ii) Use of Foreign Decisions

[MTP Nov 22, July 21, RTP Nov 19, MTP-2 Nov 23, MTP May 24 - 4 marks]

Answer

(i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Question 27

What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations? [Jan 21]

Answer

External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.

Dictionary Definitions: Dictionary Definitions is one of the External Aids to interpretation. Discussed in previous answers in detail.

Question 28:

Enumerate when does the rule of Ejusdem Generis apply

[MTP Nov 22, MTP-1 Nov 23 - 3 marks]

Answer

The rule of Ejusdem Generis applies when:

1. The statute contains an enumeration of specific words
2. The subject of enumeration constitutes a class or category
3. That class or category is not exhausted by the enumeration
4. General terms follow the enumeration; and
5. There is no indication of a different legislative intent.

Question 29

Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.

[Nov 22]

Answer

The Rule of Ejusdem Generis will not apply in the following situations:

1	If the preceding term is general, as well as that which follows this rule cannot be applied.
2	Where the particular words exhaust the whole genus.
3	Where the specific objects enumerated are essentially diverse in character.
4	Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

Question 30

Explain the following in context of use of definitional sections in Interpretation of Statutes:

(i) Definitions subject to a contrary context

(ii) Ambiguous definitions

Answer

[MTP-1 May 23]

(i) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

(ii) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

Question 31

Explain the Doctrine of Contemporanea Expositio.

Answer:

[May 2023]

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

this maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Question 32

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

[RTP Nov 23]

Answer

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions.

In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions. Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains....."

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Question 33:

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

[Nov'23 - 4 marks]

OR

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

[RTP Sept 2024]

Answer

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

A notwithstanding clause can operate at four levels.

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

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

statutes.

[MTP May'24 – 4 marks]

Answer

Heading and Title of a Chapter

If we glance through any Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles. These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.

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

They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.

It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble. But a heading cannot control or override a section.

Question 35:

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

Answer

[May 24 – 4 mark

Check suggested answer if released. It was not released till the date this question was included here.

14 The Foreign Exchange Management Act, 1999

Question 1:

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

[ICAI Module]

Answer:

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Question 2:

Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

(iii) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(iv) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

[ICAI Module, RTP May'24]

Answer:

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(v) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.

(vi) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorized Person as defined in Section 2(c).

Question 3:

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of $20,000 is required for this purpose. [MTP May 24 - 4 marks]

(ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required? [ICAI Module]

Answer:

Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawal for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However, in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

Question 4:

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

(i) M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.

(ii) P requires U.S. $ 2,000 for payment related to call back services of telephones.

Answer: [ICAI Module]

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

(i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

(ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose.

Question 5:

Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2021-2022 and 2022-2023?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

[ICAI Module]

Answer:

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2021- 2022 till 15th July 2021 and from 16th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Question 6:

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

[ICAI Module]

Answer:

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

i. Transactions for which drawal of foreign exchange is prohibited,
ii. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
iii. Transactions which require RBI's prior approval for drawl of foreign exchange.

a. Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
Hence Mr. P cannot withdraw foreign exchange for this purpose.

b. "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorized dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

Question 7:

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:
1. US$ 120,000 for studies abroad on the basis of estimates given by the foreign university.
2. Gift Remittance amounting US$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

[ICAI Module, MTP May 24 - 4 marks]

Answer:

a. Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.

b. Gift remittance exceeding US $ 10,000: Under the provisions of section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

Question 8:

Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:

i. MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2004.
ii. WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.
iii. WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.

[May 2005]

Answer:

Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

a) A company
b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a person resident in India:

a) Any person or body corporate registered or incorporated in India.
b) An office, branch or agency in India owned or controlled by a person resident outside India.
c) An office, branch or agency outside India owned or controlled by a person resident in India.

The answer to the given problem is as under:

i. MKP Limited as well as the New York branch of MKP Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.
MKP Limited is incorporated in India. Therefore, it is a 'person resident in India'.

MKP Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of MKP Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India' and so the New York branch is a 'Person resident in India'.

ii. WIP Ltd. as well as Chandigarh branch of WIP Ltd. is a 'person'. WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India. The Chandigarh branch of WIP Ltd. is a 'Person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident outside India'.

iii. The Singapore branch of WIP Ltd., though not owned, is controlled by the Chandigarh branch. The Singapore branch is a 'Person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'

Question 9:

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer:

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v) (B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
If, however, she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Question 10:

Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Answer:

Mr. X came to India for carrying on business. During FY 2019-20, he resided in India for less than 182 days. Since he has not fulfilled condition of staying in India for more than 182 days, he would normally be considered PROI but as Mr X has come for carrying on business in India, he falls under the second limb and will be considered as PRI w.e.f. 1st April 2020. Mr. X will be considered as a person resident in India' from 1st April 2020.

As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021. If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure.

It may be noted that even if Mr. X is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

Question 11:

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

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

[MTP May'24 - 4 Marks]

Answer:

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

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

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

Question 12:

Explain the meaning of the term 'Current Account Transaction' and the right of a citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999.

[CA Final May 2001]

Answer:

Definition of current account transaction [Section 2(j)]

Current account transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes-

i. payments due in connection with foreign trade, other current business, services, and short- term banking and credit facilities in the ordinary course of business;
ii. payments due as interest on loans and as net income from investments:
iii. remittances for living expenses of parents, spouse and children residing abroad: and
iv. Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

No restriction on current account transactions unless prescribed (Section 5)

Foreign exchange is freely available for a current account transaction if the following two conditions are satisfied:

(a) The transaction is not prohibited by the Rules.

(b) The transaction is within the ceiling, if any, prescribed by the Rules, or the permission of the Reserve Bank of India or the Central Government, as the case may be, is obtained

Question 13:

Mr. G, an Indian National desires to obtain foreign exchange on current account transactions for following purposes:

i. Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company.
ii. Remittance of hiring charges of transponder.

Advise G whether he can obtain the foreign exchange and, if so, under what conditions?

[CA Final Nov 2001]

Answer:

If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

i. As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited
ii. As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for remittance of hiring changes of transponder requires the prior approval of the Central Government.

Brownie Points - *However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account or EEFC.*

Question 14:

Mr. Ramesh of Nagpur wants to travel to Nepal and for this purpose proposes to draw foreign exchange. Specify-

i. Can Mr. Ramesh draw any foreign exchange for his journey?
ii. What are the purposes for which foreign exchange drawal is not allowed for current account transactions?

[CA Final Nov 2002]

Answer:

(i) Rule 3 of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange (by any person) for the purpose of travel to Nepal and/or Bhutan. Therefore, Mr. Ramesh cannot draw any foreign exchange for journey to Nepal.

(ii) Rule 3 read with Schedule I prohibits drawal of foreign exchange (by any person) tor the following purposes:

- Remittance out of lottery winnings.
- Remittance of income from racing/riding, etc., or any other hobby.
- Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes. Etc.
- Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- Remittance of dividend by any company to which the requirement of dividend balancing is applicable.

- Payment of commission on exports under Rupees State Credit Route, except payment of commission up to 10% of the invoice value of export of tea and tobacco.
- Payment related to 'Call Back Services' of telephones.
- Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.

Question 15:

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

[RTP Sept 2024]

Answer

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

Clarifications under section 6(4) of FEMA

(i) Foreign Currency Accounts

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

(ii) Income and Investments

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

(iii) Foreign Exchange and Income therefrom

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

(iv) Utilization of Assets After Return to India

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

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

Question 16:

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

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is

required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

[MTP May'24 - 4 marks]

Answer:

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

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

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

Question 17:

Mr. F, an Indian National desires to obtain foreign exchange for the following purposes:

a) Payment of US $ 10,000 as commission on exports under Rupee State Credit Route.
b) US $ 30,000 for a business trip to U.K.
c) Remittance of US $ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.

dvise him, if he can get the Foreign Exchange and under what conditions.

[CA Final May 2005]

Answer:

If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person.

However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

i. As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of commission on exports under Rupees State Credit Route (except commission up to 10% of invoice value of exports of tea and tobacco) is prohibited.

   Therefore, payment of US $ 10,000 as commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

ii. As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to $ 2,50,000 for travel for business under the Liberalized Remittance Scheme. Drawal of foreign exchange in excess of US Dollar 2,50,000 shall require prior approval of the Reserve Bank of India.

   Therefore, Mr. F can obtain US Dollar 30,000 for business tour to U.K. without any approval of the Reserve Bank of India.

iii. As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange exceeding US$ 1,00,000 for the purpose of remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State level sports bodies requires the prior approval of the Central Government.

In the given case, the drawal of US $2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia is organized by Mr. F, who is an Indian National (i.e., not any International, National or State level Sports Body).

Therefore, Mr. F can obtain US Dollar 1,00,000 without any permission, but for drawal of additional US Dollar 1,00,000, prior approval of the Central Government is required.

Question 18:

State the kind of approval required for the following transactions under the Foreign Exchange Management Act. 1999:

i. X wants to draw USD 20,000 to make donation to a charitable trust situated in South Korea.
ii. M requires USD 5,000 to make payment related to 'call back services' of telephone.

Answer: **[CA Final June 2009]**

If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

i. As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules 2000 individuals can draw foreign exchange up to $2,50,000 for gift or donation (referred to as the Liberalized Remittance Scheme'). Therefore, Mr. X can obtain US Dollar 20,000 for making donation to a charitable trust situated in South Korea without any approval of the Reserve Bank of India.
ii. Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules 2000 prohibits drawal of foreign exchange for payments related to call back services of telephones. Therefore, payment of US $ 5,000 for callback services of telephone is prohibited.

Question 19:

Mr. T. Raghava has secured admission in a reputed and recognized university in Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in a reputed German hospital. He desires to apply to the Government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad, for the said financial year. Decide the following as to the facts given in the question as per the provisions of the Foreign Exchange Management Act, 1999:

i. As an individual, to what extent Mr. T. Raghava may avail foreign exchange facilities for higher and technical study in Germany.
ii. Can Mr. T. Raghava avail the facility of additional remittance in foreign exchange, beyond the limit, for the medical treatment?

Answer: **[CA Final Nov 2017 – Old]**

According to the Schedule III of the FEMA, 1999 following shall be the limit for the remittance of Foreign Exchange in the given situations:

i. Remittance of Foreign Exchange for Studies Abroad:
Foreign exchange may be released for studies abroad up to a limit of US $ 2, 50,000 without any permission from the RBI. Above this limit, RBI's prior approval is required.

ii. Remittance for Medical Treatment:
Remittance of foreign exchange for medical treatment abroad requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000.

The Schedule also prescribes that for the purpose of expenses in connection with studies abroad and medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by the university concerned or the medical institute offering treatment respectively.
Such amount shall be reduced from USD 2, 50,000 by the amount so remitted.

Therefore, Mr. T. Raghava can draw foreign exchange exceeding USD 2, 50,000 without prior permission provided it is so required by the university concerned or the medical institute offering treatment.

Question 20:

Lifesys Limited, a billion-dollar, Indian company wishes to create a chair in a reputed university in the U.S. This chair is for the department of computer science. The company wishes to obtain your advice in regard to the following with reference to the FEMA, 1999.

(iii) Is such "chair" creation permissible?
What is the maximum amount that can be donated for such chair?
Any formalities to be complied with?

[CA Final Nov 2016 - Old]

Answer:

As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or $ 5,000,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the Reserve Bank of India.
Considering the above provision:

(i) In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is permissible.

(ii) Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous 3 FY or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India.

(iii) In case where donations exceed one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall require prior approval of Reserve Bank of India.

Question 21:

ABC Limited hired the services of Mr. Taylor, a technician from Germany for the installation of a machinery. The company paid USD 40,000 for the services rendered by Mr. Taylor. Examine under the Foreign Exchange Management Act, 1999, whether payment of remuneration to foreign technician Mr. Taylor is a permissible transaction under the provisions of the said Act.

[CA Final Nov 2019 - Old]

Answer:

Remuneration payable to a foreign technician is a current account transaction. According to Section 5 of the Foreign Exchange Management Act, 1999 any person can sell or draw foreign exchange to or from authorized person if such sale or drawal is a current account transaction.
Reasonable restrictions on current account transactions can be imposed by the Central Government. Basically, all current account transactions are free unless specifically restricted by the Central Government.

Hiring of foreign national as technicians is permissible without restriction. There is no ceiling on salary which can be paid as per contract. Their salary can be remitted abroad after-tax deductions, contribution to provident fund and other deductions at source.

Question 22:

Examine whether the following transactions are permissible or not under the above Act as Capital Account transactions:

1. Investment by person resident in India in Foreign Securities.
2. Foreign currency loans raised in India and abroad by a person resident in India.
3. Export, import and holding of currency/currency notes.
4. Trading in transferable development rights.
5. Investment in a Nidhi Company.

[CA Final Nov 2007]

Answer:

i. Investment by person resident in India in Foreign Securities is a capital account transaction. It is permitted within the limit, subject to the compliance of conditions and if declaration is made as per the provisions contained in the Regulations relevant to the transaction.

ii. Foreign currency loans raised in India and abroad by a person resident in India is a capital account transaction. It is permitted within the limit, subject to the compliance of conditions and if declaration is made as per the provisions contained in the Regulations relevant to the transaction.

iii. Export, import and holding of currency /currency notes is a capital account transaction. It is permitted within the limit, subject to the compliance of conditions and if declaration is made as per the provisions contained in the Regulations relevant to the transaction.

iv. Trading in transferable development rights is prohibited since no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage in trading in Transferable Development Rights (TDRs) (Regulation 4 of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000).

v. Investment in a Nidhi Company is prohibited since no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage as Nidhi Company (Regulation 4 of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

Question 23:

State whether there are any restrictions in respect of the following transactions:

(i) Drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

(ii) Purchase by a person resident outside India of shares of a company in India engaged in plantation activities.

[CA Final Nov 2002, Nov 2005, Nov 2010]

Answer:

1. Amortization of loans is permitted

Section 6 specifically mentions that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of -

(a) amortization of loans in the ordinary course of business; or

(b) Depreciation of direct investments in the ordinary course of business.

Thus, there is no restriction on drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

2. Investment in plantation activities is prohibited

The Reserve Bank of India has framed Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. As per these Regulations, no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage in agricultural or plantation activities.

Thus, a person resident outside India cannot purchase shares of a company in India engaged in plantation activities.

Question 24:

Examine with reference to the provisions of the Foreign Exchange Manage Act. 1999 whether there are any restrictions in respect of the following:

A person, who was resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by companies in U.S.A.?

[CA Final Nov 2010 - Old]

Answer:

As per Section 6(4), a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Hence, the USA Resident shall be entitled to hold the foreign securities even after he becomes a person resident in India.

…estion 25:

Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property?

[CA Final Nov 12- Old]

Answer:

As per section 6(5), a person resident outside India may hold, own, transfer or invest in India currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Thus, a person resident outside India may hold, own or transfer any immovable property situated in India if such property is inherited from a person resident in India.

Accordingly, Mrs. Chandra is entitled to acquire as well as hold the immovable property in India inherited by her.

Author's Note: Please note that in this question, assumption is that his father is a PRI.

Question 26:

Repeated question. Hence, merged with other question

Question 27:

Repeated question. Hence, merged with other question

Question 28:

A foreign tourist comes to India, and he purchases an antiques from a shop. He would like to pay US$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?

[CA Final RTP May 21]

Answer:

As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorized person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorized Person except where the shopkeeper has taken a money changers license to accept foreign currency.

Question 29:

The Adjudicating authority under FEMA Act, 1999 based on the complaints received in writing from the officer authorized by the Central Government, had issued show cause notice to following persons accused of committing contravention under the Act, to show cause as to why an inquiry should not be held against them as follows:

Noticed issued to whom	Alleged contravention prescribed in the show-cause notice issued	Reply by the accused person to the show- cause notice
Global Shipping Ltd.	Made remittance for membership of P & I club without taking the requisite approval	The amount for the same was remitted through the RFC Account and EEFC Account, respectively, for which no approval was required.
Siphonic Ltd.	Made remittance of $ 1,10,000 to BMT Inc., a US co., without taking requisite approval, as reimbursement of pre- incorporation expenses incurred for setting up the co. by bringing investment of Rs. 18 CR to India. (1 USD = Rs. 75)	Such remittance does not exceed the limit as specified, so, no approval was required.

In the context of aforesaid case-scenario, examine in the lights of the provisions of the FEMA Act, 1999 and its rules & regulations, the validity of the contentions made by the aforesaid persons?

[CA Final MTP – Dec'21]

Answer:

i. Validity of Contention made by Global Shipping Ltd.

As per Rule 4 read with the Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for making remittance for membership of P & I Club, prior approval of Ministry of Finance (Insurance Division) is required to be taken.

No approval is required where any remittance has to be made for the transactions listed in Schedule II from an RFC account and EEFC account, respectively. However, if payment has to be made for remittance for membership of P & I, approval is required even if payment is from EEFC account.

Here, Global Shipping Ltd. was required to take approval of the Ministry of Finance (Insurance Division) for making the remittance through EEFC account and in case of RFC account only, no approval was required. Thus, its contention is partially invalid.

ii. Validity of Contention made by Siphonic Ltd.

As per Rule 5 read with the Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses, prior approval of the Reserve Bank of India shall be required.

Here, Siphonic Ltd. made remittance of $ 1,10,000 equivalent to Rs. 82.5 lakhs (1 USD = Rs. 75) to BMT Inc., a US company, as reimbursement of pre-incorporation expenses for bringing investment of Rs. 18 crore into India. So, the amount remitted comes to approximately 4.58% (Rs. 82.5 lakhs / Rs. 1800 lakhs) of the investment made into India which is lesser than the prescribed limit of 5%.

However, as it exceeds $ 1,00,000 and so approval was required irrespective of whether the amount remitted exceeds 5% of the investment or not. Thus, the contention of Siphonic Ltd. is invalid.

Author's Note: Here the conclusion of ICAI in case of Siphonic Limited seems to be incorrect. Let me explain this in a different manner.
Provision - If amount of reimbursement exceeds the limit, then approval is required.
Limit = Higher of $100k or 5% of investment (5% of Rs. 18 crores = Rs. 90 lakh i.e., $120k) = $120k
Here, reim. Of $110k is lower than limit & hence no approval is reqd. Hence, contention of co. is valid.

Question 30:

Under the auspices of the Foreign Exchange Management Act, 1999, (the Act) examine whether the given situations fall under "Current Account Transactions" or not as defined in the Act?

(i) Mr. S, a resident in India, imports machinery from a vendor in UK for installing in his factory.

(ii) An Indian resident, imports machinery from a vendor in US for installing in his factory on a credit period of 3 months.

(iii) An Indian resident, transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York.

Answer: [CA Final Nov 20]

(i) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

(ii) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. Under FEMA, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j)(i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is a Current Account Transaction.

(iii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction

Question 31:

Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose. After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK bank account, so she planned to purchase a second flat in the UK. Based on the above facts, answer the following questions:

Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?

[CA Final MTP2- Nov22]

Answer:

Purchase of First Flat in UK

Section 6(4) of the FEMA, 1999 provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

Question 32:

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

On 02.02.2024, Mr. L left India for taking up employment as a production controller at Jeff Fashion Ltd. In Paris. On 30.04.2024 he flew back to India for 10 day family function in Manali, India.

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

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

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

Answer

[May 24 - 4 marks]

Check suggested answer if released. It was not released till the date this question was included here.

Question 33:

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

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

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

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

Answer

[May 24 - 4 marks]

Check suggested answer if released. It was not released till the day of including this question here.

15 The Limited Liability Partnership Act, 2008

Question 1:

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

[ICAI Module, MTP May 24 - 5 marks]

Answer:

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 2:

Mr. Ankit Sharma wants to form an LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

[ICAI Module]

Answer:

Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
(b) he is an undischarged insolvent; or
(c) he has applied to be adjudicated as an insolvent and his application is pending.

Further, Section (2)(1)(e) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

(i) an LLP registered under this Act;
(ii) an LLP incorporated outside India; and
(iii) a company incorporated outside India,

but does not include—

(a) a corporation sole;
(b) a co-operative society registered under any law for the time being in force; and
(c) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 20132' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

Question 3:

Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of Rs. 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

[MTP May 24]

OR

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non - resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

[ICAI Module]

Answer:

According to section 7 of the Limited Liability Partnership Act, 2008, every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are nonresident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.

Question 4:

Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of Rs. 10,00,000 against the LLP but the worth of the assets of LLP are only Rs. 7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of Rs. 3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

[ICAI Module, RTP May'24]

Answer:

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of Rs. 3,00,000 from the partners of Devi Ram Food Circle LLP.

Question 5:

M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhman Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

[ICAI Module]

Answer:

Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable; or

(b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

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

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

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of firm.

Question 6:

Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

[ICAI Module]

Answer:

According to section 24(3), where a person has ceased to be a partner of an LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

(a) the person has notice that the former partner has ceased to be a partner of the LLP; or

(b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

Question 7:

Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

[MTP May'24 - 5 marks]

Answer:

Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]

A LLP may be wound up by the Tribunal:

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

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

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

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

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

Question 8:

Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

[MTP May'24 - 5 marks]

Answer:

According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.

Question 9:

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

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

(i) When the name of LLP is identical.

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

Answer

[RTP Sept 24]

According to section 17 of the LLP Act, 2008,

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

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

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

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

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

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

Question 10

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

Answer

[May 24 - 5 marks]

Check suggested answer if released. It was not released till the date this question was included here.

Question 11

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

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

[May 24 - 5 marks]

Answer

Check suggested answer if released. It was not released till the date this question was included here.