CA INTERMEDIATE

VIVITSU

PAPER 2

Corporate & Other Laws Reviewer

Chapter-wise compilation

RTP, MTP and PYP questions

KEY HIGHLIGHTS

- Easy to Hard Difficulty Level
- Importance levels marked as A, B or C
- Reference to all questions
- Quick recap of important concepts
- Exam Insights
- Last Day Revision Questions Marked

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

Corporate & Other Laws

REVIEWER

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VIVITSU

STRIVING TOWARDS KNOWLEDGE

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This book belongs to future,

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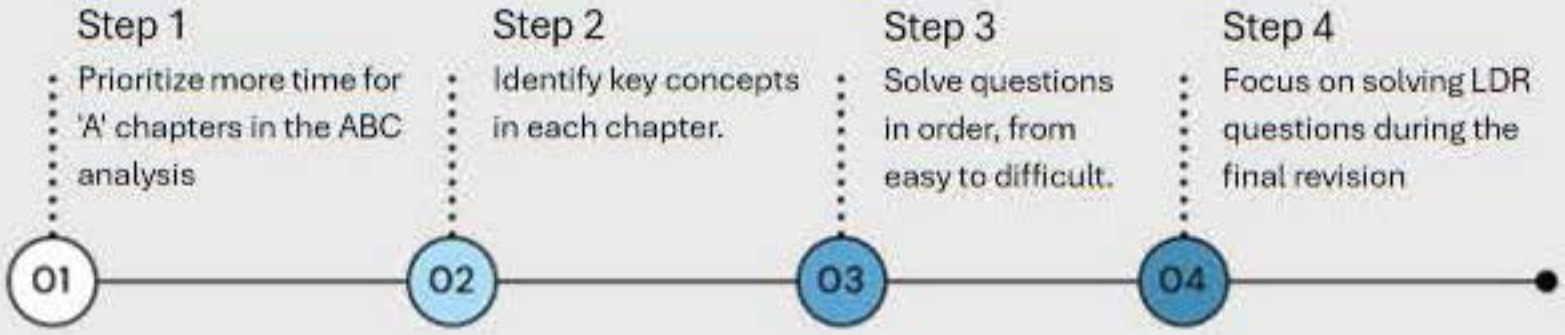

Step 1: Prioritize your chapters

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

Step 2: Identify key concept

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

Step 3: Start easy

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

Step 4: Last Day Revision (LDR)

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

Table of Contents

ABC Analysis

- **A** Very Important, Read on priority
- **B** Moderately Important
- **C** Less critical but still essential

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

CHAPTER 1: PRELIMINARY

CONCEPTS OF THIS CHAPTER		
• Sec 2(13)- Books of Accounts • Sec 2(40)- Financial Statement • Sec 2(52)- Listed Company • Sec 2(68)- Private Company • Sec 2(71)- Public Company • Sec 2(76)- Related Party • Sec 2(85)- Small Company	• Sec 2(43)- Free Reserves • Sec 2(69)- Promoter • Sec 2(6)- Associate Company • Sec 2(41)- Financial Year • Sec 2(46)- Holding Company • Sec 2(86)- Subscribed Capital • Sec 2(87)- Subsidiary Company	LDR **LDR Questions** Q 7 Q 13

QUICK REVIEW OF IMPORTANT CONCEPTS

MAJOR DEFINITIONS

1. Associate Company

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

"Significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

"Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

2. Listed Company:

Means a company which has securities listed on any recognised stock exchange. The following will not be considered as listed companies

Public companies which have not listed their equity shares on a recognized stock exchange but have listed their:

(a) non-convertible debt securities/ non convertible preference shares issued on a private placement basis

(b) non-convertible debt securities and redeemable preference shares issued on a private placement basis

(c) Whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act will not be considered as listed entities.

3. Subsidiary company:

means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies

Explanation

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company.

(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.

4. **One Person company (OPC):**

means a company which has only one person as a member.

5. **Private Company**

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum- members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company

6. **Public Company:**

- Is not a private company (Articles do not have the restricting clauses)
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company

7. **Related party:**

(i) a **director** or his relative;

(ii) a key managerial personnel or his relative;

(iii) a **firm**, in which a director, manager or his relative is a partner;

(iv) a **private company** in which a director or manager or his relative is a member or director;

(v) a **public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any**body corporate** whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) **any person** on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any**body corporate** which is- a holding, subsidiary or an associate company of such company; a subsidiary of a holding company to which it is also a subsidiary; or an investing company or the venture of the company;

8. **Small Company:**

- A private company
- Paid-up capital – not more than ` 4 crore or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and Turnover (as per P&L A/c of immediate preceding FY) – not more than ` 40 crore or such higher amount as may be prescribed which shall not be more than 100 crore rupees.
- Should not be

– A Section 8 company	– Holding or a Subsidiary company
– a company or body corporate governed by any special Act	

9. **Financial Statement**

Includes Balancesheet at the end of the year, 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; cash flow statement for the financial year; a statement of changes in equity, if applicabl3, any explanatory note annexed to, or forming part of, any document referred above

Question & Answers

Sec 2(13)- Books of Accounts

Question 1

Define the term 'Book of account' as per the Companies Act, 2013. *(MTP 5 Marks July'24)*

Answer 1

According to section 2(13) of the Companies Act, 2013, 'Books of account' includes records maintained in respect of:

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Sec 2(40)- Financial Statement

Question 2

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared. *(RTP Nov'22, MTP 5 Marks Dec'24)*

Answer 2

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

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

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

(iii) cash flow statement for the financial year;

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

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

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

Question 3

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and the said company is not a start-up company.

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

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

Provide your answer by analysing Sankul (P) Ltd. into following category of companies:-

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

(RTP May '23, RTP Jan'25)

Answer 3

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) may not include the cash flow statement.

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

(i) One person company – It is given that the company is having 40 members and also

Its name does not contain the words 'OPC', so it is not a one person company.

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

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

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

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

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

Sec 2(43)- Free Reserves

Question 4

MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'.

The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013. ***(MTP 5 Marks Nov'24)***

Answer 4

As per section 2(43) of the Companies Act, 2013, free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

Sec 2(52)- Listed Company

Question 5

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

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

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

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

Answer 5

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

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

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

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

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

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

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

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.

(ii) CHG Limited is an unlisted company.

(iii) PRS Limited is an unlisted company.

Question 6

Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s):-

(a) **Whether the aforesaid companies can be considered as listed company(ies)?**

(b) **Explain the relationship between the aforesaid companies?** ***(RTP May '22)***

Answer 6

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

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

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

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

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

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

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

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

Company Name	Analysis and Conclusion
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non- convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. **shall not be considered as a listed company.**
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non- convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. **shall not be considered as a listed company.**
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. **shall not be considered as a listed company.**

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

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

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

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

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

Explanation—For the purposes of this clause,—

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

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

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

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

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

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

Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd.

(ii) **Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.**

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

Accordingly, as per sub-clause (ii) to section 2(87), it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

(iii) **Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.**

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

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

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.

(iv) **Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.**

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

Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding– subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

Sec 2(68)- Private Company

Question 7 — LDR

ABC Limited is a registered public company having the following:

i	Directors and their Relatives	20
ii	Employees	15
iii	Ex-Employees (Shares were allotted during employment)	20
iv	Members holding shares jointly (10 shares x 2 joint- holders each)	20
v	Other Members	150

The Board of Directors of ABC 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 conversion into a private company? (MTP 5 Marks July'24) (SM)**

Answer 7

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

(i)	Directors and their relatives	20

(ii)	Joint shareholders (10x2)	10
(iii)	Other Members	150
	Total	180

(i) ABC 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 180 which is within the prescribed maximum limit of 200, so ABC 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 180 which does not exceed maximum limit of 200.

Sec 2(69)- Promoter

Question 8

Mr. Viv Tsu is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Viv Tsu can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. ***(RTP May '22) (MTP 5 Marks Dec'24)***

Answer 8

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

(a) Who has been named as such in a prospectus or is identified by the company in the annual return; or

(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

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

Sec 2(71)- Public Company

Question 9

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 ₹ 1,00,000 convertible preference shares (carrying right to vote) of ₹ 100 each and 10,00,000 equity shares of ₹ 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 5 Marks Apr'24)***

Answer 9

(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" or "subsidiary", 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 ₹
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 [(₹ 10,00,000 equity shares+ ₹ 1,00,00,000 preference shares)/ ₹ 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.

Sec 2(76)- Related Party

Question 10

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

Answer 10

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.

Exam Insights: Performance of the examinees was Average. Bulk of the examinees have answered this question correctly but not be able to give provisions in proper manner in relation with related parties as per the section 2(76)(viii) of the Companies Act, 2013.

Sec 2(85)- Small Company

Question 11

Ram Pvt. Ltd. is the holding company of Laxman Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of Laxman Pvt. Ltd., its turnover was ₹ 1.80 crore; and paid up share capital was ₹ 80 lakh. 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 Company Secretary is correct, explaining the relevant provisions of

the Act. ***(RTP May '24)***

Or

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

Answer 11

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, 2023 of Laxman Pvt. Ltd., its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though Laxman 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 a subsidiary of another company (Ram Pvt. Ltd). Hence, the contention of the company secretary is correct.

Question 12

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

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

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

Answer 12

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

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

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

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

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

(1) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 70 lakh and having turnover of ₹ 30 crore.
Since both the criteria of share capital not exceeding ₹ 4 crores and second criteria of turnover not exceeding 40 crores is met it can avail the status of small company.

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

Question 13 LDR

The information extracted from the audited Financial Statement of Resolution Private Limited as on 31st March, 2023 is as below:

(1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹ 2,00,00,000.

It is further understood that Yellow Private Limited, which is a public limited company is holding 2,00,000 equity shares, fully paid-up, of Resolution Private Limited. Resolution Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2023-24. The ROC has issued a notice to Resolution 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 Resolution Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

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

(MTP 5 Marks Mar'24, 6 Marks Oct '23) (PYP July '21,6 Marks)

Answer 13

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

(A) paid-up share capital not exceeding four crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees:

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

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

In the given question, Yellow Limited (a public company) holds 2,00,000 equity shares of Resolutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 each totaling ₹ 50 lakh). Hence, Resolutions Private Limited is not a subsidiary of Yellow Limited and hence it is a private company and not a deemed public company.

Further, the paid up share capital (₹ 50 lakh) and turnover (₹ 2 crore) is within the limit as prescribed under section 2(85), hence, Resolution Private Limited can be categorised as a small company.

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

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

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

(c) cash flow statement for the financial year;

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

(e) any explanatory note annexed to, or forming part of, any document referred to in points 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, Resolution Private Limited has not defaulted in filing its financial statements with ROC.

Sec 2(87)- Subsidiary Company

Question 14

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

(MTP 5 Marks ,March 21)

Answer 14

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

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

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

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

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

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

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

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

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

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

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

Multiple Choice Questions (MCQs)

Sec 2(6)- Associate Company

1. **"Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:** ***(MTP 1 Mark March '23, SM)***

   (a) Control of at least 10% of total voting power
   (b) Control of at least 15% of total voting power
   (c) Control of at least 20% of total voting power
   (d) Control of at least 25% of total voting power

Ans: (c)

Sec 2(41)- Financial Year

2. **Green Ltd. is incorporated on 3rd January, 2023. As per the Companies Act, 2013, what will be the financial year for the company:** ***(SM, MTP 2 Marks March '23, Mar'22, Aug'24)***

   (a) 31st March 2023
   (b) 31st December, 2023
   (c) 31st March, 2024
   (d) 30th September 2024

Ans: (c)

Sec 2(46)- Holding Company

3. **A Ltd. is holding 61% shares in B Ltd. and B Ltd. holds 51% in C Ltd. State which is the correct statement here:** ***(MTP 1 Mark , Sep'22)***

   (a) C Ltd. is the holding company to A Ltd.
   (b) C Ltd. is the holding company to B Ltd.
   (c) B Ltd. is the Subsidiary to C Ltd.
   (d) Both B Ltd. and C Ltd. are subsidiary to A Ltd.

Ans: (d)

Sec 2(71)- Public Company

4. **A Public company may be formed by:** ***(RTP Nov'22)***

   (a) Only two persons
   (b) Not more than three persons
   (c) Not more than Seven Persons

(d) Seven or more Persons :

Ans: (d)

Sec 2(85)- Small Company

5. Wiwitsu along with her six friends has incorporated Wiwitsu Trading Ltd. in May 2023. The paid-up share capital of the company is ₹ 2 crore. Further, in April 2024, she noticed that in the last financial year, the turnover of the company was well below ₹ 40 crore. Advise whether the company can be treated as a 'small company'. *(SM)*

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

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

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

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

Ans: (b)

6. Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2024, its turnover was less than ₹ 40 crore and its paid up share capital was less than ₹ 4 crore. Advise. *(SM)*

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

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

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

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

Ans: (c)

Sec 2(86)- Subscribed Capital

7. Part of the capital for which application have been received from the public and shares allotted to them *(SM)*

(a) Nominal capital

(b) Issued capital

(c) Subscribed capital

(d) Called up capital

Ans: (c)

CHAPTER 2 : INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

CONCEPTS OF THIS CHAPTER

• Sec 3- Formation of Company	• Sec 4- Memorandum of Association
• Rule 3 & 4- One Person Company	• Sec 13- Alteration of Memorandum
• Sec 7- Incorporation of Company • Sec 8- Formation of Co's with Charitable Object	• Sec 16- Rectification of Name of Company • Sec 12- Registered Office of Company
• Sec 9- Effect of Registration	• Sec 10A- Commencement of Business
• Sec 5- Articles of Association	• Sec 19- Subsidiary cannot hold shares in Holding Co
• Doctrine of Indoor Management & Constructive Notice	• Sec 20- Service of Documents
• Sec 6- Acts to Override Memorandum & Articles	• Sec 22- Execution of Bills of Exchange etc.

LDR

LDR Questions
Q 5
Q 13
Q 26

QUICK REVIEW OF IMPORTANT CONCEPTS

Memorandum of Association (MOA)

Name Clause	Name with which Co. is registered	**Alteration:** SR + Approval of CG. New COI will be issued
Domicile Clause	Specifies the state of Registered Office	**Alteration:** CG approval necessary when change from one state to another, New COI will be issued
Object Clause	Contains object for which Co. is formed	**Alteration:** SR through postal ballot is to be passed + Publish in Newspaper+ Give exit opportunity to dissenting shareholders
Liability Clause/ Capital Clause	**Co. limited by Share:** Liability of members is limited up to unpaid amt of shares **Co. limited by guarantee:** Specifies the amt each member undertake to contribute **Co. having share capital:** Amt of share capital with which Co. is to be registered, No. of shares each subscriber to MOA intends to take	
Subscription Clause	**OPC:** Name of person who on death of subscriber, shall become the member of the Co. MOA & AOA duly signed by all subscribers to the MOA, be filed with the Registrar	

Articles of Association (AOA): Contain the regulations for the management of Co.

Alteration of AOA

(i) Alteration is effected by SR

(ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of CG is necessary.

(iii) Alteration of AOA+ Approval of CG (if any) to be filed with ROC within 15 days

(iv) Alterations once registered will be valid as if it were originally contained in AOA

One Person company (OPC)

- Only one person as member.
- No minor shall become member of the OPC
- Minimum paid up capital – no limit prescribed
- No person shall be eligible to incorporate more than one OPC
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar

- The MOA 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
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of anybody corporate
- Here, the member can be the sole member and director

Formation of companies with charitable objects etc.

- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Licence revoked if conditions contravened
- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc
- Enjoy same privileges and obligations as of a limited company
- Can call its general meeting by giving a clear 14 days' notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

Commencement of Business Etc.

Co. incorporated shall not commence any business or exercise any borrowing powers unless¬—

1. Declaration is signed by director within 180 days of the date of incorporation 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
2. The Co. has filed with the Registrar a verification of its registered office
3. If no declaration has been filed with the Registrar within a period of said 180 days and the Registrar has reasonable cause to believe that the Co. is not carrying on any business or operations, Registrar may, initiate action for the removal of the name of Co. from the register of companies.

Change in Place of Registered Office

Within a state	Within a State	From One State to Another
Special Resolution		
• Notice to ROC (30 days)	• Permission of Regional Director • 30/60/30 RD/Co./ ROC • Conclusive Evidence	• Approval of Central Government • 60/30 CG/CO. • Fresh Certificate of Incorporation

Subsidiary Company not to Hold Shares in its Holding Company

No subsidiary company shall, hold any shares in its holding company	No holding company shall allot or transfer its shares to any of its subsidiary companies
• either by itself or • through its nominees	• Such allotment or transfer of shares to its subsidiary company shall be void

Exceptions

- where the subsidiary company holds such share as the **legal representative of a deceased** member of the holding company; or
- where the subsidiary company holds such shares as a **trustee;** or
- where the subsidiary company is a shareholder even **before it became a subsidiary** company of the holding company.

Doctrine of Constructive Notice

- It is therefore the duty of person dealing with a company to inspect its public documents and make the duty of person dealing with a company to inspect its public documents and make sure that his contract is in conformity with their provisions.
- Every person (dealing with company) shall be presumed to know the contents of the documents and understood them in their true perspective.
- Absence of notice of MOA and AOA cannot be an excuse to claim relief for outsiders. Even if the party dealing with the company does not have actual notice of the contents of these documents, it is presumed that he has an implied (constructive) notice of them.

Doctrine of Indoor Management

- The people who are dealing with company are entitled to presume that internal proceedings and requirements has been duly met.
- What happens internally in a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

Service of Documents

mode in which documents may be served on the company, 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

Question & Answers

Sec 3- Formation of Company

Question 1

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

Answer 1

According to section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by—

(a) 7 or more persons, where the company to be formed is to be a public company;

(b) 2 or more persons, private company; or

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to section 3A,

- If at any time the number of members of a company is reduced,
  - in the case of a public company, below 7,
  - in the case of a private company, below 2,

and the company carries on business for more than six months while the number of members is so reduced, then

- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant (aware) of the fact that it is carrying on business with less than seven members or two members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after six months) and may be severally sued therefore.

Rule 3 & 4- One Person Company

Question 2

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

Answer 2

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 3

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

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

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

Answer 3

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

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

(B) Nisha can continue her nomination irrespective of her residential status.

Question 4

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

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

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

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

Answer 4

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

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

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

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

EXAM INSIGHTS: Majority of the examinees have answered correctly and explained the requisite provisions under the Companies Act, 2013 related to One Person company.

Question 5

LDR

Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. 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 Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(ii) In case Priya withdraws her nomination as a nominee to the OPC, whether Prashant can appoint his minor son Rushang as the nominee of the OPC? ***(RTP Sep'24)***

Answer 5

(i) According to Rule 3 of 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.

In the given question Priya is an Indian citizen and a resident of India.

Thus, if Priya is able to maintain her Indian citizenship status in India after moving abroad then she can remain as nominee in OPC of Prashant irrespective of her residential status.

(ii) The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

In the light of the above provision, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Prashant cannot appoint his son Rushang as a nominee to his OPC.

Sec 7- Incorporation of Company

Question 6

Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013? ***(MTP 4 Marks April '23, PYP Nov'19 5 Marks)***

Answer 6

As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants:

(a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company.

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

Question 7

ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during an internal audit initiated by the company's new CFO, Mr. Z.

Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information ***(RTP Sep'24)***

Answer 7

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—

(a) 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
(b) direct that liability of the members shall be unlimited; or
(c) direct removal of the name of the company from the register of companies; or
(d) pass an order for the winding up of the company; or
(e) pass such other orders as it may deem fit.

However, before making any order under this sub-section, -

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

Sec 8- Formation of Co's with Charitable Object

Question 8

Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (nonprofit organization)? *(MTP 5 Marks Nov'24)*

Answer 8

As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company:

- 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;
- intends to apply its profits (if any) or other income in promoting its objects; and
- intends to prohibit payment of any dividend to its members.

Question 9

Sai along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters :

(i) What is the minimum paid-up capital requirement in case of a Section 8 Company ?
(ii) Whether a firm can be member of the Section 8 Company ?
(iii) Whether the Section 8 Company can pay dividend to its members ?

Advise, Sai with reference to the provisions of Companies Act, 2013. *(MTP 5 Marks April 22)*

Answer 9

(i) The requirement of having a minimum paid up share capital shall not apply to a section 8 company vide notification dated 5th June 2015.

(ii) Yes, under section 8(3) of the Companies Act, 2013, a firm may be a member of the company registered under section 8.

(iii) According to Section 8(1)(c) of the Companies Act, 2013, section 8 company cannot pay dividend to its members as it prohibits the payment of dividends to its members.

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 '22)*

Answer 10

According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies). Also, a firm may be a member of the company registered under section. Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies. As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid. Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Question 11

Trinity school started imparting education on 1st April, 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 2024, 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 Trinity school, in such a case? ***(MTP 5 Marks Dec'24, SM)***

Answer 11

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

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

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

Question 12

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

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

(ii) Whether the company may be wound up?

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

Answer 12

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

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

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

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

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

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

EXAM INSIGHTS: Most of the examinees were able to reply correctly to the questions based on the provisions related to section 8 companies under the Companies Act, 2013.

Question 13 — LDR

A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. ***(PYP 5 Marks Nov'23) (MTP 5 Marks Oct 20, PYP May '19 , 5 Marks, SM) (MTP 5 Marks Apr'24)***

Answer 13

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

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

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

(c) intends to prohibit the payment of any dividend to its members;

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

According section 8(9), if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of women to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the association 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 a restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of section 8 of the Companies Act, 2013. Therefore, the proposal in its entirety is not feasible. The promoters will be accordingly advised that the proposal should be in conformity with the provisions of the Act.

EXAM INSIGHTS: Majority of the examinees have referred to the applicable provisions relating to the three conditions for the formation of Section 8 company. However, many of the examinees either have not referred to or partially referred to the provisions relating to disposal of surplus assets on issolution of such company as per the provisions of the Companies Act, 2013

Sec 9- Effect of Registration

Question 14

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

Answer 14

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

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

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

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

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

EXAM INSIGHTS: Performance of the examinees with respect to this question was Below Average. It was based on section 9 and 10 of the Companies Act, 2013. Most of the examinees failed to give relevant provisions regarding the effect of the registration on the company itself and on its members as per the Companies Act, 2013.

Sec 5- Articles of Association

Question 15

Mr. Wivitsu 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. Wivitsu will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Wivitsu has warned him (Mr. Wivitsu) 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. Wivitsu may be removed from the post of director. Mr. Wivitsu has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013. ***(MTP 6 Marks April 21)***

Answer 15

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.

In the said situation the IT startup company is a private company. Therefore, Mr. Wivitsu 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 16

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

Answer 16

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

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

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

Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision [Section 5(5)]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Doctrine of Indoor Management & Constructive Notice

Question 17

Explain the exceptions to the Doctrine of Indoor Management. ***(MTP 5 Marks July'24)***

Answer 17

Exceptions to Doctrine of Indoor Management

Relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances:

1. **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.
2. **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 where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

3. **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.
4. Where the **question** is in regard to the very **existence of an agency.**
5. Where a **pre-condition** is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

Question 18

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

OR

The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.
(MTP 6 Marks Oct 21 & Sep '22, PYP 6 Marks Nov 18, SM)

Answer 18

Doctrine of Indoor Management

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

Basis for Doctrine of Indoor Management

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

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

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.

Sec 6- Acts to Override Memorandum & Articles

Question 19

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 19

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.

Sec 13- Alteration of Memorandum

Question 20

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

Does the Companies Act allow such change of object? If not, then what advise will you give to company. If yes, then give steps to be followed. *(SM)*

Answer 20

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.

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

Question 21

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? *(SM)*

Answer 21

Alteration of Objects Clause of Memorandum

The Companies Act, 2013 has made alteration of the memorandum simpler andmore 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.

Sec 16- Rectification of Name of Company

Question 22

Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? *(MTP 6 Marks April 22, RTP May '23, SM)*

Answer 22

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

- in the opinion of the Central Government, is identical with the name by 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.
- 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 identical 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 requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Sec 12- Registered Office of Company

Question 23

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

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

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

to Mumbai under the authority of a Board· resolution.

(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution. *(PYP July 21, 5 Marks, MTP 4 Marks Mar'23)*

Answer 23

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

(i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

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

[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State.

In line section 12 (5) of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.]

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

EXAM INSIGHTS: Majority of the examinees gave correct answer and provisions of the Companies Act, 2013 w.r.t shifting of Registered Office.

Sec 10A- Commencement of Business

Question 24

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

Answer 24

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

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

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

Sec 19- Subsidiary cannot hold shares in Holding Co

Question 25

New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and `50 crore to the trust. He appoints

New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way ***(MTP 5 Marks Aug'24) (MTP 6 Marks Sep'22 & March '23, RTP Nov '19, SM)***

Answer 25

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

Following are the exceptions to the above rule:

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

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

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

In the given case one of the shareholders of holding company 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 New Ltd. can hold shares in Old Ltd.

Question 26 — LDR

ABC Limited issued equity shares worth ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013

(i) Whether ABC Limited is a subsidiary of MNP Limited?

(ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023? ***(PYP 5 Marks Nov'23) (RTP Nov '21) (Same concept different figures MTP 6 Marks, March '22)***

Answer 26

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

As per section 2(87) 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:

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

(b) the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Provided further that the subsidiary company referred to in the preceding proviso 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, as referred to in clause (a) or clause (b) of the said proviso.

Here, in the instant case, ABC Limited issued 10,000 equity shares on 1st April, 2023 whereby XYZ Limited & PQR

Limited holds 3,500 & 2,500 shares respectively in ABC Limited. Considering 1 share = 1 vote, XYZ Limited and PQR Limited together holds 60% of the total voting power [i.e. more than one-half (50%)].
Further, MNP Limited controls the composition of Board of Directors of XYZ Limited and PQR Limited from 01.07.2023. In the light of section 2(87), MNP Limited is a holding company of XYZ Limited and PQR Limited (Subsidiary companies).

Following are the answers to the questions:

(i) ABC Limited shall be deemed to be a subsidiary company of the holding company (MNP Limited) as MNP Limited controls the composition of subsidiary companies XYZ Limited & PQR Limited as per explanation to section 2(87).

(ii) 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:

1. ABC Limited cannot vote at AGM of MNP Limited held on 30th September, 2023.
2. XYZ Limited can vote at AGM of MNP Limited held on 30th September, 2023.

EXAM INSIGHTS: Majority of the examinees have referred to the provisions of the Companies Act, 2013 relating to subsidiary company with the correct answer to part-(i) requiring to answer. whether ABC Limited is a subsidiary company or not? However, the answer provided to part-(ii), as regards to voting rights of subsidiary, was partially correct.

Question 27

The paid up share capital of Star Furnishing Limited is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each as at 31stMarch, 2024. Out of this, Home Decor Limited is holding 6,00,000 equity shares and the remaining equity shares of 4,00,000 held by others. Simultaneously, Star Furnishing Limited is holding 7% equity shares of Home Decor Limited out of which 2% equity shares are held as a legal representative of a deceased member of Home Decor Limited. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

(i) Can Star Furnishing Limited make further investment in equity shares of Home Decor Limited during 2024-25?

(ii) Can Star Furnishing Limited exercise voting rights at the Annual General Meeting of Home Decor Limited? ***(PYP 5 Marks Sep'24)***

Answer 27

(i) Can Star Furnishing Limited make further investment in equity sharesof Home Decor Limited during 2024-25?

According to section 19 of the Companies Act, 2013, a subsidiary company is not allowed to hold shares of its holding company. The prohibition also extends up to the nominees of the subsidiary company. Also, a 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.

The prohibition does not apply to the following cases:

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

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

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

It is also provided that the subsidiary company shall have a right tovote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

In the given question Star Furnishing Limited is a subsidiary of Home Décor Limited as it holds 60% (6,00,000/10,00,000 shares) shares of Star Furnishing Limited. Simultaneously, Star Furnishings Limited is holding 7% equity shares in Home Décor Limited out of which 2% are held as a legal representative of a deceased member of Home Décor Limited.

These shares are held by star Furnishing limited before home décor limited became its holding company. However, after becoming its subsidiary Star Furnishing Limited cannot make further investment in home décor Limited.

(ii) As per second proviso to section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.
Accordingly, Star Furnishings Limited can exercise voting rights at the Annual General Meeting of Home Décor Limited only in respect of 2% shares held in the capacity of legal representative and not for other 5% shares.

Sec 20- Service of Documents

Question 28

What is the mode of service of documents to Registrar or members, as per the provisions of the Companies Act,2013. (Chapter 7 AS Management & Administration) ***(MTP 5 Marks Aug'24)***

Answer 28

Save as provided in the Companies Act, 2013 or the rules made 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:

1. Post, or
2. registered post, or
3. speed post, or
4. courier, or
5. by delivering at his office or address, or
6. 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

The Article of Association (AOA) of Wiw Su 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? ***(PYP 5 Marks Nov '22)***

Answer 29

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
- (a) 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 Wiw Su Ltd. by courier whereas the AOA of said company provides that documents may be served upon the company only through Speed Post. Wiw Su 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 Wiw Su Ltd. is not valid as sending of documents by courier to Wiw Su Ltd. is complying with the provisions given under section 20(1) of the Act.

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

Exam Insights: This is the second choice question. Majority of the examinees provided their correct answers by explaining the gist of section 20(1) of the Companies Act, 2013 with respect to servicing of documents to a company and arrived at a proper answer that refusal of documents by Wiw Su Ltd. is not valid as sending of documents by courier to Wiw Su Ltd. is complying with the provisions given under section 20(1) of the Act and since, Wiw Su Ltd. is at fault by not accepting the documents sent by Suresh, yes, he can claim the damages for any loss occurred to him.

Question 30

A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. ***(PYP 5 Marks Nov'23) (MTP 5 Marks Oct 20, PYP May '19 , 5 Marks, Old & New SM) (MTP 5 Marks Apr'24)***

Answer 30

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

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

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

(c) intends to prohibit the payment of any dividend to its members;

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

According section 8(9), if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of women to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the association 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 a restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of section 8 of the Companies Act, 2013. Therefore, the proposal in its entirety is not feasible. The promoters will be accordingly advised that the proposal should be in conformity with the provisions of the Act.

EXAM INSIGHTS: Majority of the examinees have referred to the applicable provisions relating to the three conditions for the formation of Section 8 company. However, many of the examinees either have not referred to or partially referred to the provisions relating to disposal of surplus assets on dissolution of such company as per the provisions of the Companies Act, 2013

Sec 22- Execution of Bills of Exchange etc

Question 31

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? *(SM)*

Answer 31

As per section 22 of the Companies Act, 2013 a company may authorise 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.

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.

Multiple Choice Questions (MCQs)

Sec 3- Formation of Company

1. **_____cannot be a subscriber to the Memorandum of Association and Articles of Association. *(MTP 1 Mark April 22)***
   (a) A company
   (b) Government
   (c) Minor
   (d) Major

Ans : (c)

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

Ans : (b)

Rule 3 & 4- One Person Company

3. **Anu got incorporated 'One Person Company' with her sister Alpa as the nominee and about three years have passed satisfactorily. From time to time, Anu does a number of charitable works and is associated with three NGOs. In the meantime, her business under her OPC has also flourished. Now she is contemplating to convert the OPC either as a Section 8 company (i.e. formation of companies with charitable objects). Choose the correct option. *(MTP 2 Marks April 21)***
   (a) Since company belongs to Anu, she has full discretion to convert the OPC either as a Section 8 company or as a private or public company
   (b) Since the company was formed as a private company, the only option available with Anu is to convert it into a public limited company.
   (c) There is specific prohibition on converting OPC into a Section 8 company; otherwise, it can be converted into a private or public company without any hindrance.

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

Ans: (c)

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

(i) OPC can be formed by Indian Citizen only

(ii) He can't form OPC because in immediate previous year he was not resident in India

Choose the correct option: ***(MTP 2 Marks April '23, SM)***

(a) Both the conclusions are valid
(b) None of the conclusion is valid
(c) First conclusion is invalid
(d) Second conclusion is invalid

Ans :(d)

5. One Person Company shall file a copy of the duly adopted financial statements to the Registrar in: ***(MTP 2 Marks Oct 21, Oct'22, Oct'20 & Oct '23)***

(a) 30 days of the date of meeting in which it was adopted.
(b) 90 days of the date of meeting in which it was adopted.
(c) 90 days from the closure of the financial year.
(d) 180 days from the closure of the financial year.

Ans: (d)

Sec 7- Incorporation of Company

6. If a company is registered by furnishing incorrect information then its winding up may be ordered by: ***(MTP 1 Mark April 21)***

(a) Central Government
(b) Registrar of Companies
(c) National Company Law Tribunal
(d) Court

Ans: (c)

Sec 8- Formation of Co's with Charitable Objects

7. Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover was less than Rs. 2.00 crores and its paid up share capital was less than Rs. 50 Lacs. Advise. ***(MTP 2 Marks March 21 & Sep '23)***

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

Ans: (c)

8. Where a company is granted licence under section 8, it is not required to use the word ..... even though it is a limited company: ***(MTP 1 Mark April 22, Sep'22)***

(a) Guarantee company
(b) Limited Liability Partnership
(c) Limited or Private Limited, as the case may be
(d) Development Authority

Ans: (c)

Sec 4- Memorandum of Association

9. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of from the date of approval *(MTP 1 Mark April '23, SM)*

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

Ans: (b)

Sec 5- Articles of Association

10. Entrenchment enhance the protection. Modern Furniture Limited, an existing private company willing to insert the provisions for entrenchment; it *(SM)*

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

Ans: (c)

11. In the case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles, *(MTP 1 Mark April 22 & Sep '23)*

(a) By passing a special resolution
(b) With the consent of all the members
(c) By passing a special resolution and approval of the Central Government
(d) With the consent of all the members and approval of the Central Government

Ans : (b)

Sec 13- Alteration of Memorandum

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

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

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

Ans: (d)

Sec 10A- Commencement of Business

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

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

Ans: (d)

CHAPTER 3: PROSPECTUS AND ALLOTMENT OF SECURITIES

CONCEPTS OF THIS CHAPTER		
• Sec 26- Contents & Requirements in Prospectus	• Sec 34 & 35- Criminal & Civil Liability for Misstatement in Prospectus	 **LDR Questions** Q 9 Q 12 Q 18
• Sec 30- Advertisement of Prospectus	• Sec 39- Allotment of Securities	
• Sec 31- Shelf Prospectus	• Sec 40- Securities to be dealt with in Stock Exchanges	
• Sec 32- Red herring Prospectus	• Sec 42- Private Placement	
• Sec 33- Abridged Prospectus	• Sec 25- Deemed Prospectus	

QUICK REVIEW OF IMPORTANT CONCEPTS

Modes for Issue of Securities

Mode of Issue	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights issue / Bonus Issue	Yes	Yes
Compliance with SEBI rules & regulations	Yes*	No

*For a listed company or a company proposed to be listed.

Prospectus

Process for Variation in terms of Contract or Objects of Prospectus

Special Resolution to be passed through Postal Ballot and Contents of Notice

- If a company raised money through a prospectus and has unutilized funds,
- It cannot change contract terms from the prospectus,
- It cannot change the stated objectives without a special resolution via postal ballot,
- The special resolution notice must include prescribed details.

Publishing in Newspaper

- The resolution notice must be published in newspapers—one in English and one in the local vernacular.
- The newspapers must be from the city of the company's registered office.
- The notice must clearly justify the proposed variation.

Dissenting shareholders shall be given an exit offer by promoters or controlling shareholders

- SEBI will specify the exit price, manner, and conditions through regulations.
- Dissenting shareholders are those who oppose changes to contract terms or objectives in the prospectus.

Punishment for Issuing Prospectus in Contravention

(i) Company (ii) Any person knowingly a party to issue of such prospectus	₹ 50,000 - ₹ 3 Lakh

Advertisement of Prospectus

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

- the objects,
- the capital structure of the company.
- the liability of members and the amount of share capital of the company,
- the names of the signatories to the memorandum,

- the number of shares subscribed for by the signatories, and

Shelf Prospectus, Red Herring Prospectus and Abridged Prospectus

Shelf Prospectus	Red Herring Prospectus	Abridged Prospectus
Prospectus in respect of which the securities or class of securities are issued for subscription in one or more issues over a certain period without the issue of a further prospectus	Prospectus which does not include complete particulars of the quantum or price of the securities included therein	a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf

Securities to be Dealt with in Stock Exchanges

- Filing of an application with recognised stock exchange
- Prospectus to state name of stock exchange
- Maintaining of separate bank account
- Condition purporting to waive compliance shall be void

Penalty

Company	Defaulting Officer
• Minimum: ₹ 5 Lakh • Maximum: ₹ 50 Lakh	• Minimum: ₹ 50,000 • Maximum: ₹ 3 Lakh

Payment of Commission

Authorisation **Source**	The payment of such commission shall be authorized in the company's AOA The commission may be paid out of proceeds of the issue or the profit of the company or both
Disclosure of particulars	The prospectus of the company shall disclose the following particulars- the name of the underwriters; the rate and amount of the commission payable to the underwriter; and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally
When no commission is to be paid	There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription
Copy of payment of commission to be delivered to Registrar	A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

Rate of commission Following are the rates of commission:

- **in case of shares**
  - shall not exceed 5% of the price at which the shares are issued, or
  - a rate authorised by the Articles, • whichever is less
- **in case of debentures**
  - shall not exceed 2.5% of the price at which the debentures are issued, or
  - as specified in the company's Articles, • whichever is less

Allotment of Securities

1. Once Minimum amount has been subscribed and application money has been paid and received by the company which should not be less than 5% or such other % or amount as specified by SEBI the securities will be allotted.
2. Minimum amount not subscribed and application money not received within 30 days from date of issue of prospectus, or and application money not received amount received shall be returned within 15 days from the closure of issue
3. Where company makes an allotment of securities It shall file a return of allotment with the Registrar
4. In case of default Company shall pay penalty of ₹1000 for each day during which such default continues, or

Rs 1 Lakh whichever is less.

Liability in case of Mis-Statements in Prospectus

Civil Liability

- **Loss or damage** is an essential condition
- Offence against the counterparty
- Civil Procedure Code, 1908 applicable

Criminal Liability

- **Mens rea** (guilty mind) is an essential condition
- Offence is regarded committed
- Criminal Procedure Code, 1973 applicable
- Against the State

Punishment for Fraud (Sec 447)

	Quantum of Fraud	Fine		Imprisonment
(i)	Fraud involving less than 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Up to ₹50 lakh	or/ and	Up to 5 years
(ii)	Fraud involving at least 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Minimum fine equal to amount of fraud; and Maximum fine 3 times of amount of fraud	and	Minimum 6 months; and Maximum 10 Years
(iii)	Fraud at (ii) involves public interest	Minimum fine equal to amount of fraud; and Maximum fine 3 times of amount of fraud	and	Minimum 3 years; and Maximum 10 Years

Private Placement

Raising capital by selling securities to a small group of select investors. Unlike a public issue, securities are not sold on the open market.

Key Features

- Offer or invitation to subscribe is made only to select persons.
- Conducted through a private placement offer-cum-application.

Eligibility & Limitations

- Offer only to Board-identified persons ("identified persons").
- Maximum 200 investors in a financial year.
- Exclusions: Qualified institutional buyers & employees under ESOP.

Application & Payment

- Subscription through private placement application.
- Payment via cheque, demand draft, or banking channel (no cash).

Utilization & Compliance

- Funds cannot be used until allotment & return of allotment is filed.
- Return of allotment must be filed with the Registrar within 15 days.
- Offer letter issued only after filing relevant Board/Special Resolution.
- Non-compliant private placement is deemed a public offer.

Allotment & Repayment

- Securities must be allotted within 60 days of receiving funds.
- If not allotted within 60 days, repayment due within 15 days.
- Failure to repay incurs 12% annual interest from the 60th day.

Question & Answers

Sec 26- Contents & Requirements in Prospectus

Question 1

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

Answer 1

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.

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

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

Sec 27- Variation in Terms of Contract or Objects stated in the Prospectus

Question 2

XYZ Limited issued a prospectus to raise funds for a new manufacturing project. After successfully raising the funds, the company identified an investment opportunity in a different industry six months later, requiring a significant portion of the funds. The proposed investment involved trading in equity shares of other listed companies.

The board of directors suggested varying the original objectives for which the funds were raised to allow this new investment and recommended passing a special resolution in the company's general meeting. While the promoters and controlling shareholders supported this change, some shareholders expressed concerns, particularly regarding the deviation from the initially stated purpose of the funds.

Based on the provisions of the Companies Act, 2013, advise on the validity of the proposal to redirect the funds toward this new investment. ***(RTP Jan'25)***

Answer 2

According to section 27(1) of the Companies Act, 2013, the terms of a contract referred to in the prospectus or objects for which the prospectus has been issued can be varied, but only with the authority of the company given by it in general meeting by way of special resolution.

The second proviso to sub-section (1) prescribes that such company is not to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

In the given question, XYZ Limited, is planning to use the amount initially raised for investing in a different industry, which also involves trading in equity shares of other listed companies.

Though XYZ Limited has passed a special resolution for the said proposal but it cannot use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company. Hence, the said proposal for new investment is not valid.

Sec 30- Advertisement of Prospectus

Question 3

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

Answer 3

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

(i) the objects,
(ii) the liability of members and the amount of share capital of the company,
(iii) the names of the signatories to the memorandum,
(iv) the number of shares subscribed for by the signatories, and
(v) the capital structure of the company.

Sec 31- Shelf Prospectus

Question 4

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

Answer 4

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

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

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

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

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

EXAM INSIGHTS: Most of the examinees were not able to give provisions of deemed prospectus and shelf prospectus under the Companies Act, 2013.

Sec 32- Red herring Prospectus

Question 5

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

Answer 5

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

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

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

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

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

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

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

EXAM INSIGHTS: The given question deals with the requirement of section 32 of the Companies Act, 2013 which deals with the legal provision related to Red Herring Prospectus. Performance of the majority examinees was Average. Some of them have correctly explained the provisions related to 'Red Herring Prospectus' as per the Companies Act, 2013.

Sec 33- Abridged Prospectus

Question 6

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

Answer 6

(1) **Meaning of Abridged Prospectus: -** According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(2) **Circumstances under which the abridged prospectus need not accompany the application forms:** Section33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securitiesof a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

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

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

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

Sec 34 & 35- Criminal & Civil Liability for Misstatement in Prospectus

Question 7

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

Answer 7

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

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

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

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

EXAM INSIGHTS: Most of the examinees were able to reply correctly the provisions of material misstatement of prospectus under the Companies Act 2013.

Question 8

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

Answer 8

Remedy against the company: Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage. In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, section 35 also mentions punishment prescribed by section 36 i.e., punishment for fraud under section 447.

Circumstances when an expert is not liable: An expert will not be liable for any misstatement in a prospectus under the following situations:

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

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

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under section 35 (2) (c): As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that

consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Question 9 LDR

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. ***(PYP 5 Marks Nov '22, RTP May '20, SM)***

Answer 9

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:

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

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

(iii) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person

making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

Sec 39- Allotment of Securities

Question 10

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

(i) Minimum Subscription, and

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

Answer 10

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

Minimum subscription [Section 39 (1)]

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

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

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

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

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

In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

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

Question 11

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

Answer 11

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 one lakh rupees, whichever is less.

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

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

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

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

Question 12 LDR

Bheem Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further

reveals that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Bheem Ltd. received an amount of ₹20,00,000 on share application. Bheem Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013. ***(MTP 6 Marks April '23 & Sep '23, PYP 6 Marks Jan '21)***

Answer 12

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

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

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

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

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

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

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

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

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

Sec 40- Securities to be dealt with in Stock Exchanges

Question 13

Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013.

"The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters." ***(SM)***

Answer 13

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are

issued or a rate authorised by the articles, whichever is less.
In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.
Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e. Deal & Co.) is invalid.

Sec 42- Private Placement

Question 14

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

(i) Meaning of Private Placement

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

Answer 14

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

(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment': A company making an offer or invitation under section 42 shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

Question 15

Referring to the provisions of the Companies Act, 2013, answer the following queries:

(i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?

(ii) Explain the consequences of non-allotment of shares within the stipulated timeline.

(iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement? ***(PYP 5 Marks May'24)***

Answer 15

(i) Rule 14 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section(3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub- section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number

as may be prescribed, in a financial year.

Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

Question 16

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

Answer 16

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under private placement shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

It is provided that the monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:

(1) for adjustment against allotment of securities; or

(2) for the repayment of monies where the company is unable to allot securities.

In the instant case, application money from the members was received on 15th April, 2022 and company did not make an allotment of shares till 31 st July, 2022 i.e. after expiry of the period of 60 days. Hence, the company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

Therefore, the objection raised by the members for non- allotment of shares/ non-refund of share application money within the statutory time limit is valid. However, their claim to pay interest @ 15% is not

valid.
Also, the application money cannot be used for the payment of dividends by the company.

Exam Insights: This is the first-choice question relating to private placement offer. Majority of the examinees have provided the correct provisions and answer relating to the time limit for allotment of shares and the consequences thereof, if the company fails to allot the shares within the stipulated time and intends to utilize the share application money for the payment of dividend as per the provisions of the Companies Act, 2013.

Question 17

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

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

(ii) The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.

The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013.
(PYP 4 Marks Jan 21) (MTP 5 Marks Sep '23)

Answer 17

As per the provisions of sub-section (2) of section 42 of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.

It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

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

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

Question 18

LDR

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

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

Answer 18

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

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

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

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

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

In the given case Purple Limited, though a public company can raise funds through private placement as provisions related to private placement allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

Question 19

Stuti Ceramic Pvt. Ltd. (SCPL) manufactures crockery items which are predominantly used only by the domestic household customers. Now the company wants to expand its area of operation to manufacture all types of crockery items and cutlery for the use of big hotels. For this expansion plan, the company needs funds of around ₹ 500 lakh. The company does not want to convert itself from private company to public company since the promoters do not want to dilute their equity stake otherwise the public company have the option to raise the funds through public issue. The company explored the other avenue of raising funds by issue of right shares to the existing shareholders, however only ₹ 100 lakh could be generated.

The banks and financial institutions are also reluctant to increase their exposure in the company.

Referring to the provisions of the Companies Act, 2013, advise the SCPL, whether the company can raise further funds through private placement issue. If so, are there any limit for fresh offer and time limit of allotment of securities? ***(PYP 5 Marks Sep'24)***

Answer 19

Whether Stuti Ceramic Pvt Ltd (SCPL) can raise funds through Private Placement?

Yes, SCPL can raise funds through the private placement of shares.

Section 23(2)(b) of the Companies Act, 2013 (the Act) provides that a private company may issue securities through private placement by complying with the provisions specified in section 42 of the Act in supplement with those stated under Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Meaning of Private Placement

According to the Explanation I to section 42(3) of the Act, "private placement" means any offer or invitation to subscribe or issue ofsecurities to a select group of persons by a company (other than by wayof public offer) through private placement offer- cum-application, which satisfies the conditions specified in this section.

Offer to be made only to a select group of persons

A private placement shall be made only to a select group of not more than two hundred (200) persons (referred to as "identified persons") in a financial year who have been identified by the Board after passing a special resolution [Section 42(2) read with Rule 14(1) of the Companies (Prospectus and Allotment of Securities), Rules 2014].

Limit on Fresh Offer

As per section 42(5) of the Act, no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Thus, Stuti Ceramic Pvt. Ltd. can raise further funds through private placement issue after the allotments with respect to right issue for ₹ 100 lakh have been completed and subject to the maximum number of 200 persons (identified persons) under section 42(2) and by complying with the procedures stated in Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Time Limit for Allotment of Securities

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the sixtieth day.

Multiple Choice Questions (MCQs)

Sec 25- Deemed Prospectus

1. **Modern Furniture Limited, issued a document containing offer of securities for sale that is considered as deemed prospectus under section 25, which requires such document must contains certain matters/disclosures in addition to those required under section 26. Which of following are correct requirements;**
   - **i. A statement of the net amount received or to be received as consideration for the securities to which the offer relates**
   - **ii. The persons making the offer were named in the prospectus as promoters of the company.**
   - **iii. The time and place at which the underlying contract for allotment may be inspected. *(SM)***

   (a) i or ii only
   (b) i or iii only
   (c) ii or iii only
   (d) All of i, ii and iii

Ans: (b)

Sec 26- Contents & Requirements in Prospectus

2. **Modern Furniture decided to raise capital by issue for which prospectus need to be issued. The copy of prospectus submitted with registrar for filling need to be duly signed by:** ***(SM)***
   (a) Any two directors including managing directors
   (b) Majority of directors
   (c) Majority of directors including proposed directors
   (d) Every director or proposed director

Ans: (d)

Sec 31- Shelf Prospectus

3. **Rig exploration and refinery limited (RERL) decided to raise capital through issue of a shelf prospectus. Company secretary explains the requirement to board that RERL shall be required to file an information memorandum with the Registrar within, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.** ***(SM)***
   (a) 15 days
   (b) 21 days
   (c) 30 days
   (d) 1 month

Ans: (d)

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

Answer (b)

Sec 32- Red herring Prospectus

5. **A prospectus which does not include complete particulars of the quantum or price of the securities included therein is called:** ***(MTP 1 Mark Oct '21)***
   (a) A deemed Prospectus
   (b) A Shelf Prospectus
   (c) An Abridged Prospectus
   (d) A Red Herring Prospectus

Ans : (d)

Sec 39- Allotment of Securities

6. **The minimum amount of subscription in a public issue shall be received within days from the date of issue of prospectus.** ***(MTP 1 Mark Oct 21)***
   (a) 30
   (b) 60
   (c) 90
   (d) 120

Ans: (a)

7. **Krishna Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received. (RTP Nov '21)**

(a) 9th November, 2019

(b) 24h November, 2019

(c) 9th December, 2019

(d) 8th January, 2020

Ans: (c)

Sec 40- Securities to be dealt with in Stock Exchanges

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

(a) No penalty, as application has been filed

(b) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh

(c) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh

(d) Penalty on Madhav Casting Limited ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh and/or Imprisonment upto one year.

Ans: (c)

9. **When a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar: *(MTP 1 Mark Oct '20, Mar'22 & Sep '23)***

(a) Three days before the delivery of the prospectus for registration

(b) At the time of delivery of the prospectus for registration

(c) Three days after the delivery of the prospectus for registration

(d) Five days after the delivery of the prospectus for registration

Ans: (b)

10. **Which of the following statements is not true? *(MTP 2 Marks Oct 21)***

(a) in case of shares, the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.

(b) underwriting commission should not be more than the rate specified by the Article of Association.

(c) in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.

(d) amount of commission may be paid out of profits of the company.

Ans (c)

11. **Viwit Su Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is: *(RTP Nov 21) (MTP 2 Marks Sep '23)***

(a) 5%

(b) 2%

(c) 2.5%

(d) 2.25%

Ans: (b)

12. **The Board of Directors Vishvas Ltd. decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. What is the maximum amount of underwriting commission that can be paid to the underwriters.** ***(MTP 2 marks July'24)***

(a) 2%
(b) 3%
(c) 5%
(d) No limit has prescribed under the Companies Act, 2013 in case underwriting commission is to be paid in case of issue of shares.

Ans: (b)

Sec 42- Private Placement

13. **Which of the following statement is contrary to the provisions of the Companies Act, 2013?** ***(MTP 2 Marks April '23, RTP May'21)***

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

Ans (c)

14. **Newage Private Limited issued 9% Non-convertible Debentures worth ₹ 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ₹ 10 lakh were listed. Which of the following options is applicable in the given situation:** ***(RTP Nov '23)***

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

Ans: (b)

CHAPTER 4: SHARE CAPITAL AND DEBENTURES

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 46- Certificate of Shares	• Sec 63- Issue of Bonus Shares	Q 9
• Sec 48- Variation in Shareholder's Rights	• Sec 67- Restriction on Purchase by Company	Q 21
• Sec 52- Issue of Shares at a Premium or Discount	• Sec 68- Buyback of Own Securities	Q 25
• Sec 54- Issue of Sweat Equity Shares	• Sec 71- Debentures	Q 30
• Sec 55- Issue & Redemption of Preference Shares	• Sec 49 to 51- Calls on Shares	
• Sec 56- Transfer of Securities • Sec 58- Refusal to Transfer Shares	Sec 62- Rights Issue • Sec 47- Voting Rights	
• Sec 61- Power of Limited Companies to alter its Share Capital	• Rule 4- Issue of shares with Differential Rights	

QUICK REVIEW OF IMPORTANT CONCEPTS

Issue of Sweat Equity Shares and meaning of 'Sweat Equity Shares'

Equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing their know-how or making available rights in the nature of intellectual property rights or value additions. Section 53 provides that except the issue of 'Sweat Equity Shares' under section 54, a company shall not issue shares at discount.

Rule-8

- Applicability: A company other than a listed company, which is not required to comply with the SEBI Regulations on sweat equity
- Limit on issue of Sweat Equity Shares

  During a year, the maximum amount/ limit for which sweat equity shares can be issued is higher of:
  - 15% of existing paid up equity share capital or
  - Shares of the issue value of ₹5 crore.

  The issuance of sweat equity shares shall not exceed 25%, of the paid-up equity capital.

  For Start-up companies- 50% of paid up capital up to ten years from the date of its incorporation
- Lock-in Period -Locked in/non- transferable for a period of 3 years from the date of allotment
- Disclosure in the Directors' Report- The Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the specified details of issue of sweat equity shares.
- Valuation of Sweat Equity Shares-Sweat equity shares to be issued shall be valued at a price determined by a registered value, as the fair price giving justification for such valuation

Refusal of Registration and appeal against refusal

Private Company- Send notice of refusal with reasons within 30 days from the date the instrument of transfer/ the intimation of such transmission, delivered to the company. Appeal to Tribunal: Notice served- in 30 days, No notice served-in 60 days.

Public Company- Can't refuse without sufficient cause. May refuse to register the transfer within 30 days from the date the instrument of transfer/ the intimation of such transmission, delivered to the company. Appeal to Tribunal: in 60 days-of such refusal / in 90 days-of the delivery of the instrument of transfer/ intimation of transmission

Tribunal will either dismiss appeal or order the following:	• Transfer/transmission to be registered by company within 10 days of the receipt of order • Rectification of Register and also direct the company to pay damages, if any	Section 59 entrusts right to appeal with aggrieved person, apart from vesting power in tribunal to order for rectification of register of members.
In case of contravention of order:	• Fine and Imprisonment	

Alteration of Share Capital

1. **Power of Limited Company to Alter its Share Capital-** A limited company with a share capital can alter the capital clause of its memorandum of association
2. **Further Issue of Share Capital – Rights Issue; Preferential Allotment**

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders.

Issue of Further Shares

To Existing Equity shareholders Right Issue (Special Resolution + Offer through notice)	To Employees Employee Stock Option (Special Resolution)	To Any Person For cash or non-cash considerations (Special Resolution)

Notice shall be dispatched to all the existing shareholders at least 3 days before the opening of the rights issue. In case of a Private Company shorter notice (less than 3 days) shall be served, on 90% consent of the members in writing/ in electronic mode.

3. **Bonus Issue**

Bonus shares may be issued from Free Reserves, Securities Premium, Reserve Capital Redemption Reserve
Bonus shares shall not be issued from Revaluation Reserve

Company may capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, in compliance with following conditions:

- Authorised by its Articles,
- Not defaulted in payment of statutory dues of the employees
- On the recommendation of the Board, been authorised in the GM of the company:
- Not defaulted in payment of interest / principal in respect of fixed deposits/ debt securities issued by it:
- the outstanding partly paid-up shares, if any, on the date of allotment, are made fully paid-up;
- Complies with Rule 14 of the Companies (Share capital and Debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same

4. **Reduction of Share Capital**

- Extinguish / reduce the liability on its shares in respect of the share capital not paid-up, or
- Cancel any paid-up share capital which is lost / is unrepresented by any available assets, or
- Pay off any paid-up share capital which is in excess of the wants of the company
  - **Subject to** Passing a **special resolution**, and
  - **Alter its Memorandum** by reducing the amount of its share capital and of its shares accordingly, and
  - **Repayment of any deposits** accepted and the interest payable thereon

Restriction on Purchase by Company or giving of loans by it for Purchase of its Shares: A company cannot buy its own shares because reduction of capital, results in diminishing the fund out of which creditors are to be paid; hence adversely affecting the creditors. However, this restriction is not absolute.

5. **Buy Back of Securities**

Sources of Funds purchase should be made out of its: Fre reserves; or Securities premium account or Proceeds of the issue of any shares/ other specified securities

Conditions for buy back

- authorised by its Articles;
- SR authorising buy-back passed in GM of the company;
- The amount involved should not be more than 25% of the aggregate of paid-up capital +free reserves of the company;
- In case of buyback of equity shares, the maximum limit is 25% of its total paid-up equity capital in any FY
- After the buyback, the ratio between the debts (secured and unsecured) owed by the company should not be more than twice the paid-up capital and free reserves of the company (CG may prescribe a higher ratio).
- Shares / other specified securities for buy-back shall be fully paid-up
- The buy-back should be as per Rule 17 of the Companies (Share Capital and Debentures), Rules, 2014
- In case of listed shares/other specified securities buy back should be as per regulations made by the SEBI in this behalf

Procedure before Buy-Back: The notice of the meeting at which SR is proposed to be passed shall be accompanied by an explanatory statement stating the particulars related to Buy-Back

Cooling Period on buy back: 6 months w.r.t. further issue of same kind of shares /other specified securities

Time limit for Completion of Buy-Back :shall be completed within 12 months from the date of passing the SR/ board resolution authorising the buy-back

Prohibition for Buy Back in certain circumstances

- Through any **Subsidiary Company** including one's own; or
- Through any **Investment Company**/ group of investment companies; or
- If a default, is made by the company, in-
  - repayment of deposits/ interest thereon, or
  - redemption of debentures, or
  - redemption of preference shares or
  - payment of dividend to any shareholder or
  - repayment of any term loan/ interest thereon to FI's or banking company

Type of Debentures

On the basis of **security**	On the basis of **convertibility to shares**	On the basis of **redeem ability**
Secured	Convertible (mandatorily or optionally; partially or fully)	Redeemable
Un-cured	Non-Convertible	Irredeemable

Question & Answers

Sec 46- Certificate of Shares

Question 1

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. ***(MTP 5 Marks May 20, RTP Nov '21)***

Answer 1

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.

Sec 48- Variation in Shareholder's Rights

Question 2

MNO limited has the following equity share capital –

Class-1: Equity Share Capital – 3,00,000 equity shares of ₹ 10 each. (1 voting right for every 1 share)	**₹ 30,00,000**
Class-2: Equity share Capital – 50,000 equity shares of ₹ 10 each. (1 voting right for every 5 shares)	**₹ 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 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?
(PYP 5 Marks May'24)

Answer 2

Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.
First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.
Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.
Proviso to sub-section 1, provides 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.
Third – Where the holders of not less than10 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.
(i) In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.
Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.
(ii) Total number of dissenting shareholders= 50,000- 40,000= 10,000.

Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal= 10% of 50,000=5,000.
In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

EXAM INSIGHTS: This question pertains to section 61 of the Companies Act, 2013, in which the performance by and large of the examinees, were Poor. Majority of the examinees were not able to give provisions related to diminution or reduction of share capital as per the Companies Act 2013.

Sec 49 to 51- Calls on Shares

Question 3

SAB Health Products Limited issued equity shares worth ₹ 5,00,00,000 (5,00,000 equity shares of ₹ 100 each) and it was fully subscribed and partly paid at ₹ 50 each. The company made a call to all its subscribers to pay a sum of ₹ 30 for each share held by them. Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid. Is his claim justified? Another shareholder Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him. Referring to the provisions of the Companies Act, 2013 and Rules made there under, examine whether the directors of SAB Health Products Limited permitted to do so? *(PYP 5 Marks Sep'24)*

Answer 3

As per section 50 of the Companies Act, 2013, (the Act) a company may, if so authorized by its Articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.
As per section 51 of the Act, a company may, if so authorized by its Articles, pay dividends in proportion to the amount paid-up on each share. The Board of Directors of a company may decide to pay dividends on pro-rata basis if all the equity shares of the company are not equally paid-up.
Interest can be paid on such advance, if permitted by Articles. Here it is worth noting that, where the rate of interest is permitted by the Articles on such advance payment, same could be varied by shareholders in general meeting.
Further, section 49 of the Act, specifies that calls shall be made on a uniform basis on all shares that are falling under the same class. A shareholder on whom a regular call for payment has been served maychoose to pay only a part of the sum due.
Hence, in the light of the stated provisions, SAB Health Products Limitedis permitted to do the following acts:

Is Mr. GH's claim justified?

Mr. GH is entitled to claim interest on money advanced by him and also dividend in proportion to the amount paid-up on each share, if so authorized by the Articles of the company.

In the matter of Mr. LK

Whereas, with respect to Mr. LK, calls shall be made on a uniform basis by the directors, on all shares that are falling under the same class as per section 49 of the Act. A call cannot be made on some of the members only, unless they constitute a separate class of shareholders.
Therefore, the action of the Board of Directors of SAB Health Products Limited towards Mr. LK for calling to pay the entire amount due by him in respect of the shares held by Mr. LK is invalid and not permissible.

Sec 52- Issue of Shares at a Premium or Discount

Question 4

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized? *(PYP 5 Marks Jan 21) (MTP 6 Marks March '23 & 5 Marks Sep '23, MTP 5 Marks Aug'24)*

Answer 4

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

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

Application of Securities Premium Account: As per the provisions of sub-section (2) of section 52 of the Companies Act, 2013, the securities premium account may be applied by the company—

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

Question 5

Walnut Foods Limited has an authorized share capital of 2,00,000 equity shares of Rs. 100 per share and an amount of Rs. 2 crores in its Securities Premium Account as on 31-3-2024. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice. ***(SM , RTP May'19, MTP 6 Marks March '23,)***

Answer 5

Amount lying to the credit of Securities Premium Account is required to be utilized for certain prescribed purposes.

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

The securities premium account may be applied by the company—

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

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, —

(a) In paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
(b) In writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
(c) For the purchase of its own shares or other securities under section 68.

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

Sec 54- Issue of Sweat Equity Shares

Question 6

Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

(1) Decide whether the advise of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act, 2013.

(2) What would be your answer in the above case if the shares are issued to employees as Sweat equity shares? ***(MTP 5 Marks Oct'22, PYP 3 Marks Nov'20)***

Answer 6

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

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

(1) As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advise of the underwriter to issue shares at a discount is not valid.

(2) In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

Question 7

Kat Pvt. Ltd., is an unlisted company incorporated on 2.6.2012. The company have a share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees on 5.7.2021. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provisions for issue of sweat equity shares by a start-up company, with reference to the provisions of the Companies Act, 2013? Explain. ***(MTP 6 Marks Nov 21, RTP Nov'21)***

Answer 7

Sweat Equity Shares are governed by section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to section 54, the company can issue sweat equity shares to its director and permanent employees of the company. According to proviso to rule 8 (4), a start up company, [as defined in notification number G.S.R.127(E), dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India], may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non-transferable for a period of three years from the date of allotment.

Hence in the above case, the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment (as not five years, as given in the question).

Question 8

Data Limited (listed on Stock Exchange) was incorporated on 1st October 2018 with a paid- up share capital of Rs. 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.? *(MTP May'20, March'19,6 Marks, RTP May '19, SM, MTP 5 Marks Nov'24)*

Answer 8

Sweat equity shares of a class of shares already issued.

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

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

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

(iii)where the equity shares of the company are **listed on a recognized stock** exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014, The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders. Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Question 9

LDR

XYZ Tech Solutions Limited is a growing technology company that has seen significant contributions from its employees and directors in the development of a ground breaking software product. To reward these key contributors, the board proposed issuing sweat equity shares to certain employees and directors. XYZ Tech Solutions Limited already has issued ordinary equity shares but has never issued sweat equity shares before.

The company has a paid up equity share capital ₹ 20 crore. The company has proposed to issue sweat equity shares worth ₹ 4 crore of face value. The company's board has drafted a special resolution outlining the proposed issuance of sweat equity shares and including specific details, such as the number of shares, the current market price, consideration (if any), and the classes of directors and employees eligible to receive the shares.

The company has approached you to advise them about the issue of the said sweat equity shares, in line with the provisions of the Companies Act, 2013. *(RTP Jan'25)*

Answer 9

According to section 54(1) of the Companies Act, 2013, a company may issue sweat equity shares if all of the following conditions are fulfilled:

a. Share of that class must be already issued
b. Issue is authorised by a special resolution passed by the company;
c. Resolution specifies the details regarding 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;

The special resolution authorising the issue of sweat equity shares shallbe valid for making the allotment within a period of not more than 12 months from the date of passing.

During a year, the maximum amount/limit for which sweat equity sharescan be issued is higher of:

a. 15% of the existing paid up equity share capital or
b. Shares of the issue value of rupees 5 crore.

The issuance of sweat equity shares (cumulative, including all previous issues, if any) shall not exceed 25% of the paid-up equity capital of the company at any time.

In the given question, the company has proposed to issue sweat equity shares to the tune of ₹4 crore. However, the maximum limit to which itcan issue such shares is- Higher of:

a. 15% of the issued paid up share capital, i.e. ₹3 crore, or
b. 5 crore

Thus, company can issue sweat equity shares to the tune of ₹ 5 crore.

However, the company cannot issue such shares more than 25% of the paid-up equity capital= 25% of ₹ 20 crore = ₹ 5 crore.

Hence, the company can issue sweat equity shares of ₹ 4 crore.

Question 10

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

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

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

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

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

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

Answer 10

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.

Alternate Answer

Issue of Sweat Equity Shares

As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

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

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

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

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

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

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, as defined in notification number G.S.R. 127(E) dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, it may issue sweat equity shares not exceeding fifty percent of its paid up capital up to ten years from the date of its incorporation or registration. A company which is not a start-up company shall not issue sweat equity shares for more than fifteen per cent of the existing equity paid-up share capital in a year or shares of the issue value of rupees five crore, whichever is higher, provided that the issuance of sweat equity shares in the company shall not exceed twenty-five per cent, of the paid-up equity capital of the company at any time.

As per the aforesaid notification number G.S.R. 127(E) dated the 19th February, 2019 an entity shall be considered as a Start-up, if it is incorporated as a private limited company (as defined in the Companies Act, 2013).

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

(i) Size of issue of sweat equity shares i.e., 30% to be issued by a start-up entity would be appropriate. However, Innovative Ltd. being a public company cannot assume the status of a start-up entity. Hence, the decision of the company to issue 30% sweat equity shares to a class of directors and employees was not within the prescribed limit. Hence, the size of issue of sweat equity shares of the company was not appropriate.

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

EXAM INSIGHTS: Majority of the examinees have referred the provisions partially and provided the correct answer either to the size of the sweat equity shares or the lock-in period in light of the provisions of the Companies Act, 2013.

Sec 55- Issue & Redemption of Preference Shares

Question 11

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

the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?
Can the company include the dividend unpaid in the above issue of redeemable preference shares? ***(PYP 3 Marks May '22)***

Answer 11

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

- with the consent of the holders of three-fourths in value of such preference shares, and
- with the approval of the Tribunal on a petition made by it in this behalf,issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

EXAM INSIGHTS: Performance of the examinees was Average. Most of the examinees have correctly given the conclusion but exact provisions were not explained by the examinees for redemption of preference shares as per the Companies Act, 2013.

Sec 56- Transfer of Securities

Question 12

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? ***(SM)***

Answer 12

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.

Sec 58- Refusal to Transfer Shares

Question 13

Mr. Nirmal has transferred 1000 equity shares of Perfect Private Limited to his sister Ms. Mana. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nirmal or Ms. Mana within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company? ***(MTP 5 Marks Nov 21, SM)***

Answer 13

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. Mana being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Sec 61- Power of Limited Companies to alter its Share Capital

Question 14

Wivitzu Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹ 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the stock market and requested the company to reduce the face value of each share to ₹ 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable, as per the provisions of the Companies Act, 2013. ***(RTP Nov '23, PYP 6 Marks Nov '22)***

Answer 14

According to section 61(1)(d) of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in 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 Wivitzu Limited, in the Annual General Meeting requested the company to reduce the face value of each share (from ₹ 100 to ₹ 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Wivitzu 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.

EXAM INSIGHTS: Most of the examinees did not attempt this question in total and left this question as a choice question, However, the Performance of the examinees, who attempted this question, was average. Such examinees only provided the different modes of altering the share capital and could not answer precisely invoking section 61(1)(d) of the Companies Act,2013 Also, they have not stated that the company after altering its Memorandum in its general meeting as per the procedure contained in section 13 of the Companies Act, 2013 shall give notice to the Registrar along with an altered Memorandum.

Question 15

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 the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association. ***(PYP 5 Marks May '22)***

Answer 15

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

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

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.
According to the given facts, in the said Question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.
Accordingly, in the light of the stated facts, following shall be the Answers:

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

(ii) According to section13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

EXAM INSIGHTS: This question pertains to section 61 of the Companies Act, 2013, in which the performance by and large of the examinees, were Poor. Majority of the examinees were not able to give provisions related to diminution or reduction of share capital as per the Companies Act 2013.

Sec 62- Rights Issue

Question 16

Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013 Mars India Ltd. owed to Sunil Rs. 1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs. 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. ***(MTP 5 Marks Mar'23, Aug'18)***

Answer 16

Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such

shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Question 17

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. ***(SM)***

Answer 17

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.
Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, **in proportion to the paid-up capital** on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.
As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting 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.**
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.

Sec 63- Issue of Bonus Shares

Question 18

"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. ***(PYP 5 Marks May'24)***

Answer 18

Pre-requisites for issue of bonus shares

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

a. it is authorised by its Articles,
b. it has on the recommendation of the Board, been authorised in the general meeting of the company.
c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.
d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
f. it complies with such conditions as prescribed by Rule 14 of the Companies (Share capital and debenture)

Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Question 19

Silver Oak Ltd. Has following balances in their Balance Sheet as on 31st March, 2021:

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

Directors of the company seeks your advice in following cases:

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

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

(MTP 6 Marks Oct 21, PYP Nov'18 2 Marks)

Answer 19

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

(i) its free reserves;

(ii) the securities p remium account; or

(iii) the capital redemption reserve account:

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

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

Accordingly:

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

(ii) In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., ½ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.

Question 20

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50,00,000 equity shares of ₹ 10 each) ₹ 5,00,000

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of ₹ 10 each, fully paid-up) ₹ 2,00,00,000

(iii) Free Reserves ₹ 50,00,000

(iv) Securities premium account ₹ 25,00,000

(v) Capital Redemption Reserve ₹ 25,00,000

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

(PYP 5 Marks, May '23, SM)

Answer 20

Conditions for bonus shares

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

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

Question 21 LDR

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 5 Marks Sep'22, PYP 3 Marks Dec'21)

Answer 21

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 ¼ = 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

EXAM INSIGHTS: Performance of the examinees was good. Most of the examinees have answered correctly and explained the requisite provisions w.r.t appointment of first auditor of the company under the Companies Act, 2013.

Question 22

APR Limited, a company renowned for manufacturing various types of mats, has established a strong brand presence and garnered a commendable reputation over the years. As of March 31, 2023, its Balance Sheet reflects the following financial position:

1. **Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹ 2,50,00,000**
2. **Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid-up) ₹1,00,00,000**
3. **Free Reserves ₹ 3,00,00,000**

The Board of Directors intends to propose a bonus issue wherein existing shareholders would receive 1 additional share for every 2 shares held. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. ***(MTP 5 Marks Apr'24) (MTP 6 Marks April '23 & March '18 , 6 Marks) (SM May 22)(RTP (May 21 & Nov 20)***

Answer 22

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

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

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

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

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

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

For the issue of bonus shares APR Limited will require reserves of ` 50,00,000 (i.e. half of ` 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Sec 67- Restriction on Purchase by Company

Question 23

Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares? *(MTP 5 Marks April 21)*

Answer 23

Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, section 67 (3) of the Companies Act, 2013, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership. Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

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

Question 24

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 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 ₹ 40,000 per month, to buy 500 partly paid-up equity shares of ₹ 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. *(SM)*

Answer 24

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

Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of

₹ 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

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

Question 25 — LDR

The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of ₹ 3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of ₹ 40,000 per month, to buy 500 partly paid-Up equity shares of ₹ 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013. ***(PYP 2 Marks Jan 21)(MTP 4 Marks Sep '23)***

Answer 25

As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per the provisions of section 67(3)(c) of the Companies Act, 2013, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore this condition has not been fulfilled;
2. The amount does not exceed their salary or wages for a period of six months.- This condition has not been fulfilled.
3. The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd., which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.

Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

Sec 68- Buyback of Own Securities

Question 26

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? ***(PYP 3 Marks Jan 21)***

Answer 26

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 twenty-five per cent 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 financial year.

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.

(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.

(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 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. ***(MTP 3 Marks March '22 & Oct '23, PYP July 21, 3 Marks) (MTP 5 Marks Mar'24)***

Answer 27

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.

EXAM INSIGHTS: Majority of the examinees have not answered this question correctly w.r.t provisions of buy back of shares under the Companies Act, 2013.

Sec 71- Debentures

Question 28

What are the requirements outlined in the Companies Act, 2013 regarding the appointment of a 'Debenture Trustee' by a company? Can the following entity be designated as a 'Debenture Trustee':

(i) An investor who holds advantageous stake.

(ii) A lender to whom the company has a debt of only ₹ 1,000.

(iii) An individual who has provided a guarantee for the repayment of the debenture amount issued by the company. ***(PYP 5 Marks Nov'23, SM)***

Answer 28

Appointment of Debenture Trustee: As per 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 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees. Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, provides that no person shall be appointed as a debenture trustee, if he:

(i) beneficially holds shares in the company;
(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
(vi) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Thus, based on the above provisions answers to the given questions are as follows:

(i) An investor who holds advantageous stake cannot be appointed as a debenture trustee.
(ii) A lender to whom company has a debt of only ₹ 1000 cannot be appointed as a debenture trustee. The amount here is immaterial.
(iii) An individual who has provided a guarantee for repayment of debenture amount issued by the company also cannot be appointed as a debenture trustee.

EXAM INSIGHTS: This is the second-choice question. Most of the examinees have explained the provisions correctly relating to the disqualification of a person for being appointed as a debenture-trustee and provided the correct answer to all three different case scenario questions under Part-(i), Part-(ii) and Part-(iii) of the question relating to the appointment of a debenture-trustee as per the provisions of the Companies Act, 2013.

Question 29

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 50,00,000
(On hypothecation of stock and receivables of the Company, repayable on demand)
Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company

presenting the necessary calculations:

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

(ii) **What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?** ***(PYP 6 Marks Nov '22)***

Answer 29

I. The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be in cluded in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval 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.

Exam Insights: The Performance of the examinees was below average. Majority of the examinees did not attempt this question which is related to issue of debentures and in particular, in Part (i) of the question, to calculate the amount that can be raised by the company by issue of debentures and the resolution, if any, that is required to be passed in the general meeting of the company. And in Part (ii) of the question, to state the legal position in case, the company desired to issue debentures with an option to convert such debentures into shares. Those who attempted this question, their answers were not up to the mark.

Question 30 LDR

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?

(SM) (RTP Nov'22, PYP 4 Marks Dec '21) (MTP 4 Marks Oct '23)

Answer 30

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 a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

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

(v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are as follows:

(i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.

(ii) A creditor whom company owes ₹ 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.

Exam Insights: Performance of the examinees was Good. Majority of the examinees have answered all the parts correctly with reference to the appointment of Debenture Trustee under the Companies Act,2013.

Multiple Choice Questions (MCQs)

Sec 46- Certificate of Shares

1. **Modern Furniture an unlisted company receive a request for issue of duplicate share certificate. Complete documents in this regards submitted with the company on 30th December 2022. Modern furniture shall issue the duplicate share certificates by:**
   (a) 29^{th} January 2023
   (b) 213^{th}th February 2023
   (c) 28th February 2023
   (d) 29th March 2023

Ans: (d)

Sec 47- Voting Rights

2. **A Private Company cannot issue securities:** ***(MTP 1 Mark Sep'22)***
   (a) By way of rights issue
   (b) By way of bonus issue
   (c) By way of private placement
   (d) By issue of Prospectus in Public

Ans: (d)

3. **Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?** ***(MTP 2 Marks March '23)***
   (a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
   (b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
   (c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
   (d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

Ans: (c)

Sec 48- Variation in Shareholder's Rights

4. **In a company if any change of right of one class also affects the right of other class, then:** ***(MTP 1 Mark March 21)***
   (a) A resolution should be passed in general meeting in this case
   (b) Company need not to do anything else
   (c) Written consent of three fourth majority of that other class should be obtained
   (d) A resolution in joint meeting of both the classes should be passed

Ans: (c)

5. **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 ---------- 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:** ***(RTP Nov'22)***
   (a) One-fourth (b) 50%
   (c) Three-fourths (d) 75%:

Ans : (c)

Sec 54- Issue of Sweat Equity Shares

6. **Shares issued by a company to its directors or employees at a discount or for a consideration other than cash for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called are known as:** ***(MTP 1 Mark March '22, RTP Nov'21)***
   (a) Equity Shares
   (b) Preference Shares
   (c) Sweat Equity Shares
   (d) Redeemable preference shares

Ans : (c)

Sec 56- Transfer of Securities

7. **Mr. Bahu has received a notice from Mahishmati Private Limited on 2nd March, 2024 intimating that Mr. Bali has submitted a transfer deed duly signed by him for transfer of 1000 partly paid shares (₹ 8 paid-up out of Face Value of ₹ 10 per share) in his (Mr. Bahu) name. Mr. Bahu as transferee must raise his objection to the proposed transfer of partly paid shares latest by** ***(SM)***
   (a) 9th March, 2024
   (b) 16th March, 2024
   (c) 17th March, 2024
   (d) 31st March, 2024

Ans: (c)

Sec 67- Restriction on Purchase by Company

8. **Section 67 of the Companies Act, 2013 impose a restriction on public company from giving any financial assistance whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. Star Engineering Limited which is not covered by any of exemptions specified under said section, contravene the restrictive provisions stated above. Every officer of the company who is in default shall be liable for; *(SM)***
   (a) Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees
   (b) Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees or Imprisonment for a term which may extend to three years or both
   (c) Fine which may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both
   (d) Fine which shall not be less than one lakh rupees but may extend to twenty- five lakh rupees and Imprisonment for a term which may extend to three years

Ans: (d)

Sec 68- Buyback of Own Securities

9. **Goals Limited, a listed company has authorized share capital of ₹ 25,00,000 (issued, subscribed and paid up capital of ₹ 20,00,000). The company has planned to buy back shares worth ₹ 10,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares? *(MTP 2 Marks March '22 & Sep '23)***
   (a) ₹ 2,00,000
   (b) ₹ 5,00,000
   (c) ₹ 6,25,000
   (d) ₹ 8,00,000

Ans: (b)

Rule 4- Issue of shares with Differential Rights

10. **Super Brain Coaching Limited was engaged in offline coaching of students for various competitive examinations. It was one of the pioneer in its field. It suffered losses due to various social and government restrictions imposed on study centers. On account of this, it defaulted in the repayment of term loan for the first two quarters of the financial year 2023-24. However, Super Brain Coaching Limited adapted itself to the changing circumstances and shifted to online mode of coaching and revived its financial conditions. On 31st December 2023, it cleared all the dues and regularized the term loan. Super Brain Coaching Limited wants to issue equity shares with differential rights. When can the issue be made? *(PYP Sep'24)***
   (a) On or after January 1st 2029
   (b) On or after April 1st 2029
   (c) On or after April 1st 2027
   (d) On or after January 1st2027

Ans: (b)

11. **Green Tree Limited is planning to issue debentures to the public and, as per the legal requirements, must appoint a debenture trustee before making an offer. The company is considering several individuals for this role:**
   1. **Mr. Sharma, who owns a small number of shares in Green Tree Limited as an investor.**
   2. **Ms. Kapoor, who previously lent ₹ 5,000 to Green Tree Limited and is currently a lender.**
   3. **Mr. Verma, who has provided a personal guarantee to ensure the repayment of the debentures issued by Green Tree Limited.**

   Based on the provisions of the Companies Act, 2013 and relevant rules, who among the following is eligible to be appointed as a Debenture Trustee for Green Tree Limited? *(MTP 2 Marks Nov'24)*
   (a) Only Mr. Sharma.
   (b) Only Ms. Kapoor
   (c) Only Mr. Verma
   (d) None of Mr. Sharma, Ms. Kapoor or Mr. Verma are eligible to be appointed as Debenture trustee of Green Tree Limited.

Ans: (d)

CHAPTER 5: ACCEPTANCE OF DEPOSITS BY COMPANIES

CONCEPTS OF THIS CHAPTER

- Rule 2- Amounts not considered as Deposit
- Sec 76- Acceptance of deposits from Eligible Companies
- Acceptance of Deposits from Members
- Sec 74- Repayment of Deposit
- Sec 73- Prohibited Provisions & Exempted Companies

LDR Questions
Q 11
Q 20

QUICK REVIEW OF IMPORTANT CONCEPTS

Depositor

- any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
- any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.

Eligible Company

- It should a public company.
- It should have net worth of minimum Rs 100 crore or a turnover of minimum Rs 500 crore.
- It has obtained the prior consent by means of a special resolution passed in the general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180(1)(c).

Amounts Not to Be Considered as Deposits

- From Central Government or a state Government, foreign Governments, foreign or international banks, multilateral financial institutions etc.
- as a loan or facility from any banking company or from State Bank of India or its subsidiary banks
- as a loan or financial assistance from Public Financial Institutions
- against issue of commercial paper
- by a company from any other company
- from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company
- by the issue of bonds or debentures secured by a first charge
- by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange
- from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit
- as non-interest bearing amount and held in trust
- Amount received for the purpose of the business of the company
  - **a.** advance for the supply of goods or provision of services
  - **b.** consideration for an immovable property

c. security deposit
d. long term projects, supply of capital goods consideration for an immovable property
e. future services
f. sectoral regulator
g. subscription towards publication

- From promoters of company subject to the fulfilment of certain conditions:
- by a **Nidhi** company
- **by way of subscription in respect of a** chit fund
- collective investment scheme
- **of 25 lakh rupees or more by a** start-up company**, by way of a** convertible note repayable within a period not exceeding 10 years in a single tranche

Prohibitive Provisions and Exempted Companies

- Companies MAY Accept Deposits only in accordance with Chapter V and the Rules made thereunder
- ALL Companies MAY Accept Deposits from Members
- Only ELIGIBLE PUBLIC COMPANIES can Accept Deposits from both Members and Public

Exempted Companies

- banking company
- non- banking financial company (NBFC)
- housing finance company (HFC)
- other companies as specified by the Central Government, in consultation with RBI

Questions & Answers

Rule 2- Amounts not considered as Deposit

Question 1

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits. ***(MTP 4 Marks March '23, SM)***

Answer 1

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

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

(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

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

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

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

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

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

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or

approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.
Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

Question 2

Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

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

(ii) ₹2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ` 1,50,000, as a non-interest bearing security deposit under a contract of employment. ***(MTP 4 Marks Oct 21)***

Answer 2

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

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

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

Question 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 recognized stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit? ***(RTP May '22)***

Answer 3

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

Question 4

Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Romit paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)? ***(MTP 5 Marks Nov'24, Apr'24)***

Answer 4

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. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature

of non-interest- bearing security deposit is not considered as deposit.

In the instant case, ₹ 5,30,000 was received by PQR Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Romit, who draws an annual salary of ₹ 5,00,000 under a contract of employment.

Accordingly, amount of ₹ 5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of theAct, as the amount received from Mr. Romit is more than his annual salary of ₹5,00,000.

Question 5

Comment quoting relevant provisions of the Companies Act, 2013, whether the following amounts received by a company will be considered as deposits or not:

(i) ` 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ` 1,50,000, as a non-interest-bearing security deposit under a contract of employment.

(ii) Textile Traders Limited received a loan of ` 30,00,000 from R who is one of its directors.

(MTP 4 Marks April 22)

Answer 5

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

(i) In terms of Rule 2 (1)(c)(x), any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit, shall not be treated as deposit. ` 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ` 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c), for the amount received is more than his annual salary of ` 1,50,000.

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

In the given case, ` 30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

Question 6

Sasha Private Limited received ₹ 3,00,000 from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift. Decide as per the relevant provisions of the Companies Act, 2013, whether the said amount received by the company will be considered as deposits or not.*(MTP 4 Marks Sep'22)*

Answer 6

According to sub-clause (viii) of Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company, is not considered as deposit.

The director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report. ₹ 3,00,000 received by Sasha Private Limited, from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c).

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

Question 7

Answer the following citing relevant provisions:

(a) Prayas Electricals Limited having paid-up capital of ₹ 1 crore availed a term loan of ₹ 10,00,000 from Beta Bank Limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

(b) Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ₹ 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner? *(MTP 5 Marks Dec'24)*

(c) Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of ₹ 10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit Rs. 1,00,000 for 36 months jointly with his wife and three sons. Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company. *(RTP May 23, SM)*

Answer 7

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.
In view of the above, the contention of Mr. Sambhav that the term loan of ₹ 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.
Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.
In view of this provision, Sanjiv can deposit ₹ 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

Question 8

The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid? *(MTP 5 Marks Mar'24) (MTP 4 Marks March '22, PYP 4 Marks July '21)*

Answer 8

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

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

(a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

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

provided by the promoters themselves.
In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.

EXAM INSIGHTS: Most of the examinees did not answer correctly the question on "Deposits" under the Companies Act, 2013.

Question 9

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

(i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ` 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Shriram Readymade Garments Limited wants to accept deposits of ` 50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?

(iii) The turnover of Y Ltd. is ` 400 crore as per last audited financial statement and net worth is ` 50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013? *(PYP 5 Marks Dec '21)*

Answer 9

(i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.
In the given case, Moon Technology Private Limited, a start-up company, received ` 20.00 lacs from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ` 25.00 lacs. Hence, the amount of ` 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.
However, as an exception to this rule, for the purpose of meeting any of its short- term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:
(1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
(2) such deposits are repayable only on or after three months from the date of such deposits or renewal.
In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ` 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

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

Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of ` 400 crore and net worth of ` 50 crore. Hence, it cannot be termed as an eligible company and thus can not accept deposits from the public.

EXAM INSIGHTS: Many of the examinees have not answered correctly the provisions related to the Companies (Acceptance of Deposits) Rules, 2014 of the Companies Act, 2013.

Question 10

Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;

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

(ii) Rs 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of Rs 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.

(iii) Amount of Rs 3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother. ***(PYP Nov'19 & May '23 6 Marks, SM)***

Answer 10

Deposit: According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

(i) In the first case, where Rs 5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.

(ii) In the second case, Rs 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of Rs 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.

(iii) In the third case, amount of Rs 3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company,from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Question 11

LDR

Rashmika Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.

The share application money of ₹ 5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act 2013. ***(MTP 4 Marks Oct'22, 5 Marks Sep '23 & Oct '23 PYP 5 Marks Jan'21)***

Answer 11

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

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

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

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

In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit. Further, on 30.07.2021 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Kumar (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

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

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2023.

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

Acceptance of Deposits from Members

Question 12

Shubhra Chemicals Private Limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account. What are the conditions it must fulfill before such acceptance? *(SM)*

Answer 12

According to first proviso to Rule 3 (3), a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

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

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

(c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

Question 13

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? *(SM)*

Answer 13

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 insuch form and in such manner as may be prescribed;

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

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

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

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

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

Exemption to certain private companies:

In terms of Notification No. GSR 464 (E), dated 05-06-2015 as amended from time to time, Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

(A) Which accepts from its members monies not exceeding one hundred per centof aggregate of 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 14

State, with reasons, whether the following statements are 'True or False'?

(i) ABC Private Limited may accept deposits from its members to the extent of Rs. 50.00 lakhs, if the aggregate of its paid-up capital, free reserves and security premium account is Rs. 50.00 lakhs.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. ***(SM, MTP 4 Marks March '21)***

Answer 14

(i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregateof the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of Rs.50.00 lakh is 'true'.

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

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

Sec 76- Acceptance of deposits from Eligible Companies

Question 15

Explain the provision relating to 'Credit Rating' which an 'Eligible Company' should follow to raise public deposits as per the Companies Act, 2013. ***(PYP 2 Marks May'22, SM)***

Answer 15

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligiblecompany' 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 timeto time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and abilityto 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 ina 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 oneof 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.

EXAM INSIGHTS: Performance of the examinees was Average. Most of the examinees have given answer in general manner with reference to provisions relating to credit rating to be followed by eligible company to raise public deposit as per the provisions of the Companies Act 2013

Question 16

Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014. ***(MTP 5 Marks Oct 21)***

Answer 16

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

No person including a company that is in the business of providing trusteeship services shall be appointed as a

trustee for the depositors, if the proposed trustee:

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
(e) is related to any person specified in clause (a) above.

Question 17

Okara Limited, a company. having a net worth of ₹110 crore and a turnover of ₹450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public. ***(PYP 2 Marks May'24)***

Answer 17

According to section 76 (1) of the Companies Act, 2013, 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.

Okara Limited is having net worth of ₹ 110 crore. Hence, it falls in the category of 'eligible company' and thus can accept the deposits from public.

Question 18

A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. State, with reasons, whether the following statement is 'True or False'? ***(MTP 2 Marks April 21, SM, RTP May'23)***

Answer 18

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

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

Question 19

ABC Limited having a net worth of Rs. 120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'. ***(MTP March'19,4 Marks, PYP 3 Marks Jan 21 & SM)***

Answer 19

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 aturnover 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 makingany 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 20 — LDR

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 & Building	**₹ 60 crores**
Plant & machinery	**₹ 20 crores**
Factory Shed	**₹ 20 crores**
Trademark	**₹ 20 crores**
Goodwill	**₹ 25 crores**

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014. ***(PYP 4 Marks Nov '22) (RTP Nov '23)***

Answer 20

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 the amount of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

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.

EXAM INSIGHTS: Majority of the examinees have answered this question in a generalized manner and have not answered precisely, the provisions of Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, which states that the company accepting secured deposits shall create security by way of charge on its tangible assets only and the total value of security should not be less than the amount of deposits accepted and interest payable thereon. They could not arrive at the value of the securities (value of assets on which the charge can be created) and also the total deposits accepted and the interests payable thereon. Because of non arrival at calculations, eventually, most of the examinees could not conclude the correct answer.

Question 21

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 ` 90 crore and turnover for the year 2022-23 was ` 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 ` 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, PYP 4 Marks Nov'23)*

Answer 21

(i) As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly:

- It should be a public company.
- It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore.
- It has obtained the prior consent by means of a special resolution passed in general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: 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.

The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, 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, the said deposits by Mr. P Kishore shall not be treated as deposit.

EXAM INSIGHTS: Majority of the examinees have mentioned one or more provisions correctly relating to eligible company' for acceptance of deposits from the public and the maximum tenure for which it can be accepted under Part-(i) and the correct answer under Part-(ii) classifying the loan advanced by the director is not a deposit considering the declaration given by him referring to the provisions of the Companies Act, 2013.

Question 22

Dolls Toys Limited is having a net- worth of ₹ 310 crore, paid up share capital of ₹ 200 crore, free reserves and security premium of ₹ 110 crore and turnover of ₹ 300 crore. Dolls Toys Limited wants to accept deposits form public other than its members.

(i) Referring to the provisions of the Companies Act, 2013, state whether Dolls Toys Limited is permitted

to accept the deposits from public other than its members.

(ii) It is further mentioned that Dolls Toys Limited is in urgent need of funds as one of its contract is on the verge of completion and it is promising to repay the deposits within a period of four months. Is Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

(PYP 5 Marks Sep'24)

Answer 22

(i) Whether Dolls Toys Limited is permitted to accept deposits from Public other than its members?

Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposits) Rules, 2014 deal with acceptance of deposits from public other than its members by 'eligible companies'.

Accordingly, a public company, having net worth of not less than ₹ 100 crore or turnover of not less than ₹ 500 crore, and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other thanits members.

Eligible Company: As per Rule 2(1)(e) of the Companies (Acceptanceof Deposits) Rules, 2014, a public company, having net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees, may accept deposits from persons other thanits members. Such type of public company is known as 'eligible company'.

In the given question, Dollys Toys Limited has a net-worth of ₹ 310 crore and turnover of ₹300 crore.

Since at least one condition is satisfied that is net worth is ₹ 310 crore which is more than the prescribed limit, and assuming it has obtained the prior consent by a special resolution and filed it with the Registrar of Companies, it is permitted to accept deposits from public other than its members.

Thus, Dollys Toys Limited is an eligible company and hence can accept deposits from public other than its members.

(ii) Whether Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules,2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or inless than six months. Further, the maximum period of acceptance of deposits cannot exceed thirty- six months.

Exception to the rule of tenure of six months: 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:

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

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

Conclusion: Hence, Dolly Toys Limited is permitted to accept deposits withrepayment period of 4 months in compliance to the stated provisions.

However, by virtue of exception to the rule of tenure of six months as stated above, since the company cannot accept the deposit exceeding 10% of the aggregate of the paid up share capital, freereserves and security premium account which is ₹ 310 crore therefore the company can accept the deposits to the extent of ₹31 crore only.

Multiple Choice Questions (MCQs)

Acceptance of deposits from Members

1. As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company is not permitted to accept from public or renew the same deposits (whether secured or unsecured) which is repayable on demand or in less than _____ months. Further, the maximum period of acceptance of deposit cannot exceed _____ months. But, for the purpose of meeting any of its short- term requirements of funds, a company may accept or renew deposits for repayment earlier than _____months subject to certain conditions. *(SM, RTP May'23)*

   (a) six, thirty six, six
   (b) three, twenty four, three
   (c) six, sixty, six
   (d) three, sixty, six

Ans: (a)

2. **Where depositors so desire, deposits may be accepted in joint names not exceeding ____(MTP 1 Mark April 21)**

(a) 2 (b) 3
(c) 5 (d) 7

Ans: (b)

3. **A company shall execute a deposit trust deed at least days before issuing the circular or circular in the form of advertisement.** ***(MTP 1 Mark April 21)***

(a) 7 (b) 14
(c) 21 (d) 28

Ans: (a)

4. **Amit Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.** ***(MTP 1 Mark Nov 21, Mar'22)***

(a) Four years from the financial year in which the latest entry is made in the Register.
(b) Six years from the financial year in which the latest entry is made in the Register.
(c) Eight years from the financial year in which the latest entry is made in the Register.
(d) Ten years from the latest date of entry.

Ans: (c)

5. **Varsha Limited decides to raise deposits of ` 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth ` 15.00 lacs. Which of the following options best describe such deposits:** ***(MTP 1 Mark April 22)***

(a) Fully secured deposits (except a small portion)
(b) Unsecured deposits
(c) Partially secured deposits
(d) These cannot be classified as deposits

Ans: (b)

6. **What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?** ***(MTP 1 Mark April 22)***

(a) 12 months (b) 24 months
(c) 36 months (d) 48 months

Ans: (c)

7. **K Limited decides to raise deposits of ₹ 10.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 5.00 lakh. Which of the following options best describe such deposits:** ***(MTP 1 Mark Sep'22, Apr'23)***

(a) Fully secured deposits (except a small portion)
(b) Unsecured deposits
(c) Partially secured deposits
(d) These cannot be classified as deposits

Ans: (c)

8. **Red Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.** ***(MTP 1 Mark Oct'22)***

(a) Four years from the financial year in which the latest entry is made in the Register.
(b) Six years from the financial year in which the latest entry is made in the Register.
(c) Eight years from the financial year in which the latest entry is made in the Register.
(d) Ten years from the latest date of entry.

Ans: (c)

9. **Varsha Limited decides to raise deposits of ₹ 20.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lakh. Which of the following options best describe such deposits:**
   (a) Fully secured deposits (except a small portion)
   (b) Unsecured deposits
   (c) Partially secured deposits
   (d) These cannot be classified as deposits

Ans: (b)

10. **What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?**
   (a) 12 months
   (b) 24 months
   (c) 36 months
   (d) 48 months

Ans: (c)

11. **Every company shall pay a penal rate of interest of per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid: (MTP 1 Mark Sep'22, Apr'23, Oct'22 & Oct '23, SM)**
   (a) 9%
   (b) 14%
   (c) 18%
   (d) 24%

Ans: (c)

12. **Mr. Mudit works as an employee at ABC Private Limited with an annual salary of ₹3,00,000, as specified in his employment contract. Mr. Mudit paid to the company ₹ 3,50,000 in the nature of non-interest bearing security deposit. Giving regard to the provisions of the Companies Act, 2013, choose the correct option out of the following: *(MTP 2 Marks Dec'24)***
   (a) The deposit is a valid transaction since it is a non-interest-bearing security deposit provided under the terms of his employment.
   (b) The deposit violates the Companies Act, 2013, because companies cannot accept deposits from their employees.
   (c) The deposit violates the Companies Act, 2013, as the amount exceeds Mr. Mudit's annual salary.
   (d) The deposit is invalid unless approved by the company's shareholders in a general meeting.

Ans: (c)

Sec 74- Repayment of Deposit

13. **A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called: *(MTP 1 Mark Sep '23)***
   (a) Debenture redemption reserve account
   (b) Deposit repayment reserve account
   (c) Capital redemption reserve account
   (d) Free reserve account

Ans (b)

Sec 76- Acceptance of deposits from Eligible Companies

14. **Wood Apple Limited accepts deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office, is complete. State the minimum period for which it should mandatorily be preserved in good order. *(MTP 1 Mark Oct '23, SM)***
   (a) Four years from the financial year in which the latest entry is made in the Register.
   (b) Six years from the financial year in which the latest entry is made in the Register.
   (c) Eight years from the financial year in which the latest entry is made in the Register.
   (d) Ten years from the latest date of entry.

Ans :(c)

CHAPTER 6: REGISTRATION OF CHARGES

CONCEPTS OF THIS CHAPTER		
• Sec 2(16)- Definition of Charge	• Sec 83- Power to make entries for Satisfaction & Release in absence of Intimation	 **LDR Questions** Q 1 Q 7 Q 14
• Sec 77- Duty to Register Charges	• Sec 85- Register of Charges to be kept by the Company	
• Sec 78- Application of Registration of Charge-by-Charge Holder	• Sec 86- Punishment for Contravention	
• Sec 80- Deemed Notice of Charge	• Sec 87- Rectification by Central Govt in Register of Charges	
• Sec 82- Company to Report Satisfaction of Charge	• Sec 81-Register of Charges kept by the Registrar	

QUICK REVIEW OF IMPORTANT CONCEPTS

Definition of Charge

Charge as an Interest or Lien created on property or assets of a Co. or any of its undertakings or both as security and includes mortgage.

Types of Charge

Fixed Charge: Charge on specific Assets

Floating Charge: Created on Assets or class of Assets which are of fluctuating nature.

Crystallization of a floating charge occurs when a creditor enforces security due to a breach of terms, company liquidation, or business cessation. At this point, the floating charge becomes fixed on available assets, making them realizable by the lender for debt repayment.

Process of Registration of Charge

Charge Created before 02-11-2018	Charge Created on or after 02-11-2018
Register charge within 30 days of creation (If not registered in 30 days)	Register Charge within 30 days (If not registered in 30 days)
Register within 300 days of creation on payment of additional fees (If not registered in 300 days)	Register in next 30 days (i.e. within 60 days from creation) with additional fees (If not registered in next 30 days)
Register within six months from 02-11-2018 with additional fees. Different fees for different classes of companies.	Register within a further period of sixty days with advalorem fees

Satisfaction of Charge

Satisfaction of Charge

Company shall give intimation to the Registrar within 30 days of the payment or satisfaction. If not intimated, the Registrar may allow giving of intimation within 300	Registrar on receipt of intimation, sends show cause notice to holder of charge within 14 days Exception: No notice, in case the intimation to the Registrar is in the	If any cause is shown, the Registrar shall record a note in the register of charges and shall inform the company.

days on payment of prescribed additional fees. Specified IFSC Public/ Private Co. (within 300 days of the payment or satisfaction)	specified form and signed by the holder of charge	

Question & Answers

Sec 2(16)- Definition of Charge

Question 1

LDR

What is 'Floating Charge'? When does it get crystallized?
(MTP 5 Marks Mar'24, New SM, MTP 5 Marks July'24)

Answer 1

A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge.

Crystallization of a Floating Charge In the following events, a floating charge will get crystallised or fixed:

(i) When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company ceases to continue its business.

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid

Question 2

Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation. ***(MTP 5 Marks Oct'22)***

Answer 2

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 an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

Sec 77- Duty to Register Charges

Question 3

Define Charge.

Who has the authority to verify the instrument of charge created for property situated outside India? Give

your answer as per the provisions of the Companies Act, 2013. ***(MTP 5 Marks Nov 21)***

Answer 3

Section 2(16) of the Companies Act, 2013 defines "charge" as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar shall be verified by a certificate issued either-

- under the seal, if any, of the company, 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.

Question 4

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified? ***(MTP 3 Marks March 21, SM)***

Answer 4

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

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

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

Question 5

Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013. ***(MTP 5 Marks April '23, PYP 3 Marks Jan 21)***

Answer 5

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 6

Viwitsu Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realizes its mistake of not registering the charge on 27 th May, 2021 (instead of 15th March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013. *(RTP May '22)*

Answer 6

According to section 77(1) of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

(a) Viwitsu Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).

Taking advantage of clause (b) of first proviso to section 77 (1), Viwitsu Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.

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

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

Question 7 LDR

PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.

After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.

Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013. *(RTP Jan'25)*

Answer 7

The provisions of section 77 relating to registration of charges shall, sofar as may be, apply to:

a. a company acquiring any property subject to a charge within the meaning of that section; or

b. any modification in the terms or conditions or the extent or operation of any charge registered under that section.

According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with section 77.

According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge asits

own. This means that PQR Limited must create a fresh charge overthe acquired property and register it with the Registrar of Companies(RoC) as per section 77.

Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge. Hence, the contention of directors of PQR Limitedthat since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.

Question 8

(Includes concepts of Management & Administration)

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

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

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

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

(i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?

(ii) Which type of Charge was created by company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of the Companies Act, 2013?

(iii) Whether the notice given to convene AGM at shorter notice was in compliance of the Companies Act, 2013? *(PYP 5 Marks Nov'23)*

Answer 8

(i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 shall be kept at the registered office of the company. Section 88(1) provides that every company shall keep and maintain the register of members.

However, such registers 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, Majboot Cement Limited (MCL) can keep the Registers of Members at Faridabad (as around 15% of total members are resident of Faridabad) by passing a Special Resolution at a general meeting.

(ii) A 'Floating Charge' is created on assets or a class of assets which are of fluctuating nature or changing in nature like raw material, stock-in-trade, debtors, and the like. The assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale. In the instant case, since charge was created on all the assets of company on that date (i.e. on 18th June, 2023) for loan of ₹ 325 crore, it is type of Floating Charge.

As per section 77 of the Companies Act, 2013, if 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.

In the instant case, MCL created a charge on 18th June, 2023 but failed to register it. On 18th August, it filed the application for registration of charge. Since the charge has to be filed by 17th August, 2023 (within 60 days from 18th June, 2023) with additional fees, the application can be filed within a further period of sixty days i.e. by 17th October, 2023 after payment of prescribed ad valorem fees.

(iii) According to section 101(1) of the Companies Act, 2013, general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than 95% of the members entitled to vote thereat.

In the instant case, MCL wants to convene its AGM on 10th September, 2023 by giving shorter notice which is consented by only 78% of the members. Hence, shorter notice is not in compliance with the provisions of the Act.

Question 9

Wiwizu Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ₹ 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.

During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023.

So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.

Further, the company management pleaded that it is the responsibility of the financier i.e. Goodwill Bank to get the charges registered with the Registrar since the registration of charge is to be effected in favour of the Bank and for Bank's own benefit, so the NTL is in no way responsible for getting registration or for delayed registration.

In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:

(i) When trigger point for the registration of charge shall arise,

(a) at the time of credit limit sanctioned by the Bank; or

(b) at the time of availing of credit limit when cheque was issued by the company?

(ii) What are the consequences for non-registration of charge on the Wiwizu Tools Ltd? (PYP 5 Marks Sep'24)

Answer 9

(i) According to section 77(1) of the Companies Act, 2013, it shall be the duty of a company creating a charge to register it with the Registrarof Companies within 30 days from the date of creation of the charge.The obligation to register a charge arises not merely at the time of sanctioning the credit limit but when the charge is created.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks orany other persons, by offering its property or assets, as security a charge is created on such property or assets in favor of the lender.

The Trigger point for registration of charge arises when the Bank has sanctioned the mortgaged backed credit limit, documentation was done, papers of the property for creation of the mortgage was tendered by the company for creation of fixation of the credit limits.

Here, the words 'creating a charge' refers to the accepting of the property papers for the purpose of creation of charge. Thus, it is the date when the credit limits were sanctioned as assigned to the company and not the date when the company had actually drawn a cheque from such credit limit.

(ii) Consequence of non-registration of charge [Section 77 (3) & (4)]

No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless itis

duly registered and a certificate of registration of such charge is given by the Registrar.
This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time ofwinding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidatornor any other creditor will give legal recognition to a charge that isnot registered.
Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respectof any property before the charge is actually registered.

Sec 78- Application of Registration of Charge-by-Charge Holder

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? *(PYP 4 Marks May '22)*

Answer 10

1. Registration by charge holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.
   Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.
2. Registrar refuse to register the charges: However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Sec 80- Deemed Notice of Charge

Question 11

Mr. A is working with a reputed Chartered Accountant firm in Delhi. After gaining an experience of 5 years, now Mr. A is planning to open his own firm A and Associates. He has now purchased a commercial property in Delhi belonging to Kesha Limited after entering into an agreement with the company. At the time of registration, Mr. A comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of Kesha Limited is correct? Give your answer with respect to the provisions of the Companies Act, 2013. *(MTP 4 Marks March 21, MTP 4 Marks Nov 21, Apr 22, SM, RTP May 18, MTP 5 Marks Dec'24)*

Answer 11

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. A, therefore, ought to have been careful while purchasing property and should have

verified beforehand that Kesha Limited had already created a charge on the property. In view of above, the contention of Kesha Limited is correct.

Question 12

City Bakers Limited obtained a term loan of ` 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013. ***(PYP 5 Marks, May '23)***

Answer 12

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.

Exam Insights: Most of the examinees have correctly mentioned the provisions relating to deemed notice registration of charge created on the assets of the company and extension of time limit available for its registration as per the provisions of the Act, 2013.

Sec 82- Company to Report Satisfaction of Charge

Question 13

Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges.
(PYP 5 Marks Nov '22, PYP 5 Marks Nov'19)

Answer 13

In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

Exam Insights : Most of the examinees have answered this question in a generalized manner and could not explain the provisions of section 82 of the Companies Act, 2013.

Sec 83- Power to make entries for Satisfaction & Release in absence of Intimation

Question 14

LDR

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to 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 paramid Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013. *(MTP 4 Marks Oct 20, MTP 5 Marks Sep'22, RTP Nov 20, SM, MTP 5 Marks Aug'24, Dec'24)*

Answer 14

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5. Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

Sec 85- Register of Charges to be kept by the Company

Question 15

'A company is required to keep a Register of Charges at its Registered Office'. Considering this statement, mention the provisions of the Companies Act, 2013 in respect of keeping of Register of Charges by the companies. ***(SM)***

Answer 15

In respect of keeping of Register of Charges by a company, Section 85 of the Companies Act, 2013 and Rules 10 as well as 11 of the Companies (Registration of Charges) Rules, 2014 are relevant.

(i) According to section 85 (1):

- Every company shall keep a Register of Charges in the prescribed form and manner at its registered office.
- **Note:** Rule 10 (1) specifies Form CHG-7 in which the Register of Charges shall be maintained.
- The Register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case the prescribed particulars.

(ii) According to Proviso to section 85 (1):

- A copy of the instrument creating the charge shall also be kept at the registered office along with the Register of Charges.

(iii) Provisions of Rule 10 are as under:

- Entry of Particulars of all Charges: According to Rule 10 (1), the company shall enter in the Register particulars of all the charges registered with the Registrar on any of its property, assets or undertakings and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- When to make Entries: According to Rule 10 (2), the entries in the Register shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- Who can authenticate Entries: According to Rule 10 (3), the entries in the Register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

Inspection of Register of Charges and Instrument of Charges: As regards inspection, section 85 (2) states that the register of charges and the instrument of charges shall be open for inspection during business hours:

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of prescribed fees.

Similarly, regarding inspection, Rule 11 states that the Register of Charges and the instrument of charges kept by the company shall be open for inspection-

(a) by any member or creditor of the company without fees;

(b) by any other person on payment of fee.

Preservation of Register: According to Rule 10 (4) the Register of Charges shall be preserved permanently. However, the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge.

Question 16

Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'. ***(MTP 5 Marks Apr'24)***

Answer 16

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 6 may, by its articles, impose.

Sec 86- Punishment for Contravention

Question 17

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013. ***(MTP April'19 5 Marks, SM, RTP Nov '21)***

Answer 17

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'.

Punishment for contravention – 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 everyofficer 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).

Sec 87- Rectification by Central Govt in Register of Charges

Question 18

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. ***(SM)***

Answer 18

ABC is advised to immediately file an application for rectification of the Register of Charges in Form No CHG-8 to the Central Government under Section87 of the Companies Act, 2013.

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

(i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

(ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, OK Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Multiple Choice Questions (MCQs

Sec 2(16)- Definition of Charge

1. **An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:** ***(1 Mark March '22, SM)***
   (a) Debt
   (b) Charge
   (c) Liability
   (d) Hypothecation

Ans (b)

Sec 77- Duty to Register Charges

2. **A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ` 1 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16 th February, 2023. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:**
   (a) 27th April, 2023
   (b) 17th April, 2023
   (c) 2nd May, 2023
   (d) 16th June 2023

Ans: (b)

3. **XYZ Ltd., a manufacturing company, had taken a loan from ABC Bank and registered a charge on its assets on January 1, 2022. On April 1, 2024, XYZ Ltd. paid off the entire loan to ABC Bank. According to Section 82 of the Companies Act, 2013, XYZ Ltd. was required to file an intimation with the Registrar of Companies (ROC) regarding the satisfaction of the charge within 30 days from the date of the payment.However, due to an oversight, the company did not submit the intimation until July 15, 2024. To rectify this, the company decided to take advantage of the extended period for intimation provided under the proviso to Section 82 (1),which allows for an extension up to 300 days with the payment of additional fees.The additional fee for late intimation was `5,000, and the company's compliance officer needed to calculate the total fee to be paid for the delayed filing.As per the given facts, examine by how many days XYZ Ltd. was late in submitting the intimation of satisfaction of charge? What additional fee should the company pay for this delay?** ***(MTP 2 Marks Aug'24)***
   (a) 90 days , Fee = 1,000
   (b) 76 days , Fee = 5,000
   (c) 90 days , Fee = 5,000
   (d) 300 days , Fee = 10,000

Ans (b)

4. **Best Limited initially created a charge in favor of LKJ Bank for a financial facility. This charge was duly registered. A few months later, LKJ Bank enhanced the credit facility by an additional ₹ 40 crore. However, due to an oversight, Best Limited failed to register the modification to the original charge with the Registrar of Companies. The company has now realized this error and is concerned about the potential impact on its records and compliance.**
   As per the provisions of the Companies Act, 2013, what steps should Best Limited take to correct the situation regarding the unregistered modification of the charge?
   (a) Ignore the oversight since the original charge was registered.
   (b) Re-register only the original charge with the updated facility amount.
   (c) File an application with the Central Government for rectification of the Register of Charges.
   (d) Contact LKJ Bank to withdraw the enhanced facility until the registrationis completed.
   (MTP 2 Marks Nov'24)

   Ans: (c)

Sec 80- Deemed Notice of Charge

5. **Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from: *(SM)***
   (a) the expiry of thirty days of such charge
   (b) the date of application for registration of the charge
   (c) the date of acquiring the property
   (d) the date of such registration

Ans: (d)

Sec 81-Register of Charges kept by the Registrar

6. **The registrar shall keep a register of charges which shall be open to inspection by _____ on payment of fee: *(1 Mark April 22 & Oct '23)***
   (a) the company
   (b) the charge holder
   (c) holder
   (d) any person

Ans: (d)

Sec 82- Company to Report Satisfaction of Charge

7. **The instrument creating a charge or modification thereon shall be preserved for a period of _____ years from the date of satisfaction of charge by the company. *(MTP 1 Mark March 21, MTP 1 Mark Oct'22, SM)***
   (a) 5
   (b) 7
   (c) 8
   (d) 15

Ans: (c)

Sec 83- Power to make entries for Satisfaction & Release in absence of Intimation

8. **Raj Limited purchased a property from ABC Limited which was mortgaged to DEF Bank against a loan of ` 50 lakh. Raj Limited settled the dues to DEF Bank and the same was registered with the sub-registrar. However, neither the ABC Limited nor DEF Bank has filed particulars of satisfaction of charge with the Registrar of Companies. In this particular case what will Raj Limited do to file particulars of satisfaction of charge with the Registrar of Companies? *(MTP 2 Marks Sep '23)***
   (a) Raj Limited needs to approach DEF Bank or ABC Limited to file a memorandum of satisfaction as they were the party to mortgage.
   (b) Raj Limited can directly request the Registrar to file a particulars of satisfaction noting the release of charge.
   (c) Raj Limited needs to approach DEF Bank (mortgagee) to file particulars of satisfaction of charge with the Registrar of Companies.
   (d) Raj Limited needs to approach ABC Limited (mortgagor) to file particulars of satisfaction of charge with the Registrar of Companies.

Ans: (b)

Sec 85- Register of Charges to be kept by the Company

9. **Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees: *(SM, RTP May'23)***
   (a) Any member of the company
   (b) The Creditor of the company
   (c) Persons other than member and creditor of the company
   (d) No person is allowed to inspect the register of charges

Ans: (c)

B

CHAPTER 7: MANAGEMENT & ADMINISTRATION

CONCEPTS OF THIS CHAPTER

- Sec 88- Register of Members
- Sec 90- Register of Significant Beneficial Owner
- Sec 92- Annual Return
- Sec 94- Place of Keeping & Inspection of Registers & Returns
- Sec 96- Annual General Meeting
- Sec 100- Extraordinary General Meeting
- Sec 101- Notice of a Meeting
- Sec 102- Explanatory Statement to be annexed to Notice
- Sec 103- Quorum for Meetings
- Sec 105- Proxies
- Sec 106- Restriction on Voting Rights
- Sec 109- Demand for Poll
- Sec 111- Circulation of Members Resolution
- Sec 118- Minutes
- Sec 119- Inspection of Minutes Book of General Meeting
- Sec 121- Report on Annual General Meeting
- Sec 91- Power to close Register of Members
- Sec 108- Voting through Electronic Means
- Sec 114- Ordinary & Special Resolution

LDR Questions

Q 7
Q 13
Q 20
Q 22
Q 28

QUICK REVIEW OF IMPORTANT CONCEPTS

Types of Registers

Register of Members (Both Equity & Pref.)	Register of debentures holders	Register of Significant Beneficial Owners	Register of any other security holders

Annual Return

Particulars to be contained in the Annual Return as they stood on close of Financial Year

1. Company's 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 members and debenture-holders along with the changes therein since the close of the PFY
4. Its promoters, directors, key managerial personnel along with changes therein since the close of the PFY
5. Meetings of members or a class thereof, Board and its various committees along with attendance details
6. Remuneration of directors and key managerial personnel
7. In case of Private Company - "aggregate amount of remuneration drawn by directors;".
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

Filing of Annual Return

- Copy of annual return shall be filed with the RoC
- When no AGM is held in any year

- from the date on which AGM is held
- within 60 days from the date on which AGM should have been held,
- along with the reasons for not holding the AGM
- within 60 days

Place of keeping of Registers and Annual Returns

Question	Answer
What is the Place of keeping of Registers and Annual Returns?	Registered Office (RO)
Can the Registers and Annual Returns be kept at any other place in India?	Yes

Conditions (when keeping Register & AR at any other place in India) = If more than 1/10th of total no. members entered in register reside there + Approval by SR

Inspection

Persons Who Can Inspect Registers & their Indices & Annual Return (During Business Hours)

1. Without payment of fees	• Member • Debenture holder • Other Security holder • Beneficial Owner
2. With payment of fees	• Any other person

Meetings of Members

Annual General Meeting

Question	Answer
Maximum time duration between two AGMs	15 months + 3 months (for special reasons)
Date of AGM	Any day except National Holiday

Holding of AGM

When Is AGM Held?

First AGM	Subsequent AGM
Within 9 months from date of closing of 1st Financial Year	Within 6 months from date of closing of Financial Year

Registrar may, for special reason extend time by a period not exceeding 3 months

Types of Business Transacted in AGM

Ordinary Business	Special Business
1. Consideration of financial statement and the reports of the Board of Directors and auditors 2. Declaration of any dividend 3. Appointment of Directors in place of those retiring 4. Appointment of, and fixing of the remuneration of the auditors	At AGM, all other businesses except the ones stated as ordinary business are special business

Extraordinary General Meeting

The Board shall call EGM on requisition made by

- Shareholders holding not less than 1/10$_{th}$ of paid up capital (in case of co. having share capital)
- Such Number of members having not less than 1/10$_{th}$ of total voting power of all members (in case of Co. NOT having share capital)

Period of Holding EGM

- If board within 21 days from the date of receipt of Requisition does not
- proceed to call EGM on a day not later than 45 days of receipt of requisition
- meeting may be called & held by requisitionists themselves within 3 months from the date of requisition

Place of Holding EGM

EGM of the company, other than of the wholly owned subsidiary of a Co. incorporated outside India, shall be held at a place within India

Notice of the Meeting

Should be served to

1. Members
2. Every Director
3. Auditor of the company
4. Assignee of insolvent member
5. Legal Representative of the deceased member

Length of Service of Notice - 21 clear days (Excluding: date on which notice is served and date of meeting)

Meeting can be called at shorter notice (if consent, in writing or by electronic mode, is accorded thereto-)	**1.** In case of AGM	• by not less than 95% of the members entitled to vote thereat	
	2. In case of any other GM	• Co. having SHARE CAPITAL	– members having at least 95% such part of the paid-up share capital of the company as gives them a right to vote at the meeting
		• Co. NOT having SHARECAPITAL	– members having 95% of the total voting power exercisable at that meeting

Quorum for Meetings

Public Company

No. Of Members	Quorum
Number of members ≤ 1000	5 members personally present
1000 < Number of members ≤ 5000	15 members personally present
Number of members > 5000	30 members personally present

Private Company

Quorum	2 members personally present

Proxies

- A member eligible to vote may appoint a proxy to attend and vote on their behalf.
- A proxy cannot speak at the meeting and may vote only in a poll.
- One proxy can represent up to 50 members, holding no more than 10% of voting share capital.
- Proxies submitted at least 48 hours before the meeting are valid, even if articles specify a longer period.
- Proxy appointments must be in writing.

Voting

- Voting by show of hands
- Voting by Poll
- Voting by electronic means
- Voting by Postal Ballot

Types of Resolution

Resolutions	
Ordinary Resolution - Passed By Simple Majority of those present., i.e. More Than 50%	Special Resolution - Passed by Three Times Majority, i.e. 75%
More Than **50%**	75 %

Characteristics of Special Resolution

1. Passed by three times majority
2. Resolution shall be set out in the notice
3. Proper notice of 21 days is given for holding the meeting
4. Explanatory Statement should be annexed to the notice for conducting special business

Minutes

- Minutes must be recorded within 30 days of the meeting or resolution by postal ballot
- Minute books should be consecutively numbered.
- Minutes must provide a fair and accurate summary of proceedings
- All appointments made during the meeting must be recorded.
- **Board/Committee Meetings:**
  - Must include names of attending directors.
  - Must note any dissenting or non-concurring directors for each resolution.
- Exclusions (at Chairman's discretion):
  - Defamatory content.
  - Irrelevant or immaterial matters.
  - Content detrimental to the company's interests.
- Properly kept minutes serve as evidence of proceedings.

Question & Answers

Sec 88- Register of Members

Question 1

The paid-up share capital of Golden Shoes Limited is ₹25,00,000 divided into 2,50,000 equity shares of ₹10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office. ***(RTP Nov '23)***

Answer 1

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.

Sec 90- Register of Significant Beneficial Owner

Question 2

There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them. ***(SM)***

Answer 2

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

(a) The Investor Education and Protection Fund Authority [constituted under section 125 (5)];

(b) Its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;

(c) The Central Government, State Government or any local authority;

(d) (i) A reporting company; or
(ii) A body corporate; or
(iii) An entity, controlled wholly or partly by the Central Government and/ or State Government(s);

(e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;

(f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

Sec 92- Annual Return

Question 3

State with reason whether the following statement is correct or incorrect:

(i) A company should file its annual return within six months of the closing of the financial year. ***(MTP 5 Marks April 21)***

Answer 3

(i) 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 4

Explain the following as per the provisions of the Companies Act, 2013:

(i) Abridged Form of Annual Return

(ii) Signing of Annual Return *(MTP 5 Marks Apr'24)*

Answer 4

(i) Abridged Form of Annual Return

In terms of Second Proviso to Section 91(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) One Person Company 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 5

The paid-up share capital of Disha Home Appliances Limited is Rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice. *(SM)*

Answer 5

In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

(i) A listed company; or

(ii) A company having paid-up share capital of Rs. 10 crores or more or turnover of Rs. 50 crores or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Question 6

(a) Enumerate the provisions of the Companies Act, 2013 in respect to the following:

I. Time limit for filing of annual return when Annual General Meeting is held.

II. Time limit for filing of annual return when Annual General Meeting is not held. *(MTP 5 Marks July'24)*

Answer 6

Time limit for Filing of Annual Return

(i) A copy of annual return shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the Annual General Meeting ('AGM') is held.

(ii) Where no annual general meeting is held in any year, it shall be filed with the Registrar of Companies (RoC)

within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

Question 7 LDR

Wills Private Limited convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face ***(PYP 4 Marks Nov'23) ?(RTP Nov '21) (MTP 4 Marks Oct 20, SM , PYP May '18 , 4 Marks)***

Answer 7

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

In the instant case, the idea of the directors that since the Annual General Meeting (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.

Section 92(5) 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 given situation, Wills Private Limited has contravened the provisions of section 92(4). Thus, the company and its every officer in default may face the penalties as specified in section 92(5) of the Act.

Exam insights: Majority of the examinees have referred to the provisions relating to filing of annual return but failed to answer the quantum of penalty in case of default under the provisions of the Companies Act, 2013.

Sec 94- Place of Keeping & Inspection of Registers & Returns

Question 8

Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.

(i) Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.

(ii) Whether Mr. Rich, a director holding only 400 shares of worth ` 4000, has the right to inspect the Register of Members? ***(SM)***

Answer 8

(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, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.
Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

Sec 96- Annual General Meeting

Question 9

State with reason whether the following statement is correct or incorrect: An annual general meeting can be held on a national holiday. ***(MTP 5 Marks April 21)***

Answer 9

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.

Question 10

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.

(iv) There shall be a maximum interval of 15 months between two AGMs. ***(PYP July'21, 4 Marks, MTP Mar'22)***

Answer 10

According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the fir st financial year.

(i) Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is **incorrect**.

(ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held.
Given statement is **incorrect**.

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.
Hence, the given statement is correct.

(iv) According to section 96, the gap between two annual general meetings should not exceed 15 months.
Hence, the given statement is **correct**, that there shall be a maximum interval of 15 months between two AGMs.

Exam insights: Majority of the examinees have answered correctly and explained the requisite provisions w.r.t time period within which Annual General Meeting is to be held under the Companies Act, 2013.

Question 11

Wiwtzu Limited was incorporated on 1.4.2022. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2024. 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 5 Marks March 21 SM, RTP May '20, RTP Nov'19, MTP 4 Marks Mar'24)***

Answer 11

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 Wiwtzu Ltd is for the period 1st April 2022 to 31st March 2023, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2023.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech should have been held on or before 31st December, 2023. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company.

Question 12

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013. (PYP 2 Marks May '22, RTP Jan'25)

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director. ***(PYP 2 Marks May '22)***

Answer 12

(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 a 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)].

EXAM INSIGHTS: (i) With respect to this question which is based on section 96 of the Companies Act, 2013, performance of the examinees was Average. Largely, the examinees have answered this question correctly but not able to give particular provisions with reference to AGM of unlisted companies as per the Companies Act, 2013.
(ii) This question pertains to section 102 of the Companies Act, 2013 in which the performance of the examinees was Poor. On the whole, examinees were not able to correctly explain the effect of non-disclosure of interest of director before passing a resolution in a meeting as per the provisions of the Companies Act, 2013.

Question 13

LDR

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

(i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.

(ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013. *(PYP 4 Marks Nov'23) (MTP 5 Marks July'24, Dec'24)*

Answer 13

Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called 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 ci ty, town or village in which the registered office of the company is situated. However, AGM of an unlisted company may be held at any place in India if consent i s given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, 'National Holiday' means and includes a day declared as National Holiday by the Central Government.

In the instant case,

(i) Sunshine Limited, an unlisted company, can hold its AGM on 28th September, 2023 which happens to be a holiday declared by U.P. Government because this is not a national holiday.

(ii) Sunshine Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 38 members out of 40 has given their consent for conducting the meeting in Lonavala.

EXAM INSIGHTS: Majority of the examinees have provided the correct provision and conclusion under Part-(i) and Part-(ii) of the question relating to holding of an annual general meeting on a public holiday (not a national holiday), and at a place other than the State in which the registered office of the company is situated, as per the provisions of the Companies Act, 2013.

Sec 100- Extraordinary General Meeting

Question 14

Silk Textile Limited is a company which is incorporated in India. It holds two subsidiaries- Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Silk Textile Limited intends to call an Extraordinary General Meeting (EGM) of Silk Textile Limited. During the same time, the Board of Print Limited also wanted to hold an EGM on urgent basis at Dubai. The Chairman with the consent of his Board wanted to hold the EGM of Silk Textile Limited at Dubai so that he can attend both the EGM. But the Company Secretary advised the Chairman that he cannot hold the EGM outside India.

Referring to the provisions of the Companies Act, 2013, advise the Board of Directors on the following:

(i) Whether the Board of Silk Textile Limited can hold its EGM at Dubai?

(ii) Whether the EGM of Print Limited can be held at Dubai? *(PYP 5 Marks Sep'24)*

Answer 14

(i) Can the Board of Silk Textile Limited can hold its EGM at Dubai?

As per 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.

As per the facts given in the question, Silk Textile Limited is a Company incorporated in India and has two subsidiaries incorporated outside India. In Print Limited, it holds 80% of the shares and Stitch Limited is its wholly owned subsidiary. As Silk Textile Limited is incorporated in India the Company can call the EGM anywhere only in India. Hence, it cannot hold its EGM at Dubai (outside India).

(ii) Whether the EGM of Print Limited can be held in Dubai?

Print Limited is incorporated outside India and its 80% shares are held by Silk Limited (incorporated in India).

Hence, it is not a wholly owned subsidiary of Silk Limited. Only a wholly owned subsidiary of a company incorporated outside India, can hold its EGM outside India. In view of the above, Print Limited cannot hold its EGM in Dubai.

Question 15

Creative Textiles Ltd. is an unlisted public company. The company's paid-up share capital is ₹ 50 lakh consisting of 5 lakh shares having face value of ₹ 10 each.

Raman is having 50,000 shares in the company. He is not happy with Somnath, who is a director in the company. He believed that Somnath is acting against the interest of the company. Raman wanted to remove Somnath from the directorship. Removal of a person from the directorship requires the approval of the shareholders in the general meeting. The Annual General Meeting (AGM) of the company has recently been concluded and the next AGM will be held in the next year. Considering the case and referring to the provisions of the Companies Act, 2013, advise:

(i) Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?

(ii) If the company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM? *(PYP 5 Marks Sep'24)*

Answer 15

(i) Can Raman, as an individual shareholder make a requisition for calling an EGM?

According to section 100 of the Companies Act, 2013, in the case of company having a share capital, EGM may be called by the Board of Directors at the requisition of such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting.

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.

In the given question, Raman is holding 1/10th [5,00,000/50,00,000]of the paid up share capital. Hence, he can, even as a single shareholder (holding 1/10th of the paid up share capital), make a requisition to the company for calling the EGM.

(ii) If the company does not call the EGM on the requisition of Raman

If the company does not within 21 days from the date of receipt of a valid requisition from Raman, proceed to call the EGM for the consideration of the matter of removal of Somnath, on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called by Raman himself within a period of 3 months from the date of the requisition.[Section 100(4)].

In this regard, Rule 17 of the Companies (Management and Administration) Rules, 2014 containing the provisions with regard to calling of EGM by requisitionists shall be followed.

Further, section 100 (5) of the Act provides that a meeting under sub- section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Question 16

TST Limited has Equity Share Capital of 10000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013. ***(PYP 4 Marks Nov'22, MTP 5 Marks Nov'24)***

Answer 16

Validity of Resolution passed in the EGM called by the Requisitionists

As per Section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.

The requisition made under sub- section 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that

matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.

Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be re-imbursed to the requisitionists by the company.

In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ₹ 30,000 (each holding ₹ 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

EXAM INSIGHTS: Majority of the examinees have answered correctly the question by referring to the provisions of section 100 and its sub-sections of the Companies Act, 2013 which deals with calling of an EGM by a company on the requests made by the shareholders (requisitionists) and in case, the company fails to call the said AGM, the validity of the resolution passed to remove the Managing Director.

Sec 101- Notice of a Meeting

Question 17

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan. ***(MTP 4 Marks April 21)***

Answer 17

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 18

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013. ***(MTP 4 Marks Oct '21, MTP 4 Marks Jul'24)***

Answer 18

Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of at least 21 clear days', before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.

Generally, general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat.

In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e. less than 95% members). Hence, such meeting can not be said to be validity called.

Question 19

New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2024. The notice was posted to the members on 16th August 2024. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide:

(i) **Whether meeting has been validly called?**

(ii) **If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?**

(iii) **Whether the length of serving of notices be curtailed by Article of Association?** ***(PYP 5 Marks Dec '21, PYP 6 Marks May'19, RTP Nov 20, SM)***

Answer 19

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.

EXAM INSIGHTS: Some of examinees correctly stated the provisions with regard to period of notice for holding of Annual General Meeting as per the Companies Act,2013.

Question 20

LDR

With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ` 30 crores divided into 3 crores shares of ` 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss the possibility of calling a general meeting by giving shorter notice. ***(MTP 6 Marks March '23, SM)***

Answer 20

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.

Sec 102- Explanatory Statement to be annexed to Notice

Question 21

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) **The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.**

(ii) **The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.**

(iii) **Adjournment of extraordinary general meeting called upon the requisition of members on the grounds that the quorum was not present in the meeting.** ***(PYP 6 Marks Dec '21) (MTP 6 Marks Oct '23)***

Answer 21

(i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be annexed to the notice of an

extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requistionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

Hence, it is imperative for joint holders (or by requistionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

(iii) According to section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

Question 22 LDR

Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

1. **Resolution to increase the authorised share capital of the company.**
2. **Appointment and fixation of the remuneration of Mr. Pramod as the statutory 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.
(RTP Sep'24)(SM)

OR

Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? *(MTP 5 Marks Aug'24, Nov'24)*

Answer 22

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, 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. Pramod as the auditor.
The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Sec 103- Quorum for Meetings

Question 23

The Board of Directors of Swati Limited called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company on the basis of the provisions of the Companies Act, 2013. ***(MTP 2 Marks April 21, SM, MTP 5 Marks Aug'24)***

Answer 23

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 24

Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which
14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:

(i) Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?

(ii) Whether Mr. Rahi adjourn the meeting in the current scenario? (Chapter 7: Management & Administration) ***(PYP 5 Marks May'24)***

Answer 24

According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.
As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.
Here, the term 'members personally present' refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

(i) Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present. Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates. Hence, total 15 members were present at the meeting held on 10.12.2023.
Thus, the requisite quorum was present.
Assumption: It is assumed that these 14 persons are inclusive of Mr. Mohan.

(i) In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

Question 25

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached

you to explain them the following as per the provisions of the Companies Act, 2013:

(a) Quorum for the general meeting if the company has 800 members.

(b) Quorum for the general meeting if the company has 6500 members.

(c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50. ***(MTP 5 Marks April 22)***

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 5 Marks Mar'24)***

Answer 25

According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

(1) five members personally present if the number of members as on the date of meeting is not more than one thousand,

(2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,

(3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting. Thus,

(a) If the company has 800 members, quorum shall be 5 members personally present.

(b) If the company has 6500 members, quorum shall be 30 members personally present.

(c) If the company has 5500 members, quorum shall be 30 members personally present.

However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

Question 26

KMN Ltd. scheduled its Annual General Meeting to be held on 11th September, 2024 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.

1. P1, P2 & P3 shareholders

2. P4 representing ABC Ltd.

3. P5 representing VIVI Ltd.

4. P6 & P7 as proxies of the shareholders

(i) Examine with reference to relevant provisions of the Companies Act,2013, whether quorum was present in the meeting.

(ii) What will be your answer if P4 representing ABC Ltd., reached in themeeting after 11:30 A.M.?

(iii) In case lack of Quorum, discuss the provisions as applicable for anadjourned meeting in terms of date, time & place.

(iv) What happens if there is no Quorum in the Adjourned meeting?

(SM) (MTP 5 Marks Aug'24) (MTP 4 Marks Nov 21, PYP Nov'18,4 Marks,)

Answer 26

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

(i) P1, P2 and P3 will be counted as three members.

(1) If a company is a member of another company, it may authorize aperson 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 VIVI Ltd. respectively will be countedas two members.

(2) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for

Annual General Meeting of 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.

(ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time 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.

(iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103 of the Companies Act, 2013. 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.

(iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Question 27

LKJ Ltd. is a company having paid up share capital of ₹ 12.50 crore 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 the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitions under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?
(PYP 5 Marks May'24)

Answer 27

(i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.
If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) 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; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:
Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement 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.
Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.
In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.
Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

Question 28

LDR

The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Karnataka.
(ii) B and C, shareholders of preference shares,
(iii) D, representing Green Limited and Blue Limited
(iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting? ***(MTP 6 Marks Sep'22)(Same concept fewer adjustments MTP 5 Marks Aug'18, RTP May '20, SM)***

Answer 28

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies Green Limited and Blue Limited. E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Sec 105- Proxies

Question 29

Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions as per the provisions of the Companies Act, 2013? ***(SM)***

Answer 29

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, Surya has given a proper notice. Therefore, validity of notice cannot be denied.

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.
In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

Question 30

Happy Limited received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case? ***(MTP 4 Marks March '23 & MTP 6 Marks ,Sep '23, PYP 3 Marks Jan'21)***

Answer 30

Section 105(1) of the Companies Act, 2013, provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
Further, section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. Happy Limited refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Question 31

A General Meeting was scheduled to be held on 15th April, 2024 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 09-04-2024 was deposited by Mr. Y with the company at its registered Office on 11-04-2024. 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 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, M and N were present before the meeting.
According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?
(RTP May 21, MTP April'19,6 Marks, MTP Oct'18, 5 Marks, SM) (PYP 4 Marks ,May '2, MTP 5 Marks Dec'24)

Answer 31

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.
Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.
Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.
However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Sec 106- Restriction on Voting Rights

Question 32

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.*(RTP Nov'22)*

Answer 32

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 33

In the circumstance where Mr. M and Mr. P, joint shareholders of Primal Private Limited holding 500 equity shares, have conflicting views on one special business (related to proposed changes in the Articles of Association) at the extra-ordinary general meeting, Mr. M is endorsing the resolution, and Mr. P is dissenting. Determine the procedure for casting the vote in the event of such a situation, as per the guidelines outlined in the Companies Act, 2013. *(PYP 3 Marks May'24)*

Answer 33

As per the Companies Act, 2013, in case of joint shareholders, they must concur in voting unless the articles provide to the contrary.As per Regulation 52 of Table F, the voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members.Accordingly, in case of Mr. M and Mr. P, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is cast in favour of resolution or against it.

Sec 108- Voting through Electronic Means

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. *(RTP Nov'22)*

Answer 34

Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. 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.
2. 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 be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas 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

Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:

(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?

(ii) AGM is going to be held on 07-09-2020. Then what will be the e- voting period and the time of closing? *(PYP 4 Marks Dec '21)(MTP 4 Marks Oct '23)*

Answer 35

Joint shareholders must concur in voting unless the articles provide to the contrary.

(i) The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.
As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.
Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) Time period for e-voting: The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.
Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e- voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

EXAM INSIGHTS: Majority of the examinees were unable to give relevant provisions related to e-voting as per the Companies Act 2013.

Sec 109- Demand for Poll

Question 36

Examine the validity of the following decision of the Board of Directors with reference to the provisions of the Companies Act, 2013:

In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll. *(MTP 5 Marks Nov'24)*

Answer 36

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-
Before or on the declaration of the result of the voting on any resolutionon 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 himon a demand made in that behalf:-

(i) 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

(i) 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.

Question 37

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total votingpower, 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. *(SM)*

Answer 37

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that: -

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf: -

(a) In the case a company having a share capital, by the members present inperson or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any timeby the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Sec 111- Circulation of Members Resolution

Question 38

Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ` one 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) (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution. *(RTP May '24)*

Answer 38

(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. ` 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.

Sec 118- Minutes

Question 39

Enumerate the provisions of the Companies Act, 2013 in respect to the following:
(i) Matters not to be included in the minute, as per the opinion of the Chairman.
(ii) Maximum time allowed for entering minutes of proceedings. ***(MTP 5 Marks Apr'24)***

Answer 39
(i) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–
- is or could reasonably be regarded as defamatory of any person; or
- is irrelevant or immaterial to the proceedings; or
- is detrimental to the interests of the company.

(ii) 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 40

Miraj Limited held its Annual Sc on September 15, 2024. The meeting was presided over by Mr. Vivit, the Chairman of the Company's Board of Directors. On September 17, 2024, Mr. Vivit, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Vivit and by whom. ***(MTP Oct'18,6 Marks, MTP Mar'22, 5 Marks MTP 5 Marks April '23, PYP 5 Marks Jan 21, SM, MTP 4 Marks Apr'19)***

Answer 40
Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.
By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose. Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr. Vivit, by any director who is authorized by the Board.

Sec 119- Inspection of Minutes Book of General Meeting

Question 41

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?

(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority? *(PYP July 21, 5 Marks)*

Answer 41

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes .

Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.

(ii) As provision does not specify anything on authorizing any one else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him.

Question 42

Mr. Krish, a shareholder of ABC Ltd., has made a request to the company for providing a copy of minutes book of general meeting. His name is already entered in the register of members of the company. Whether the Mr. Krish is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013. (MTP 4 Marks April '23, PYP 3 Marks May 22)

Answer 42

In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company.

As Mr. Krish, in the given case, is the member of ABC Ltd., so shall be entitled to receive a copy of any minutes book of general meeting.

Sec 121- Report on Annual General Meeting

Question 43

Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.

(i) State within how much time it is required to file the said Report.

(ii) In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure. (SM)

Answer 43

(i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto- parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.

(ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:

- **Company:** Rs. one lakh and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. five lakh.
- **Every officer who is in default:** Minimum Rs. twenty-five thousand and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. one lakh.

  Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to Rs. five lakh in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be Rs. one lakh in case of continuing failure.

Question 44

Ganges Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2022. However, 10 days have passed since 31st August, 2022, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Ganges Limited is required to file report on Annual General Meeting? *(MTP 4 Marks April '23, RTP May 21)*

Answer 44

According to section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy o f the report is to be filed with the Registrar within thirty days of the conclusion of AGM along with the prescribed fee.

Since, Ganges Ltd. is a listed company, hence it has to file a copy of report on annual general meeting with the Registrar within 30 days from 31st August, 2022.

Multiple Choice Questions (MCQs

Sec 88- Register of Members

1. **Raman, the original allottee of 2000 equity shares in ABC Limited has transferred the same to Ruchi. The instrument of transfer dated 21st August, 2020, duly stamped and signed by Raman was handed over to Ruchi. Advise Ruchi regarding the latest date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members. *(RTP May '22)***
   (a) 21st August 2020.
   (b) 20th September 2020
   (c) 20th October 2020.
   (d) 19th November 2020

Ans: (c)

Sec 91- Power to close Register of Members

2. **Amber Limited is a manufacturer of glassware. Its paid up share capital is divided into 20,0000 shares of ` 100 each. The company is maintaining its register of members as per the provisions of the Companies Act, 2013. The company wanted to close its register of members for declaring dividend. It may do so by giving minimum days' notice. *(RTP May '22)***
   (a) 7 days
   (b) 10 days
   (c) 15 days
   (d) The register of members cannot be closed.

Ans: (a)

Sec 92- Annual Return

3. **Vichar Vimarsh Limited called its Annual General Meeting on 20th September, 2022 to consider and adopt the financial result as of 31st March, 2022. Due to want of quorum the meeting was adjourned and the adjourned meeting was held on 27th September, 2022. What is the last date of filing of Annual Return with the Registrar of Companies:** ***(RTP Nov '23)***

(a) 60 days from the date of 31st March, 2022
(b) 60 days from the date of 20th September, 2022
(c) 60 days from the date of 27th September, 2022
(d) 60 days from the date of 30th September, 2022

Ans: (c)

Sec 96- Annual General Meeting

4. **First annual general meeting of the company should be held within ..... from the closing of the first financial year.** ***(MTP 1 Mark March '23)***

(a) 6 months
(b) 9 months
(c) 12 months
(d) 18 months

Ans: (b)

Sec 101- Notice of a Meeting

5. **The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?** ***(MTP 1 Mark Oct'22, Mar'19, SM)***

(a) 75% of members entitled
(b) 90% of members entitled
(c) 91% of members entitled
(d) 95% of members entitled

Ans :(d)

Sec 103- Quorum for Meetings

6. **In case of a private company, quorum of Annual General Meeting is: (MTP 1 Mark April '23)**

(a) 1 member personally present
(b) 2 members personally present
(c) 3 members personally present
(d) 5 members personally present

Ans: (b)

Sec 108- Voting through Electronic Means

7. **Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?**

(a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
(b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
(c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
(d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

Ans: (c)

Sec 114- Ordinary & Special Resolution

8. A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than the number of votes, if any, cast against the resolution : *(MTP 1 Mark April 22 & Oct '23, MTP 1 Mark April 21)*

(a) Twice
(b) Three times
(c) Three fourth of
(d) Two thirds of

Ans: (b)

Sec 118- Minutes

9. Gama Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Gama Limited will be kept at: . (MTP 1 Mark Nov 21, Mar'22, Oct'22, RTP May'20)

(a) That place where members of Gama Limited will decide.
(b) That place where all employees of Gama Limited will decide.
(c) Registered office of the company Gama Limited.
(d) That place where senior officials of Gama Limited will decide

Ans: (c)

Sec 121- Report on Annual General Meeting

10. The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar? *(MTP 2 Marks Sep'22, MTP 2 Marks Nov 21)*

(a) 30.06.2022
(b) 10.07.2022
(c) 24.07.2022
(d) 25.07.2022

Ans: (d)

11. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. *(MTP 2 Marks Oct'22, Nov'21) (SM)*

(a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
(b) No, the signing is not in order as only the Chairman is authorised to sign the report
(c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.

Ans :(d)

A

CHAPTER 8: DECLARATION AND PAYMENT OF DIVIDEND TRANSFER TO RESERVES

CONCEPTS OF THIS CHAPTER

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

LDR Questions

Q 4 Q 12
Q 10 Q 21

QUICK REVIEW OF IMPORTANT CONCEPTS

Provisions regarding Declaration of Dividend

Dividend can be declared out of following sources

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

Transfer to Reserve

A company may before the declaration of any dividend in any financial year transfer such percentage of the profits for that year as it may consider appropriate to the reserves of the company.

Depositing amount of Dividend

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

Declaration of Dividend in Case of Inadequate/No Profits

1. **Declaring dividend out of past year profits**

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

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

2. **Amounts not treated as free reserves**

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

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

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

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

Total amount that can be drawn from accumulated profits

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

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

Balance of reserves after such withdrawal

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

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

Prohibition on Declaration of Dividend

In case of any defaulting company	A company fails to comply with provisions of section 73 and 74 of the Companies Act
In case of section 8 companies	With licence under section 8, Its profits are applied only in promoting the objects for which it is formed.

Unpaid Dividend Account (UPA)

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

Investor Education and Protection Fund (IEPF)

1. **Amounts to be credited to the Fund**
   - Amount given by the Central Government- by way of grants after due appropriation made by Parliament
   - Donations given by the Central Government, State Governments, companies or any other institution- for the purposes of the Fund
   - Amount lying in the Unpaid Dividend Account
   - Amount in the General Revenue Account of the Central Government- that had been transferred to that account under section 205A(5) of the Companies Act, 1956 and remaining unpaid or unclaimed on the commencement of the Companies Act, 2013
   - Amount in IEPF- as per section 205C of the Companies Act, 1956
   - Interest or other income- received out of investments made from the Fund
   - Amount received through disgorgement or disposal of Securities- seized from a person who has been convicted for personation for acquisition of securities
   - Application Money- for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment)
   - Matured Deposits
   - Matured Debentures
   - Interest- accrued on the amounts mentioned as Application money, Matured deposits and matured debentures and interest thereon
   - Amount received from Sale Proceeds- of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years
   - Redemption amount of preference shares- remaining unpaid or unclaimed for 7 or more years
   - Other amounts (as applicable)

2. Utilization of the Fund

- Refund of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon
- Promotion of investors' education, awareness and protection
- Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures by, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement
- Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal
- Any other purpose incidental thereto

Punishment for failure to Distribute Dividends

1. Punishment and liability

Declared Dividend	Dividend not paid/Warrant not Posted (within 30 days from the date of declaration)	**1.** Every Director (If knowingly a party to default)	• Imprisonment ≤ 2 years • Fine ₹ 1,000 per day (during which default continues)
		2. Company	• Simple Interest @18% per annum

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

- Not be paid by reason of operation of any law
- Shareholder gave directions regarding payment but same cannot be complied with and communicated to him
- Dispute regarding right to receive it
- Any other reason- the failure to pay/ post dividend/ warrant within the prescribed time, was not due to any default on the part of the company
- It has been lawfully adjusted against any sum due from shareholder to Co.

Question & Answers

Transfer to Reserves

Question 1

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

Answer 1

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

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

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

Question 2

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

Answer 2

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

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

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

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

Question 3

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

Answer 3

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

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

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

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

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

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

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

Question 4 LDR

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

Answer 4

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

Conditions of Rule 3:

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

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

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

Calculations For Each Condition

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

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

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

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

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

10% thereof = ₹ 17.5 Lakh

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

Condition 3:

Here, Free Reserves = ₹ 75 Lakh

Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh

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

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

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

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

Question 5

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

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

Answer 5

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

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

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

CONDITION I

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

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

CONDITION III

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

CONDITION IV

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

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

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

Fulfilment of Conditions mentioned in Rule 3

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

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

Prohibition on Declaration of Dividend

Question 6

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
The Board of Directors of VIVITZU Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. *(SM)*

Answer 6

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

In the given instance, the Board of Directors of VIVITZU 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 VIVITZU Tractors Limited is not valid.

Question 7

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

Answer 7

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

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

Sec 123(3)- Interim Dividend

Question 8

Alex limited is facing loss in business during the financial year 2023-2024. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediate preceding year. Is the act of the Board of Directors valid? ***(SM, PYP 5 Marks Sep'24)***

Answer 8

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

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

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2023-2024. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2023-2024 is not valid.

Question 9

Wivtsu Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of Wivtsu Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. ***(MTP May'20, March'19, Aug'18 6 Marks, PYP May '18 & May '19 , 4***

Marks)(Similar to MTP Apr'21 & Apr'22 5 Marks but different figures)

Answer 9

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

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

In the instant case, Interim dividend by Wivtsu Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Question 10 — LDR

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

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

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

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

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

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend? Justify your answer with reference to provisions of the Companies Act, 2013. ***(PYP 6 Marks, May '23 ,MTP 5 Marks July'24)***

Answer 10

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

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

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

Accordingly, following shall be the answers:

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

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

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

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

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

Sec 124- Unpaid Dividend Account

Question 11

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

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

Answer 11

According to section 124 of the Companies Act, 2013:

(1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account** - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)** - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

(3) **Transfer of Shares to IEPF**- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

(4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

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

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

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

(i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.

(ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

Question 12 LDR

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

Answer 12

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

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

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

(i) Since, declared dividend has not been paid within 30 days from the date ofthe declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

(ii) The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

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

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee one thousand for 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.

Sec 127- Punishment for failure to distribute Dividend

Question 13

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

October, 2024, leading to shareholder complaints.
In light of this scenario, what specific punishments and liabilities couldthe company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013. (MTP 5 Marks Nov'24)

Answer 13

According to section 127 of the Companies Act, 2013, in case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

(i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.

(ii) The company shall be liable to pay simple interest at the rate of18% p.a. during the period for which such default continues.

Question 14

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

Answer 14

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

In the given instance, A Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27th September 2024. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28th September 2024 to 27th October 2024. In this series of 30 days, 27th September 2024 will be excluded and last 30th day, i.e. 27th October 2024 will be included. Accordingly, A Ltd. will be required to pay dividend within 28th September 2024 and 27th October 2024 (both days inclusive).

Question 15

Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrants to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013? *(MTP 2 Marks Mar'24) (PYP 3 Marks Jul'21) (MTP Oct '23)*

Answer 15

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

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

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

Question 16

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

(i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.

(ii) Dividend amount of Rs. 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. *(SM)*

Answer 16

(i) Section 127 of the Companies Act, 2013 provides for punishment for failureto 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 shareholderMrs. Sheela Bhatt about non-compliance of her direction regarding payment ofdividend. 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 17

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

Answer 17

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

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

Question 18

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

Answer 18

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

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

Question 19

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

Answer 19
The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.
As per the facts given in the question, Mr. A is holding equity shares of face value of ` 10 Lakhs and has not paid an amount of ` 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ` 1.20 lakh towards dividend, out of which an amount of ` 1 lakh can be adjusted towards call money due on his shares. ` 20,000 can be paid to him in cash or by cheque or in any electronic mode.
According to the above mentioned provision, company can adjust sum of ` 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

Question 20

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

Answer 20
Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

(1) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(2) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

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

Question 21 LDR

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

Name of the Company	Dividend Declaration Date	Dividend Amount (`)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value ` 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

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

(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?

(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22? *(RTP Nov '23)*

Answer 21

According to Section 127 of the Companies Act, 2013

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

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

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

(i) In case of Suvaas Limited

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

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

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

Dividend Amount (`)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (`)
800	25.08.2022	800×18%×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 ` 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.

Multiple Choice Questions (MCQs)

Transfer to Reserves

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

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

   Ans : (d)

Payment of Dividend

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

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

Ans: (c)

Sec 123(3)- Interim Dividend

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

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

Ans: (a)

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

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

Ans: (b)

Sec 125- Investor Education & Protection Fund

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

   (a) refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.

(b) reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
(c) grants or donation to the Central Government for the purpose of investor's education and training.
(d) distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.

Ans: (c)

Prohibition on Declaration of Dividend

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

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

Ans: (d)

7. Mr. Guru bought 40,000 shares of Real Consultancy Services (RCS) of face value 10 each out of his savings. On such shares, the final call of Rs. 2 is due but unpaid by Mr. Guru. In the meantime, RCS declared dividend at a rate of 15%. Regarding un-paid call money by Mr. Guru, in light of dividend due to him from RCS, state which of following the statements is correct? *(MTP 2 Marks Nov 21)*

(a) Dividend cannot be adjusted against the unpaid call money
(b) The dividend of Rs. 48,000 can be adjusted against unpaid call money
(c) The dividend of Rs. 48,000 can be adjusted against unpaid call money, only if consent is given by Mr. Guru.
(d) The dividend of Rs. 64,000 can be adjusted against unpaid call money, even if consent is not given by Mr. Guru.

Ans: (b)

CHAPTER 9: ACCOUNTS OF COMPANIES

CONCEPTS OF THIS CHAPTER

- Sec 128- Books of Accounts to be kept by Company
- Sec 129- Financial Statement
- Sec 129A- Periodic Financial Results
- Sec 130- Re-opening of Accounts on Court or Tribunal's Order
- Sec 131- Voluntary Revision of Financial Statements or Boards Report
- Sec 134- Approval of Financial Statements, Board Report etc
- Sec 135- Corporate Social Responsibility

Sec 137- Copy of Financial Statements to be filed with Registrar

- Sec 138- Internal Audit

LDR Questions

Q 5
Q 10
Q 16
Q 21
Q 26

QUICK REVIEW OF IMPORTANT CONCEPTS

Financial Statement (FS)

Financial statement shall:

- Give True & Fair view of state of affairs of the Co.
- Comply with Accounting Standards (AS)
- Be in form as provided for different classes of Co.s in Schedule III
- If FS do not comply with AS- reasons for such deviation along with Financial effects need to be Disclosed in financial statements

Laying of Financial statement

1. At each AGM, the Board of Directors (BOD) shall lay the FS for the FY
2. If the Co. has subsidiary or associate or Joint Venture, Consolidated Financial Statement (CFS) is also to be laid before AGM

Maintenance of Books of Accounts

Company shall prepare

1. Books of accounts, Books and papers, Financial statement
2. Kept at its registered office/ any other place in India as the Board of Directors (BOD) may decide
3. Preserved for 8 years
4. Failure in compliance Fine (₹ 50,000 - ₹ 5 lakh)

Periodic Financial Statements

- The Central Government may, require unlisted companies
- To prepare the financial results of the company on periodical basis in prescribed form
- To obtain approval of the BOD and complete audit/ limited review of such periodical financial results
- File a copy with the Registrar within a period of 30 days of completion of the relevant period on payment of fees

Re-opening of Accounts on Court's or Tribunal Orders

Application to be made by

1. Central Govt, Income Tax authorities, SEBI, Statutory regulatory body, Any other person

2. Application made to Court/ Tribunal Court/Tribunal which passes an order to the effect that:
   (i) Earlier accounts were prepared in fraudulent manner, or
   (ii) Affairs of company were mismanaged casting a doubt on reliability of financial statements
3. The Court/ Tribunal will give Notice to applicants
4. The Court/ Tribunal will take Representation into consideration, if any
5. Pass order to revise/ recast the accounts
6. Time limit for reopening: Order of re-opening of books of account shall only relate to 8 financial years immediately preceding the current FY. Except on direction of CG, BOA may be kept for a period longer than 8 years and accordingly my be ordered of re-opening of such period.

Voluntary Revision of Financial Statements or Board's Report

If it appears to the Directors of the Co. that FS or Board's report are not in compliance with sections 129 &134

- Revise Board's report (any 3 P.F.Y)
- Prepare revised FS

Copy of order of revised FS & Report to be filed with Registrar

Board Report

The Board Report must include the web address for the annual return, the number of Board meetings, the Directors' Responsibility Statement, and any fraud reported by auditors. It should contain a declaration by Independent Directors and the company's policy on director appointments and remuneration. The Board must comment on auditors' and CS's remarks and provide details of loans, guarantees, investments, and related party transactions.

It must cover the company's affairs, reserves, dividends, material financial changes, energy conservation, technology absorption, foreign exchange, risk management, and CSR initiatives. Other prescribed matters should be included.

For listed and public companies (₹25+ Cr capital), the report must state how the Board, its Committees, and individual directors were evaluated. It should be based on standalone financials, highlighting the performance of subsidiaries, associates, and JVs. The report must be signed by the Chairperson (if authorized) or at least two directors, including the MD, or by the sole director if applicable.

Director's Responsibility Statement

- Compliance with applicable accounting standards in annual accounts, with explanations for any material departures.
- Consistent application of accounting policies to present a true and fair view of the company's financials.
- Maintenance of adequate records to safeguard assets and prevent fraud.
- Preparation of annual accounts on a going concern basis.
- For listed companies, implementation and effectiveness of internal financial controls (IFC).
- Establishment of proper systems for compliance with all applicable laws.

Corporate Social Responsibility (CSR)

Definition & Exclusions

CSR refers to activities undertaken by companies as per Section 135 and CSR Policy Rules, 2014. CSR **excludes**:

1. Normal business activities.
2. Activities outside India (except training for national/international sports representation).
3. Contributions to political parties.
4. Employee benefits (as per Code on Wages, 2019).
5. Sponsorship-based activities for marketing.
6. Compliance with other statutory obligations.

CSR Committee Requirement

A company must form a CSR Committee if, in the previous financial year, it has:

- Net worth ≥ **₹500 crore**, or
- Turnover ≥ **₹1000 crore**, or

- Net profit ≥ ₹5 crore.
  Composition: At least **3 directors**, including **one independent director** (if required under Sec 149(4)); otherwise, **2 or more directors**.

CSR Contribution Requirement

- **Minimum 2%** of the average net profits of the last **3 financial years**.
- If less than **3 years old**, **2% of available profits**.
- **Excess spending** can be set off against future CSR obligations as per prescribed rules.

Unspent CSR Funds

- **Ongoing projects:** Transfer to an **Unspent CSR Account** within **30 days** & utilize within **3 years**; else, transfer to a **Schedule VII Fund**.
- **Other cases:** Transfer to a **Schedule VII Fund** within **6 months** of FY end.

CSR Committee Not Required If:

CSR obligation is **≤ ₹50 lakh**; in such cases, the Board of Directors handles CSR functions.

Entitlement of Members to Receive Financial Statement

Timeframe & Circulation

- Documents: Audited FS, CFS (if any), Audit Report, etc.
- Recipients: Members, debenture trustees, others.
- Deadline: 21 days before GM.
- **Modes:**
  - Electronic: Demat shareholders with registered email.
  - Physical: Others as per Section 20.

Reduced Notice Period- Allowed if 95% voting power (for non-share capital companies) or 95% paid-up capital (for share capital companies) agrees.

Listed Companies

FS is deemed served if:

- Available for inspection at RO for 21 days.
- Summary statement sent 21 days before GM.

Financial Statements to be filed with Registrar

1.AGM Held	[Copy of FS + CFS + other documents to be presented] Prescribed documents	If prescribed documents are adopted -Filed with Registrar within 30 days of the date of AGM If Prescribed documents not adopted in AGM/ Adjourned AGM • Filed within 30 days of AGM. Registrar takes them as Provisional in their records • Further adopted in Adjourned AGM - filed with Registrar within 30 days of date of such adjourned meeting
2.AGM Not held	Prescribed documents + Statement of Facts & Reasons for not holding AGM	File with ROC Within 30 days of the last date before which the AGM should have been held

- **One Person Company (OPC):** Must file financial statements with required documents within 180 days from the financial year-end.
- **Companies with Foreign Subsidiaries**: Must attach accounts of foreign subsidiaries without a place of business in India when filing financial statements.
- **Foreign Subsidiary (Unaudited):** If not subject to audit under local laws and remains unaudited, the Indian holding company must file:
  - Unaudited financial statements with a declaration.
  - English translation, if the original is in another language.

Internal Audit

Who can be internal auditor?

- 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
- Significant point: Internal auditor may be either an individual or a partnership firm or a body corporate. Internal auditor may or may not be an employee of the company

Companies required to conduct internal audit

Companies eligible for internal audit	1. Listed Co.	• Turnover (₹ 200 Cr or more) • Outstanding loans/ borrowings from banks or PFI exceeding ₹100 crore during P.F.Y • Paid up share capital (₹ 50 cr or more during P.F.Y) • Turnover ₹ 200 cr or more during P.F.Y • Outstanding loan/borrowing from banks or PFI ₹100 cr or more during P.F.Y • Outstanding deposits ₹ 25 cr or more during P.F.Y
	2. Private Co.	
	3. Unlisted public Co.	

Question & Answers

Sec 128- Books of Accounts to be kept by Company

Question 1

State the people responsible for complying with the provisions regarding the maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013. (MTP 5 Marks Dec'24)

Answer 1

People responsible for maintaining books: As per section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Question 2

Sanjana joined a company named as Designers Cloths Ltd. as an Independent Director. In order to know more about the company, she wanted to inspect the books of account and minutes books of the Board Meetings held during the previous three years. The company is keeping the books of account and other records at its Registered Office, which is at Mumbai whereas Sanjana resides in Kolkata. Therefore, through power of attorney, Sanjana authorised her friend Avantika, who is a Chartered Accountant and does practice in Mumbai, to make an inspection of the books of accounts and minutes books of the meetings of the Board. Giving the relevant provisions of the Companies Act, 2013 and its Rules made thereunder, examine, whether Avantika can make inspection on behalf of Sanjana. ***(PYP 5 Marks Sep'24)***

Answer 2

In terms of section 128(3) of the Companies Act, 2013 the books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours andin the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as prescribed in Rule 4 of the Companies (Accounts) Rules, 2014.The financial information shall be sought for by the director himself andnot by or through

his power of attorney holder or agent or representative. As per the facts of the question, the books of accounts and other records including minutes books are maintained at the registered office of Designer's Cloths Ltd. in Mumbai i.e. within India. Sanjana as the directorof the company can inspect the books of accounts and minutes books. But she cannot authorize Avantika to inspect on behalf of her.

Question 3

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:

(ii) Inspection of books of account and other books and papers of the company.

(iii) Period of preservation of books of accounts *(MTP 6 Marks April 22)*

Answer 3

i. Inspection by Directors

As per Section 128(3) of the Companies Act, 2013, any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on authorization by way of the resolution of Board of Directors.

Assistance by officers and Employees

As per Section 128(4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

ii. Period for preservation of books

According to section 128(5) of the Companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the 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 4

BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company 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. *(PYP 5 Marks May'24)*

Answer 4

1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors

have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and

b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection. Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

Question 5 LDR

(i) Ravi Limited maintained its books of accounts under Single Entry System ofAccounting. Is it permitted under the provisions of the Companies Act, 2013?

(ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.

(iii) Whether a Company can keep books of Accounts in electronic mode accessible only outside India?

(MTP 3 Marks March 21, Oct'21, RTP Nov '22) (MTP 4 Marks March 21) (PYP Nov'19,2 Marks, SM, RTP Sep'24)

Answer 5

(i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account shouldgive a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accountingby Ravi Limited is not permitted.

(ii) Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

(iii) A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) The books of account and other relevant books and papers maintained h electronic mode shall remain accessible in India at all times so as to be usable fsubsequent reference. Provided that for the financial year commencing on or after the 1st day of April, 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Sec 129- Financial Statement

Question 6

Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss? *(PYP 3 Marks Dec '21)*

Answer 6

According to section 129(3) of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub- section (2).

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

EXAM INSIGHTS: Majority of the examinees have not answered this question correctly w.r.t preparation of Balance Sheet and Statement of Profit & Loss Accounts by subsidiaries of the holding company as per the provisions of the Companies Act,2013.

Sec 129A- Periodic Financial Results

Question 7

Vishal Ltd., an unlisted company, has been directed by the Central Government to prepare periodical financial results and undergo a limited review of these results. The Board of Directors is objecting, arguing that, as an unlisted entity, they are not required to prepare periodical financial results. Analyze this situation with reference to the relevant provisions of the Companies Act, 2013. (Chapter 9 AS Accounts of Companies) *(MTP 5 Marks July'24) (RTP May 23, PYP 4 Marks May'22) (MTP 5 Marks Apr'24)*

Answer 7

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 Vishal Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that the prescribed class(es) of unlisted companies has to prepare Periodical Financial Results.

Sec 130- Re-opening of Accounts on Court or Tribunal's Order

Question 8

The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. Considering the Companies Act, 2013 elucidate.

(i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.

(ii) the voluntary revision of financial statements or board's report by the directors.

(iii) For how many preceding financial years the board of directors may revise the financial statements?

(PYP 5 Marks May'24)

Answer 8

(i) According to section 130 of the Companies Act, 2013, a company shall not:

a. re-open its books of account and

b. recast its financial statements,

unless an application in this regard is made by:

a. the Central Government,

b. the Income-tax authorities,

c. the Securities and Exchange Board of India (SEBI),

d. any other statutory regulatory body or authority or

e. any person concerned.

& an order is made by a court of competent jurisdiction or tribunal to the effect

a. That the relevant earlier accounts were prepared in a fraudulent manner; or

b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(ii) According to section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or

b. the report of the Board does not comply with the provisions of section 134.

They may prepare revised financial statement or board's report in respect of any of the three preceding financial years. Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

(iii) The board of directors may revise financial statements in respect of any of the three preceding financial years.

Question 9

A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 201516 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT. ***(PYP 3 Marks, May '23)***

Answer 9

Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for reopening of accounts —A company shall re-open its books of account and recast its financial statements, on an application made by the Central

Government, or other competent authorities as prescribed under section130 (1) of the Companies Act, 2013 to the NCLT to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is validly filed to NCLT.

EXAM INSIGHTS: Performance of the examinees was good. Majority of the examinees have referred to the provisions property and answered correctly that the application made to NCLT by the competent authority for reopening of the accounts for 2015-16 shall be valid as per the provisions of the Companies Act, 2013.

Question 10 LDR

The Income Tax Authorities in the current financial year 2023-24 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2012-13 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2012-13. Examine the validity of the application filed by the Income Tax Authorities to NCLT. ***(MTP 6 Marks April '23, MTP 6 Marks Nov 21, MTP 5 Marks Oct 20, Old & New SM, PYP May'19 3 Marks, RTP May 21)***

Answer 10

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 Sun Ltd. for the financial year 2012-13 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2023-2024, is invalid.

Sec 131- Voluntary Revision of Financial Statements or Boards Report

Question 11

Right Trading Limited is a company engaged in trading of automobile spare parts. During the current financial year 2024-25, Mr. J the CFO retired due to bad health. The company appointed Mr. C as the new CFO. On verification of the financial statements and statutory returns of the company, Mr. C advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether M/s Right Trading Limited can do so? ***(PYP 3 Marks Sep'24)***

Answer 11

Voluntary Revision of Financial Statements or Board's Report on the Approval of the Tribunal

As per section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or
b. the report of the Board does not comply with the provisions of section 134

they may prepare revised financial statement or board's report in respect of any of the 3 preceding financial years after obtaining the approval of the Tribunal on an application made by the company within fourteen days of the decision taken by the Board.

A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within 30 days of the date of receipt of the certified copy.

In the given question, Mr. C has advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22. The Board of Directors can do so as the said financial statements are pertaining to not later than three preceding financial years (from 2024- 2025) and by obtaining the approval of the Tribunal within fourteen days of the decision taken by the Board.

Sec 134- Approval of Financial Statements, Board Report etc

Question 12

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a Company Secretary. The financial statements of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013? *(SM)*

Answer 12

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Boardof Directors before they are signed on behalf of the Board by the chairperson ofthe company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one ofthe two signing directors. Since, the company has also employed a full-time Secretary, he should also sign the financial statements.

Question 13

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly mention any four matters to be furnished in the said statement. *(MTP 5 Marks Mar'24) (MTP 6 Marks Oct'22, Aug'18 & Oct '23, PYP 3 Marks Dec '21, PYP 4 Marks May 18)*

Answer 13

Directors' Responsibility Statement: According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(4) the directors had prepared the annual accounts on a going concern basis; and
(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by

the company and that such internal financial controls are adequate and were operating effectively.
Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

EXAM INSIGHTS: Performance of the examinees was Good. Most of them were able to give the necessary points regarding Director Responsibility Statement under the Companies Act,2013.

Question 14

WIWITZULimited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March,2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

(i) **Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report. (RTP May'20, Old & New SM , PYP 3 Marks Jan 21)**

(ii) **What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? *(MTP 6 Marks May 20, RTP May '18)***

Answer 14

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto under section 134(3), shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full- time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Sec 135- Corporate Social Responsibility

Question 15

The balances extracted from the financial statement of Pacific Limited are as below:

Sr. No.	Particulars	Balances as on 31-03-2023 as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2023 (Provisional ₹ in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether Pacific Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half

of the financial year 2023-24. *(MTP 3 Marks Mar'24) PYP 3 Marks July '21 ,MTP Oct '23)*

Answer 15

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 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., 1.4.2022 to 31.3.2023). Hence, Pacific Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2023-24.

Question 16 LDR

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorized share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was ₹ 200 crore divided into 20 crore equity shares of ₹ 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures–

Particulars	Amount (₹) crore
Free reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during the financial year 2022-23 was ₹ 700 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. The Board of Directors of the company consists of the following directors: 'CA. R.C Goel' as the Managing Director 'Rudra Mittal' and 'Pragya' as independent directors 'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013 , and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of the following members:

'CA. R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility.The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

(I) The CSR projects for the benefit of employees of the company and their families only.

(II) A contribution of ₹ 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.

(III) A contribution to the PM CARES Fund during Covid pandemic.

(IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein answer the following questions:

(i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only ₹ 700 crore?

(ii) Advise the company, how many members are eligible to be part of the Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules,2014?

(iii) Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? *(PYP 6 Marks Nov'23)*

Answer 16

(i) According to section 135 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 consisting of three or more directors, out of which at least one director shall be an independent director:

"Net worth" [As per section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss 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.

Particulars	Amount (₹ in crore)
Paid up share capital	200
Free Reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Miscellaneous expenditure not written off	(20)
Net Worth	**510**

As the Net worth of the company is more than ₹ 510 crore (i.e more than ₹ 500 crore), hence the company has attracted the provisions of section 135 of the Companies Act, 2013.

(ii) The CSR Committee is constituted of CA. R. C. Goel (Managing Director), Varun (director), Prabodh (director) and Vineet (Chief Compliance Officer). The composition of the committee is not in compliance with section 135 of the Companies Act, 2013, as no independent director is the part of the committee. Further, Chief Compliance Officer has also been included which is not the requirement of the Act.

(iii)

List of activities	Whether the activities are in accordance with the provisions of the Act
(I) The CSR projects for the benefit of employees of the company and their family only	No
(II) A contribution of ₹ 50,000 to a political party	No
(III) Contribution to PM CARES Fund during Covid pandemic	Yes
(IV) Local activities like promotion of child and women education	Yes

EXAM INSIGHTS: Majority of the examinees have provided the correct provisions and answer to Part-(i) and Part-(ii) of the question regarding the applicability of the provisions of Section 135 of the Companies Act, 2013 and the validity of the CSR Committee. Most of the examinees have correctly classified one or more activities to be the CSR activity or otherwise under Part-(iii) of the question.

Question 17

Help India Limited was incorporated on 1st April 2022. 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)
2022-23	₹ 11.00 crore	₹ 4 crore
2023-24	₹ 10.00 crore	₹ 5 crore

Help India Limited is considering allocating the minimum required amount for Corporate Social Responsibility (CSR) activities to be undertaken during the financial year 2024-25, provided it is mandatory to do so. They seek advice on this matter.

Furthermore, Help India Limited requests assistance in calculating the minimum amount to be allocated, if necessary, considering the relevant provisions outlined in the Companies Act, 2013.

(MTP 5 Marks Apr'24) (RTP May 23, PYP 3 Marks May '22)

Answer 17

According to section 135(1) of the Companies Act, 2013, every company 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.

Also, according to sub-section 9, where the amount to be spent by a company under sub-section 5 does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

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 HelpIndia Limited for the FY 2023- 24 is ₹ 10 crore, hence, HelpIndia Limited is required to constitute a CSR committee during FY 2024- 25 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 (HelpIndia Limited was incorporated on 1st April 2022.)
   Average Net Profit since incorporation: (₹ 11 crore + ₹ 10 crore)/ 2 = ₹ 10.5 crore
   Minimum contribution towards CSR will be: 2% of ` 10.5 crore = ` 0.21 crore or ` 21 lakh.
   In the given question, since the amount to be spent by HelpIndia Limited is not exceeding ` 50 lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

EXAM INSIGHTS: Performance of the examinees was above average. Most of the examinees have answered correctly as per the provisions related to CSR under the Companies Act, 2013. Few examinees were not able to apply correctly net profit before tax for computation of CSR Contribution.

Sec 137- Copy of Financial Statements to be filed with Registrar

Question 18

Explain the following as per the provisions of the Companies Act, 2013:
Who shall sign Board's Report *(MTP 6 Marks March '23, MTP 5 Marks Dec'24)*

Answer 18

Annual General meeting not held [Section 137(2)]: Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

Question 19

A Housing Finance Ltd. is a housing finance company having a paid up share capital of ₹ 11 crores and a turnover of ₹ 145 crores during the financial year 2023-24. 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. *(SM)*

Answer 19

Filing of financial statements in XBRL Mode

As per Rule 1 of the Companies (Filing of Documents and forms in Extensible BusinessReporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under section 137 of the Act with theRegistrar in e-form AOC-4 XBRL as per Annexure-I:

(i) companies listed with stock exchanges in India and their Indian subsidiaries;
(ii) companies having paid up capital of five crore rupees or above;
(iii) companies having turnover of one hundred crore rupees or above;
(iv) all companies which are required to prepare their financial statements inaccordance with Companies (Indian Accounting Standards) Rules, 2015. Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules. Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode.

Question 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 20

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

LDR

The Government of India is holding 51% of the paid-up equity share capital of Viwit Su Ltd. The Audited financial statements of Viwit Su Ltd. for the financial year 2023-24 were placed at its annual general meeting held on 1st August, 2024. However, pending the comments of the Comptroller and Auditor General of India

(CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 29th September, 2024 whereat the accounts were adopted. Thereafter, Viwit Su Ltd. filed its financial statements relevant to the financial year 2023-24 with the Registrar of Companies on 20th October, 2024. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Viwit Su Ltd. has complied with the statutory requirement regarding filing of accounts (unadopted and adopted) with the Registrar? *(MTP 5 Marks Aug'24, RTP May '24 SM, PYP 5 Marks Nov'22, PYP 4 Marks May'19)*

Answer 21

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Viwit Su Ltd. were adopted at the adjourned AGM held on 29th September, 2024 and filing of financial statements with Registrar was done on 20th October, 2024 i.e. within 30 days of the date of adjourned AGM.

Hence, Viwit Su 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.

Sec 138- Internal Audit

Question 22

The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor. *(MTP 4 Marks Sep'22)*

Answer 22

The following class of companies shall be requireds to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;

(2) every unlisted public company having-

(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year; or

(C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

Question 23

Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of ` 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020 -21. The management of the company have approached you to advise them about the appointment of internal auditor. Advise them as per the provisions of the Companies Act, 2013. *(RTP Nov '21)*

Answer 23

According to section 138 re ad along with Rules of the Companies Act, 2013, every private company having—

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ` 45 crore and turnover of ` 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than ` 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020 -21.

Question 24

PQR Private Limited operates as a manufacturing company, generating a turnover of 150 crore and holds an outstanding loan of ₹ 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of ₹ 110 crore, but ₹ 35 crore were repaid during the same year). The company's Board has delegated the authority to CEO to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Secretary of the company Mr. A as an internal auditor? *(PYP 6 Marks Nov'23)*

Answer 24

1. 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.
   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 crore (irrespective of the fact that the outstanding loan during the year is ₹ 75 crore rupees).
   Hence, the advice of CEO is not correct.
2. 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.
   Hence, the Board of Directors may appoint Mr. A, the Secretary of the company as an internal auditor.

EXAM INSIGHTS: Majority of the examinees have referred to the provisions properly and provided the conclusion correctly relating to the appointment of an internal auditor of the company as per the provisions of the Companies Act, 2013.

Question 25

Kesar Limited, an unlisted company furnishes the following data:

(a) Paid-up share capital as on 31st March 2024 ` 49 Crore.

(b) Turnover for the year ended 31st March 2024 ` 100 Crore

(c) Outstanding loan from bank as on 3rd March 2024 is ` 102 crore (` 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 ` 95 crore after repayment.

Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025. *(MTP 5 Marks Apr'24) (PYP July '21, 3 Marks)*

Answer 25

According to the Companies (Accounts) Rules, 2014, every unlisted public company having:

(A) paid up share capital of ` 50 crore rupees or more during the preceding financial year; 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;
shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a corporate body.

In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ` 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.

EXAM INSIGHTS: Most of the examinees correctly answered the provisions of the appointment of internal auditor under the Companies Act.2013.

Question 26 — LDR

PQR Private Limited operates as a manufacturing company, generating a turnover of ` 150 crore and holds an outstanding loan of ` 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of ` 110 crore, but ` 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. Analyze 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) (MTP 6 Marks March '22 & 5 Marks Sep '23) (PYP 3 Marks Jan 21)

Answer 26

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 crore (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.

Multiple Choice Questions (MCQs)

Sec 128- Books of Accounts to be kept by Company

1. **The financial statement in relation to a dormant company may not include:** ***(MTP 1 Mark Sep'22)***
   (a) balance sheet
   (b) cash flow statement
   (c) applicable explanatory note
   (d) profit and loss account

Ans: (b)

2. **Which of the following is not mandatorily required to include cash flow as part of its financial statement.** ***(MTP 2 Marks April '23)***
   (a) Shiv Limited

(b) Shiv Private Limited (not a start- up company)
(c) Shiv (OPC) Private Limited
(d) Shiv Limited, having paid up share capital of 3 crore and turnover of 30 crore

Ans: (c)

Sec 130- Re-opening of Accounts on Court or Tribunal's Order

3. **WIWITZULimited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2024, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of account of the Company. You, as an expert, are called upon by SEBI to advise the earliest financial year to be quoted in application for reopening of books of account may be granted by Tribunal?** ***(MTP 2 Marks April 22 & Oct '23, SM, RTP May'23)***

(a) 2019-2020
(b) 2017-2018
(c) 2014-2015
(d) 2015-2016

Ans: (d)

4. **During the half year ended September 2022, the board of directors (BOD) of Gold Leaf Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2020. Further during the year ended March 2023, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2022. You are required to state the validity of the acts of the Board of directors.** ***(MTP 2 Marks Oct 21 & Sep'23) (SM)***

(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
(b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
(d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2023. The application made for revision in the Board report is however valid in law.

Ans: (b)

Sec 131- Voluntary Revision of Financial Statements or Boards Report

5. **During the half year ended September 2021, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2019. Further during the year ended March 2022, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2021. You are required to state the validity of the acts of the Board of directors. (MTP 2 Marks Oct'22)**

(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
(b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
(d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2022. The application made for revision in the Board report is however valid in law.

Ans:(d)

Sec 135- Corporate Social Responsibility

6. **Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of Companies Act, 2013 this would mean that:**
   (a) This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (b) No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (c) Only half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (d) Only the amount that has been spent on the employees having salary of ₹ 20,000 per month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

Ans: (b)

7. **Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of Companies Act, 2013 this would mean that: - *(MTP 2 Marks Nov 21, SM)***
   (a) This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (b) No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (c) Only Half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year
   (d) Only the amount that has been spent on the employees having salary of Rs. 20,000 per month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

Ans: (b)

8. **As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities: *(MTP 1 Mark March '22) (SM)***
   (a) The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.
   (b) The surplus shall not form part of the business profit of a company
   (c) The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.
   (d) The surplus shall form part of the business profit of a company

Ans: (b)

9. **Pratham Limited has decided to spend ` 40 lakhs on project of CSR. The average net profit of the company is ` 10 crores. But due to some reasons, company was able to spend only ` 30 lakhs. Now what will be the option for the company for the rest ` 10 lakhs. *(MTP 2 Marks March '23)***
   (a) Penal provision will be applicable for unspent amount of ` 10 lakhs.
   (b) No penal provision but explanation is required in Board report for not spending ` 10 lakhs
   (c) No penal provision
   (d) The company is required to transfer the amount to separate fund.

Ans: (c)

10. **The company X plans to cover its skilled as well as semi-skilled workers of its units under medical health insurance plan, for which the company X will bear the expenses. Will this expenditure be permissible under CSR activities as per the provisions of the Companies Act, 2013: *(MTP 2 Marks March '23)***
   (a) only expenditure on skilled workers is allowed
   (b) expenditure on both skilled and semi- skilled workers is allowed
   (c) Resolution to be passed in board meeting before incurring this expenditure and in the board report

it must be mentioned, so that the same will be permissible under CSR activities

(d) Such expenditure is not permissible under eligible CSR activities

Ans: (d)

11. The Corporate Social Responsibility Committee of the board shall consist of: *(MTP 1 Mark March '23)*

(a) Three or more directors out of which at two directors shall be Independent Director

(b) Three or more directors out of which at least one director shall be Independent Director.

(c) Three or more directors and all should be Independent Directors

(d) Three or more directors with condition of not a single director should be Independent Director

Ans :(b)

12. Victory Limited was incorporated in January 2015. How much expenditure Victory Limited shall ensure to spend in pursuance of its Corporate Social Responsibility Policy: *(MTP 1 Mark March '23)*

(a) The company shall ensure to spend in every financial year, at least 2% of the average gross profits of the company made during the 2 immediately preceding financial years.

(b) The company shall ensure to spend in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years.

(c) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 2 immediately preceding financial years.

(d) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 3 immediately preceding financial years.

Ans: (b)

13. Computing the minimum amount the company (Natraj Limited) is required to spend on account of Corporate Social responsibility year 2022-2023, if during the financial years 2019-2020, 2020-2021 and 2021-2022 net profits are ` 30 crore, ` 25 crore and ` 32 crore respectively. *(MTP 2 Marks April '23)*

(a) ` 87 lac

(b) ` 1.14 crore

(c) ` 1.64 crore

(d) ` 58 lac

Ans: (d)

Sec 137- Copy of Financial Statements to be filed with Registrar

14. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2024. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. (MTP 2 Marks Dec'24)

(a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.

(b) No, the signing is not in order as only the Chairman is authorised to sign the report

(c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.

(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.

Ans: (d)

A

CHAPTER 10: AUDIT & AUDITORS

CONCEPTS OF THIS CHAPTER

- Sec 139(1)- Appointment of Auditor
- Sec 139(2)- Term of Auditor
- Sec 139(6)- Appointment of First Auditors
- Sec 139(7)- Appointment of First Auditor of Govt Company
- Sec 139(8)- Casual Vacancy
- Sec 140- Removal, Resignation of Auditor & Giving of Special Notice
- Sec 141(3)- Disqualification of an Auditor
- Sec 142- Remuneration of Auditor
- Sec 144- Auditor not to render certain Services
- Sec 145- Signing of Audit Reports
- Sec 147(5)- Contravention by Audit Firm

LDR Questions

Q 9
Q 15
Q 20
Q 31

QUICK REVIEW OF IMPORTANT CONCEPTS

Appointment of First Auditor

In case of Government Co.*	In any Other Co.
• C & AG shall appoint auditor Within 60 days from date of Registration of Co. • If C & AG does not appoint 1st Auditor in said 60 days • BOD shall appoint auditor, within next 30 days • If BOD does not appoint auditor in these 30 days • BOD shall inform the members of Co. • Now, members of Co. shall appoint 1st auditor Within 60 days at EGM • Tenure- Till the conclusion of 1st AGM.	• BOD shall appoint auditor Within 30 days of Registration of Co. • If BOD does not appoint auditor • BOD shall inform members regarding such failure • Member shall appoint auditor Within 90 days at EGM • Tenure - till the conclusion of 1st AGM.

Appointment of Subsequent Auditor

• Appointed by C & AG In respect of a Financial Year • Within 180 days from Commencement of Financial Year • Tenure- Till the conclusion of AGM.	• Appointed by Co. in AGM • Tenure- Auditor shall hold office from the conclusion of that AGM (in which he is appointed) till the conclusion of 6th AGM.

Casual Vacancy of Auditor

• Casual vacancy to be filled by CAG within 30 days • If CAG does not fill vacancy in 30 days: To be filled by BOD within next 30 days	• If vacancy is caused by Resignation- appointment by Board shall also be approved by company at GM convened within 3 months of recommendation of Board • The Auditor so appointed shall hold office till the conclusion of next AGM.

Re-Appointment of Retiring Auditor

A retiring auditor may be reappointed at an AGM if—

- He is not disqualified for re-appointment;
- He has not given Co. notice in writing of his unwillingness to be re-appointed; and

- A SR has not been passed at that meeting, appointing some other auditor or providing expressly that he shall not be re-appointed

Term of Auditor

Appointment or Re-appointment as Auditor (Listed Companies or prescribed class of companies)	Individual	One Term of 5 consecutive years	Cooling Period: On completion of term (one term of 5 consecutive years)- 5 years from the completion of his term
	Audit Firm	Two terms of five consecutive years	Cooling Period: On completion of term (two term of 5 consecutive years)- 5 years from the completion of his term

Listed Companies & Prescribed Class of Companies

(a) unlisted public companies having paid up share capital of rupees 10 crore or more
(b) Pvt Ltd. companies having paid up share capital of rupees fifty crore or more
(c) companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more

Disqualification of Auditors

- Body Corporate (Except LLP)
- Officer or employee of Co.
- a person who is a partner, or who is in the employment, of an officer or employee of the company
  - They hold any security or interest in the company or its group entities (relatives may hold up to ₹1 lakh).
  - They are indebted to the company/group for more than ₹5 lakh.
  - They have provided a guarantee or security for third-party indebtedness to the company/group exceeding ₹1 lakh.
- A person or firm with a business relationship with the company, its subsidiary, holding, or associate company is ineligible.
  Exceptions:
  - Professional services allowed under the Companies Act and Chartered Accountants Act, 1949.
  - Arm's length transactions in the ordinary course of business (e.g., sale of products/services in telecom, airlines, hospitals, hotels, etc.).
- a person whose relative is a director or is in the employment of the company as a director or key managerial personnel
- A person in full-time employment elsewhere or a person/partner of a firm cannot be appointed as an auditor if, at the time of appointment or reappointment, they are already the auditor of more than 20 companies (excluding OPCs, dormant companies, small companies, and private companies with paid-up capital less than ₹100 crore).
- Person convicted by a court of an offence involving fraud and a 10 years has not elapsed from date of conviction
- Renders any service referred to in section 144 to the company /holding company/subsidiary company

Steps for Removal of Auditor

- A Special Notice is received for Removal of auditor
- A board meeting will be held (To decide about removal and then authorizing the filing of application to CG)
- Application to CG (To be made in ADT-2), within 30 days of Board meeting
- Approval of CG received
- After approval from CG, Special Notice to be sent for GM
- Auditor shall be given a reasonable opportunity of being heard
- Auditor removal can be done only through Special Resolution
- Auditor will be removed

Resignation by Auditor

Resignation by auditor of Government company or company controlled by CG or SG	Form ADT-3	within 30 days of resignation	with Company, Registrar & CAG, indicating the reasons for his resignation
Resignation by auditor of Other Co.	Form ADT-3	within 30 days of resignation	with Company and Registrar

Punishment under Section 147

1. In case of company and officer of company

Contravention of sec 139 to 146	In case of Co.	Fine: ₹ 25,000 to ₹ 5 lakh
	In case of Officer in default	Fine: ₹ 10,000 to ₹ 1 lakh

2. In case of auditor

Contravention by Auditor of Sec 139, 144 or 145	If default is Not Wilful	Fine: ₹ 25,000 to ₹ 5 lakh, or four times the remuneration of the auditor, whichever is less
	If default is Wilful (with the intention to deceive the company or its shareholders or creditors or tax authorities)	Fine: ₹ 50,000 to ₹ 25 lakh or 8 times the remuneration of the auditor, whichever is less + Imprisonment: May extend to 1 year
If the Auditor has been convicted, he shall also be liable to:	Refund the remuneration	
	Pay for the damages to the Co., statutory bodies, authorities or to members or creditors of the company for loss arising out of incorrect statements in Audit Report	

3. In case of audit of a co. conducted by an audit firm
   - Where the partner/s of the audit firm has / have acted in a - fraudulent manner / abetted / colluded in any fraud by, or in relation to or by - the company / its directors / officers,
   - the liability (whether civil /criminal) under this Act or in any other law in force, shall be of the partner / partners concerned of the audit firm jointly and severally
   - in case of criminal liability of an audit firm (in respect of liability other than fine)- the concerned partner/s, who acted in a fraudulent manner/ abetted / as the case may be colluded in any fraud-shall only be liable

Question & Answers

Sec 139(1)- Appointment of Auditor

Question 1

One-fourth of the subscribed capital of AMC Limited was held by the Governmentof Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2024 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act. *(SM)*

Answer 1

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. Under section 139 of the Companies Act, 2013, the appointment of an auditor bya company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the

auditor vestswith the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors. Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Sec 139(2)- Term of Auditor

Question 2

CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of Liberal Ltd. (a listed company) for past ten years as on 31st March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31st March, 2027) for SM & Company? *(MTP 5 Marks Aug'24)*

Answer 2

Section 139(2) of the Companies Act, 2013, provides that no listed company or a company belonging to prescribed classes of companies, shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

The proviso to section 139(2) provides that an audit firm which has completed its terms, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Further, it provides 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.

In the given question, SM & Company has also completed its two terms of 5 years (i.e. 10 years in total).Thus, ML & Co. cannot be appointed as statutory auditor of Liberal Ltd. during cooling period because CA. Mudit was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2032. After 5 years, Liberal Ltd. is free to appoint ML & Co. as its statutory auditors.

Question 3

M/s WIVITSU is conducting the audit of Right Trading Limited for the past 9 years. Now due to the requirement of rotation of auditors, M/s WIVITSU is going to retire at the upcoming Annual General Meeting and in its place M/s XYZ will be appointed as the Auditor of Right Trading Limited. One of the partner Mr. F, who was in charge of the certification of the financial statements of the company retired from the firm of M/s WIVITSU and joined the firm of M/s XYZ. Examine, considering the provisions of the Companies Act, 2013 about the validity of the appointment of M/s XYZ. *(PYP 2 Marks Sep'24)*

Answer 3

As per section 139(2) of the Companies Act, 2013, listed companies and such class of companies as prescribed, shall not appoint or re- appoint an audit firm as auditor for more than two terms of five consecutive years.

Further, on the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a company immediately preceding the financial year.

It means, if a partner (common partner), who is in charge of an auditfirm 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 as succeeding auditor of same company after two terms of five consecutive years. i.e. cooling period. [Rule 6(3) of Companies (Audit and Auditors) Rules, 2014]

The audit of Right Trading Limited was conducted by M/s WIVITSUandafter expiry of two consecutive terms, it is proposed to appoint M/s XYZ. Mr. F is the common partner in M/s WIVITSUand M/s XYZ, hence, the appointment of M/s XYZ is not valid.Assumption: In this question, nothing is specified about the nature ofthe company. Hence, drawing a positive assumption that RightTrading Limited is a company on which the provisions related to rotation of auditors [as specified under section 139(2)], are applicable.

Question 4

Mr. Ramchandra is a partner and in- charge (and certifies financial statements) of A & Associates. The firm is appointed as an auditor firm of Badri Limited (listed company). Mr. Ramchandra retires from A & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/24. In the general meeting of Badri Limited held on 15/06/24, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Badri Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company? ***(MTP 5 Marks Dec'24, MTP 5 Marks Oct 21, RTP Nov '22)***

Answer 4

According to section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

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. Ramchandra has retired from A & Associates and joined Gupta & Gupta Firm. Mr. Ramchandra was a partner, in- charge Associates (and certifies the financial statement of the company) in A & Associates. He retires from A & 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 Badri Limited (listed company) for a period of 5 years.

Sec 139(6)- Appointment of First Auditors

Question 5

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor. ***(MTP 3 Marks March 21)***

Answer 5

According to section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company and the auditor so appointed shall hold office until the conclusion of the first AGM.

If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and such auditor shall hold office till the conclusion of the first AGM.

Question 6

State the procedure for the following, explaining the relevant provisions of theCompanies Act, 2013: Appointment of First Auditor, when the Board of directors did not appoint theFirst Auditor within one month from the date of registration of the company. ***(MTP 5 Marks Oct'22, PYP July '21 , 5 Marks, SM)***

Answer 6

Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors failsto appoint such auditor, it shall inform the members of the company, who shallwithin ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.
From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

a. Inform the members of the Company;
b. Immediately take steps to convene an extra ordinary general meeting notlater than 90 days;
c. Members shall at that extra ordinary meeting appoint the first auditors ofthe company;
d. The first auditors so appointed shall hold office up to the conclusion ofthe first AGM of the company.

Question 7

Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing-chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard. ***(PYP 2 Marks Dec '21)***

Answer 7

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".
In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in violation of section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.
In view of the above, the Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself.

Question 8

Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:

(i) First auditor

(ii) Subsequent auditor ***(MTP 6 Marks, Apr'21)***

Answer 8

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.
In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply. The auditor shall be appointed as follows:

(i) According to section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(ii) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor: Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Question 9 LDR

The Board of Directors of Mines Limited, a listed company appointed Mr. Guru, Chartered Accountant as its first auditor within 30 days of the date of 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. Guru was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) **Appointment of Mr. Guru by the Board of Directors.**

(ii) **Re-appointment of Mr. Guru at the first AGM in the above situation.** ***(MTP 5 Marks March '22, MTP 6 Marks March '23, RTP Nov '21, PYP 6 Marks Nov '20)***

Answer 9

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. Guru (as first auditor) by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

Sec 139(7)- Appointment of First Auditor of Govt Company

Question 10

Explain how the auditor will be appointed in the following cases: A Government company within the meaning of section 394 of the CompaniesAct, 2013. ***(SM)***

Answer 10

The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditorshall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

Question 11

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding the appointment of its first auditor. ***(PYP July '21, 3 Marks)***

Answer 11

(i) First auditor

(1) According to section 139(7) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State

Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

XYZ Ltd. can follow the above provisions for appointment of its first auditor.

Question 12

Shiv Limited is incorporated on 3.10.2020. The company is having a paid- up share capital of Rs. 5 crores. Following are key shareholders of the company:

Name of the Party holding shares	Amount (in Rs.)
Central Government	1.50
Punjab Government	1.23
Others	2.27

The first auditor of the company has been appointed by the Board of Directors on 31.10.2020. The members of the company have objected to such an appointment by the Board of Directors. According to the members its only the members who can appoint the first auditor. Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct. ***(MTP 6 Marks April 21)***

Answer 12

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.

Sec 139(8)- Casual Vacancy

Question 13

The Auditor of the company (other than government company) has resigned on 31st December, 2020, while the Financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.*(MTP 3 Marks Oct 21, Oct'19, MTP 5 Marks Nov'24)*

Answer 13

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under section 139 (8)(i) of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 14

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following: Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company? *(PYP 5 Marks Dec '21)*

Answer 14

(ii) Casual vacancy

According to section 139(8) of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Question 15 LDR

Stallworth Ltd., a listed company having a paid up share capital of ₹ 11 crore with a turnover of ₹ 100 crore 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? *(PYP 5 Marks May'24)*

Answer 15

According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors. Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Sec 140- Removal, Resignation of Auditor & Giving of Special Notice

Question 16

(i) Removal of Statutory Auditor (appointed in last Annual General Meeting)before the expiry of his term.

(MTP 5 Marks Oct'22, PYP July '21, 5 Marks, SM)

Answer 16

(ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed 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 withRule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall bemade in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014. The application shall be made to the Central Government within thirty days of the resolution passed by the Board. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Question 17

Abhiyogic Ltd. having 1,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ` 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co.,

as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term. Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.

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

(a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?

(b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company? *(RTP May '22)*

Answer 17

(a) As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:-

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ` 1 crore, and it received a notice from its 60 members holding paid-up capital of ` 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ` 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

(b) As per Section 140(4) of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his

right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Question 18

ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013. ***(MTP 5 Marks Mar'24) (MTP 4 Marks Oct '23)***

Answer 18

Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25-5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Question 19

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013. ***(MTP 5 Marks Oct'22, PYP July '21 , 5 Marks)***

Answer 19

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 ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Question 20 LDR

L Ltd. having 2,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ` 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.
When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.
In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co? ***(PYP 4 Marks, May '23)***

Answer 20

i) Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.
As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:
Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.
Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.
The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
Here, L Ltd. is having 2,000 members with paid-up capital of `1 crore, and it received a notice from its 50 members holding paid-up capital of ` 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.
As the members who gave the notice hold more than ` 5 lakh in the paid-up capital of the company, they were eligible to give such notice.
Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.
Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.
[Note: In the given question 50 members are holding paid-up share capital of ` 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is ` 1 crore.
This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —
(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.

EXAM INSIGHTS: Most of the examinees answered correctly both the parts of the question by applying the provisions of Section 455 of the Companies Act, 2013 read with Rule 3 of the Companies (Miscellaneous) Rules, 2014. However, some of the examinees answered the question in a generalized manner which has impacted on the marks.

Sec 141(3)- Disqualification of an Auditor

Question 21

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021 -
22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:
(1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.
(2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh. ***(MTP 5 Marks Sep'22)***

Answer 21

1. As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.
   Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.
2. As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Question 22

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company.
Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013. ***(PYP 3 Marks Jan 21)***

Answer 22

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 23

Mr. Raman, a Chartered Accountant, was appointed as an auditor of Viv Tsu Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a

Finance executive of Viv Tsu Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor. ***(PYP 2 Marks Dec '21)***

Answer 23

Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of section 141, he shall be deemed to have vacated his office as an auditor.

In the present case, Mr. Raman, an auditor of Viv Tsu Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Viv Tsu Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Viv Tsu Distributors Ltd.

Question 24

Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of `1,20,000 (face value ` 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd. ***(MTP 3 Marks Oct 21, PYP Nov '18 ,2 Marks)***

Answer 24

As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ` 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].

In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ` 95,000 in the said company, which is within the prescribed limit.

Question 25

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for rupees 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita spouse of Mr. Kumar, a Chartered Accountant, is the store- keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company. ***(MTP 5 Marks Nov 21, PYP Nov '19 , 6 Marks, SM)***

Answer 25

(i) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lacs.

(ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Question 26

Advise as per the provisions of the Companies Act, 2013, with regard to appointment of auditor:

(i) Mr. Shepra is a practicing Chartered Accountant. He holds shares in X Limited. The nominal value of these shares is ` 50,000. Whether X Limited can appoint Mr. Shepra as auditor?

(ii) **Mr. Showik, a practicing Chartered Accountant has business relationship with Primus Hotels Limited. The hotel used to provide services to Mr. Showik frequently, on the same price as charged from other customers. Whether Primus Hotels Limited can appoint Mr. Showik as its auditor?** ***(MTP 6 Marks March '22)***

Answer 26

I. As per section 141 (3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
In this case Mr. Sherpa, a practicing Chartered Accountant holding shares in X Limited cannot be appointed as auditor of X Limited.

II. Section 141(3) of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company, shall not be eligible for appointment as an auditor of a company.
The term business relationship shall be construed as any transaction entered into for a commercial purpose except –
- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;
- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the given question, since the transaction is at arm's length price so Mr. Showik can be appointed as an auditor of Primus Hotels Limited.

Question 27

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd :

(i) **Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of ` 2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.**

(ii) **Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of ` 99,000**

(iii) **Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.** ***(MTP 6 Marks April 22)***

Answer 27

(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.)
As per section 141(3)(d)(ii) a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5 Lacs.
Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only ` 99,000.

(ii) 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 28

Examine the following situations in the light of the Companies Act, 2013:

(i) Mr. Prem, a Chartered Accountant, has been appointed as an auditor of A Limited in the Annual General Meeting of the company held in September 2023, in which he accepted the assignment. Subsequently, in January 2024 he joined as a partner in the consultancy firm where Mr. Ajay is also a partner. Mr. Ajay is also working as a Finance Executive of A Limited.

(ii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹ 1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role? *(MTP 5 Marks Nov'24)*

Answer 28

(i) 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. Section 141(4) provides where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in section 141(3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

In the present case, Mr. Prem, an auditor of A Limited, joined as partner with consultancy firm where Mr. Ajay has become a partner and Mr. Ajay is also the Finance executive of A Limited. Hence, Mr. Prem has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of A Limited.

(ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Tom is holding security of ₹ 1,00,000 in the B Limited, therefore, he is not eligible for appointment as an auditor of B Limited.

Question 29

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 ₹4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.**
2. **Mr. A's relative, Ms. C, has an outstanding debt of ₹2 Lacs with WIVITSULtd., 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 Sep'24)*

Answer 29

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 ₹ 5 Lacs.

In this scenario:

1. Mr. A's partner, Mr. B, has a debt of ₹ 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of ₹ 2 Lacs from WIVITSULtd., an associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is ₹ 6 Lacs (₹ 4 Lacs + ₹ 2 Lacs), which exceeds the ₹ 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 30

Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

(i) 'Ms. Rekha', a practicing Chartered Accountant, and 'Mr. Alok', who is the spouse of 'Ms. Rekha', holds

securities of 'Charcoal Ltd.' valued at a face value amount of ₹ 85,000 (with a market value of ₹ 75,000). The directors of Charcoal Ltd. are considering the appointment of 'Ms. Rekha' as an auditor for the company.

(ii) 'Mr. Puri', a practicing Chartered Accountant, has a debt of ₹ 7 lakh owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of 'Mr. Puri' as an auditor for the company.

(iii) 'Ms. Komal', the real sister of 'Mr. Vivit', a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of 'Mr. Vivit' as an auditor for the company. *(PYP 6 Marks Nov'23, SM) (MTP 5 Marks July'24)*

Answer 30

(i) As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ` 1,00,000. In the present case, Mr. Alok (spouse of Ms. Rekha, the auditor), is having securities of Charcoal Limited having face value of ` 85,000, which is within the limit as per requirement of under the proviso to section 141(3)(d)(i). Therefore, Ms. Rekha will be eligible to be appointed as an auditor of Charcoal Limited.

(ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 lakh. In the instant case, Mr. Puri will be disqualified to be appointed as an auditor of RAI Limited as he is indebted to RAI Limited for ` 7 lakh.

(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 Ms. Komal, real sister of Mr. Vivit (Chartered Accountant) is the CFO (a KMP) of Biotech Limited, hence Mr. Vivit will be disqualified to be appointed as an auditor in the said company.

Question 31 — LDR

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.)** ***(PYP 6 Marks Nov '22)***

Answer 31

(i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.
Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹ 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lakh. such person cannot be appointed as auditor of the company.
In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹ 1 Lakh i.e. of an amount worth ₹ 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.

(iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted

to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh, shall not be appointed as an auditor. Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹ 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹ 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

Sec 142- Remuneration of Auditor

Question 32

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 32

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 33

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013. ***(PYP 5 Marks May'22)***

Answer 33

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the Question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine

Question 34

HD Software Limited is engaged in the business of providing software services. The company appointed its statutory auditors (not the first auditor). The Board of directors of the company informed the auditor that the fees shall be fixed by the Board of directors only.But the auditor objected to the same. Now the directors have approached you to advise them whether they can solely fix the remuneration of the auditor. ***(RTP Jan'25)***

Answer 34

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. However,the Board may fix remuneration of the first

auditor appointed by it.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 ofthe appointed statutory 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 as they are not the first auditor.
Hence, the contention of the Board of directors that they can fix theremuneration of the auditor on their own is not valid.

Sec 144- Auditor not to render certain Services

Question 35

The Board of Directors of Avni 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 a Statutory Auditor of Avni Ltd., taking into account the consequences, if any, of accepting this proposal?
(MTP 5 Marks Aug'24) (MTP 6 Marks April '23, RTP May 21, SM, PYP May '19 , 3 Marks)

Answer 35
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 Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.
In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Sec 145- Signing of Audit Reports

Question 36

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? (Chapter 10: Audit and Auditors)(3 Marks)
(PYP 3 Marks May'24)

Answer 36
As per section 145 of the Companies Act, 2013,
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 section 141(2) (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).
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.

Sec 147(5)- Contravention by Audit Firm

Question 37

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.*(PYP 5 Marks May'22)*

Answer 37

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine.

With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.

Multiple Choice Questions (MCQs)

Sec 139(6)- Appointment of First Auditors

1. **The word 'firm' for the purpose of Section 139 shall include-** ***(MTP 1 Mark Nov 21)***
   (a) An individual auditor
   (b) LLP
   (c) An individual auditor and LLP both
   (d) A company

Ans: (b)

2. **Every 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:** ***(MTP 1 Mark Sep'22, SM)***
   (a) Second annual general meeting
   (b) Fourth annual general meeting
   (c) Sixth annual general meeting
   (d) Eight annual general meeting

Ans: (c)

Sec 139(2)- Term of Auditor

3. **Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:** ***(SM, MTP 1 Mark, Mar'22 & Mar'23)***
   (a) One year only
   (b) One term of 3 consecutive years only
   (c) One term of 4 consecutive years only
   (d) Two terms of 5 consecutive years

Ans: (d)

Sec 139(7)- Appointment of First Auditor of Govt Company

4. **The auditor of a Government Company shall be appointed or re-appointed by:** ***(MTP 1 Mark Oct '23)***
   (a) The Central Government
   (b) Comptroller and Auditor General of India (CAG)
   (c) Central Government on the advice of Comptroller and Auditor General of India
   (d) Chairman of the Board of Directors

Ans: (b)

5. **XYZ Limited is a company with 51% of its equity shares held by the State Government of Maharashtra and 49% by private investors. The Board of XYZ Limited seeks to appoint an auditor for the upcoming financial year. As per the Companies Act, 2013, which of the following statements is correct regarding the appointment of the auditor? *(RTP Jan'25)***

(a) The Board of XYZ Limited has the authority to appoint the auditor through a board resolution.
(b) The Comptroller and Auditor General (CAG) of India will appoint the auditor for XYZ Limited.
(c) The shareholders of XYZ Limited will appoint the auditor in the annual general meeting.
(d) The State Government of Maharashtra, holding the majority stake, will appoint the auditor.

Ans: (b)

Sec 140- Removal, Resignation of Auditor & Giving of Special Notice

6. **For appointing an auditor other than the retiring auditor, *(MTP Oct'21, May'20, April'19, 1 Mark, SM)***

(a) Special notice is required.
(b) Ordinary notice is required.
(c) Neither ordinary nor special notice is required
(d) Approval of Central Government is required.

Ans: (a)

Sec 141(3)- Disqualification of an Auditor

7. **Mr. Amit, a Chartered Accountant, is the appointed auditor of Grey Limited. Mrs. Anita, Mr. Amit's wife, recently acquired equity shares in Grey Limited with a face value of ₹ 1 lakh. Which of the following statements is correct regarding M/s Amit & Co. eligibility to continue as the auditor of Grey Limited?*(RTP Jan'25)***

(a) M/s Amit & Co. must vacate the position of auditor immediately due to the disqualification arising from his wife's holding of shares.
(b) M/s Amit & Co. can continue as the auditor only if Mrs. Anita divests her shares within 30 days.
(c) M/s Amit & Co. can continue as the auditor since the shares heldby Mr. Amit's wife do not exceed the limit specified under the Companies (Audit and Auditors) Rules, 2014.
(d) M/s Amit & Co. cannot continue as the auditor, as any acquisitionof shares by a relative leads to automatic disqualification.

Ans: (c)

Sec 144- Auditor not to render certain Services

8. **Which of the following is a prohibited services to be rendered by the auditor of the Company *(MTP Oct'21, April'19, & March '23, 1 Mark)***

(a) design and implementation of any financial information system
(b) making report to the members of the company on the accounts examined by him
(c) compliance with the auditing standards
(d) Reporting fraud against the company by officers or employees to the Central Government.

Ans: (a)

CHAPTER 11: COMPANIES INCORPORATED OUTSIDE INDIA

CONCEPTS OF THIS CHAPTER

- Sec 2(42)- Foreign Company
- Sec 379- Application of Act to Foreign Companies
- Sec 380- Documents to be delivered to Registrar by Foreign Companies
- Sec 381- Accounts of Foreign Company
- Sec 382- Display of Name etc. of Foreign Company
- Sec 387- Dating of Prospectus & Particulars to be contained therein
- Sec 389- Registration of Prospectus
- Sec 392- Punishment for Contravention
- Sec 393- Co's failure to comply with provisions to not affect validity of contracts

LDR Questions

Q 4
Q 10
Q 14
Q 17

QUICK REVIEW OF IMPORTANT CONCEPTS

Foreign Company

Any foreign company or body corporate with a place of business in India, either directly or through an agent, conducting business activities in India, whether physically or electronically.

Electronic mode includes:

- Business-to-business (B2B) and business-to-consumer (B2C) transactions, data interchange, and digital supplies.
- Offering, accepting, or inviting deposits/subscriptions in securities in India or from Indian citizens.
- Financial settlements, web-based marketing, advisory services, database products, supply chain management.
- Online services like telemarketing, telemedicine, telecommuting, education, and research.
- All related data communication services, conducted via email, mobile devices, social media, cloud computing, document management, or voice/data transmission.

Applicability of provisions of Chapter XXII to foreign companies

Limit: Not less than 50% of the paid-up share capital of a foreign company incorporated outside India

Type of Shares: Equity or • Preference or • Partly equity and partly preference

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

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

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

- certified copy of the charter, statutes or memorandum and articles (in English language)
- full address of the registered office
- list of the directors and secretary of the company
- name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company any notices or other documents required to be served on the company
- full address of principal place of business in India

- particulars of opening and closing of a place of business in India on earlier occasion/s
- declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad

Other Points

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

Display of name, etc., of foreign company

1. **NAME of foreign company and the country in which it is incorporated**
   - Conspicuously exhibit on outside of every office or place where it carries on business in India in letters easily legible in English characters
   - And one of the languages in general use in the locality in which the office or place is situate

2. **Name of Co. in Business Letters, bill-heads and letter paper, and in all notices, and other official publications**
   - Name of the company and of the country in which the company is incorporated
   - It is to be stated in legible English characters

3. **When liability of the members of the company is limited**
   - cause notice of that fact: - stated in point 1. and 2.

Service on foreign company

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

Registration of prospectus

1. **Signing and delivery of prospectus**

   No person shall issue, circulate, or distribute a prospectus in India offering securities of a company incorporated or to be incorporated outside India unless:
   - A certified copy of the prospectus, approved by the chairperson and two directors, is delivered to the Registrar for registration.
   - The prospectus states that it has been delivered for registration.
   - The required consent under section 388 and any prescribed documents are attached.

2. **Documents to be annexed to the prospectus**
   - Consent for the issue of the prospectus from any expert.
   - Copy of contracts for appointing the managing director/manager or a memorandum if not in writing.
   - Copy of any material contracts (not in the ordinary course of business) entered within the last two years.
   - Copy of the underwriting agreement.
   - Copy of the power of attorney if the prospectus is signed by a duly authorized agent of the directors.

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

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

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

The Co. shall not be entitled to

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

Question & Answers

Sec 2(42)- Foreign Company

Question 1

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

(i) Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.

(ii) Xen Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. *(SM)*

Answer 1

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

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

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

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

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

(c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(f) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

(g) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question 2

(i) In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server located outside India.

(j) (ii) In continuance of (i) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. ***(RTP Sep'24)***

Answer 2

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

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

In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in online business of telemarketing services in India having its main server outside India, Gram Pte will be treated as foreign company.

(ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Here, Prism Ltd. is advised to follow the above procedure accordingly.

Question 3

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

Answer 3

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

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

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

Question 4

LDR

(Includes concepts of Sec 380 Documents to be delivered to Registrar by Foreign Companies)

I. **Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013.** ***(3 Marks April '23)***

II. **Arica is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:**

(1) **Whether branch office will be considered as a company incorporated outside India.**

(2) **If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.** ***(MTP 5 Marks April '23, SM)***

Answer 4

(i) Yes, as per 2(42) of the Companies Act, 2013, any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner shall be considered as a foreign company.

Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

(ii) (1) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

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

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company.

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing their respective details as per the rules.

(d) the name/s and address/s of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company / the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

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

Question 5

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

(i) A Company incorporated outside India and registered in Moscow, Russia has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India.

(ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.

(iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company.

(iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the Board Meetings held only in India.

(PYP 4 Marks Jan '21)

Answer 5

(i) As per the facts, a company is registered in Moscow, Russia and has installed its main server in Moscow for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that this company has a place of business in India through electronic mode and is conducting business activity in India. Hence, the above company is a foreign company by taking into account the provisions of

Section 2(42) of the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014.

(ii) In this case, a company is incorporated outside India and employs agents in India but does not have a place of business in India. As per section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode. Since, the company though employed agent in India but have no place of business in India, so it cannot be termed as foreign company.

(iii) In the given situation, a company is registered in Australia. It has authorised Mr. X in India to source customers and enter into contract on behalf of the company. Thus, it can be said that this company has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, this company is a foreign company as per the Companies Act, 2013.

(iv) In the given situation, a company is registered in Mauritius. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business models, financial strategies and important decisions in India cannot be termed as conducting business activity in India. Hence, the above company is not a foreign company as per the Companies Act, 2013.

Sec 379- Application of Act to Foreign Companies

Question 6

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

(i) Based on the above facts of procuring 100% business from India, whether the company will be treated as foreign company or an Indian company.

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

Answer 6

(i) In terms of Section 2(42) "Foreign Company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

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

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

(ii) Section 379(2) provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by-

a. one or more citizens of India; or

b. one or more companies; or

c. bodies corporate incorporated in India;

d. 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 7

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

The company does not have any Preference Share Capital.

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

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

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

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

(i) Whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India, and

(ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company? *(PYP 5 Marks Sep'24)*

Answer 7

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

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

(a) a place of business in India whether by itself or through an agent physically or through electronic mode and

(b) conducts any business activity in India in any other manner.

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

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

(i) one or more citizens of India; or

(ii) by one or more companies or bodies corporate incorporated in India; or

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

whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and other prescribed provisions of the Companies Act, 2013, with regard to the business carried on by it in India as if it were a company incorporated in India.

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

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

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

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

Question 8

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

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

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

Based on the above facts, answer the following questions:

(i) Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Vivitzu Motors Ltd?

(ii) What documents are required to be filed by Vivitzu Motors Ltd to the Registrar of Companies?

(iii) By what time all the requisite documents shall be filed? *(RTP Nov 21)*

Answer 8

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

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

(ii) In terms of section 380(1) every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

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

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

Question 9

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

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

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

Debt Fund - £ 21.25 Million

Out of which;

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

Mr. Nirav who is an Indian citizen but residing in UAE own 109,205 preference stock of ZPL Modern Engineering Limited that an Indian Company own 67,220 ordinary shares and 142,320 preference stocks of ZPL Raj Investment Limited, which is an Indian Company holds 393,475 preference stocks of ZPL You are required to evaluate the facts, and determine whose opinion hold legal validity in the light of the relevant provisions of the Companies Act, 2013. ***(RTP May 23)***

Answer 9

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

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

(i) one or more citizens of India or

(ii) one or more companies or bodies corporate incorporated in India, or

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

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

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

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

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

Opinion of Registrar is legally valid and shall prevail.

Question 10 — LDR

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

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

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

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

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

(i) Whether RFC Limited is a foreign company?

(ii) Whether service of notice by the Registrar of companies valid? ***(PYP 4 Marks May '22)***

Answer 10

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

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

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

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

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

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

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

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

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

Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .

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

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

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

Question 11

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

Answer 11

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

Question 12

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

Answer 12

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

Question 13

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

(i) Compliance procedure as regards to amendment of Memorandum of Association.

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

Answer 13

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

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

According to Section 380 (3) of the Act which provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form *FC-2* along with prescribed fees.

As in the instance, the CNC Limited has amended its Memorandum of Association on 1st of June 2022 and closed its branch office of Mumbai. This altered document is required to be delivered to Registrar by CNC Limited within 30 days i.e. latest by 1st of July 2022.

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

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

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

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

Question 14 LDR

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

Answer 14

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

(a) 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 prescribed under the Companies (Registration of Foreign Companies) Rules,2014,

(1) personal name and surname in full;

(2) any former name or names and surname or surnames in full;

(3) father's name or mother's name and spouse's name;
(4) date of birth;
(5) residential address;
(6) nationality;
(7) if the present nationality is not the nationality of origin, his nationality of origin;
(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
(9) income-tax permanent account number (PAN), if applicable;
(10) occupation, if any;
(11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
(12) other directorship or directorships held by him;
(13) Membership Number (for Secretary only); and
(14) e-mail ID.

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
(h) any other information as may be prescribed.

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

Sec 381- Accounts of Foreign Company

Question 15

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

Answer 15

Audit of accounts of foreign company

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

(i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
(ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company.

Question 16

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

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

Answer 16

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

(i) All the documents required to be filed with the Registrar by the foreign companies shall be in **English language**. If the financial statements are in German language and not in the English language, a certified translation thereof in the English language shall be annexed and submitted to Registrar [Section 381 (2)]

(ii) Format of Financial statement as per IFRS:

Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:

Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

(iii) Authentication of translated financial statements [Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014]:

(1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of—

(a) the official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.

(3) Where such translation is made within India, it shall be authenticated by—

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

(iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi. Hence, the documents of WIWITSU Ltd. cannot be submitted at the Registrar's office at Mumbai.

[Following assumptions drawn within the provided informations:

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

EXAM INSIGHTS: The Performance of the examinees was average. Majority of the examinees have answered this question in a generalized manner without referring the provisions of section381(2) of the Companies Act, 2013 for filing of documents by foreign companies and Rule 6 of the Companies (Accounts) Rules, 2014 for consolidation of accounts and Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014 for authentication of translated financial statements.

Question 17 — LDR

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

(i) **Whether the accounts of the Company pertaining to Indian business operations shall be audited ? If yes, by whom ?**

(ii) **What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?**

(iii) **What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?**

(iv) **In which e-forrn and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies?** ***(PYP 4 Marks Jan '21)***

Answer 17

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

(i) According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered Accountants.

(ii) The audited financial statements of Indian business operations of PHSI shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate i.e., latest by 30 th September 2020.

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months i.e. latest by 31st December 2020.

(iii) According to Section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013 (chapter XXII deals with 'Companies incorporated Outside India'), shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.

In the instant case, non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI.

However, PHSI shall not be entitled to bring in any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract until the company has filed the financial statements.

(iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year i.e. by 30th May 2020, to the Registrar containing the particulars as they stood on the close of the financial year.

Question 18

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

Answer 18

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

(i) Every foreign company shall, in every calendar year, —

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

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

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

(1) documents that with Chapter IX i.e. Accounts of Companies.

(2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws

there.

(ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.

(iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

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

Sec 382- Display of Name etc of Foreign Company

Question 19

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

Answer 19

According to Section 382 of the Companies Act, 2013,

- every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- if the liability of the members of the company is limited, cause notice of that fact—
  (I) to be stated in every such prospectus issued and in all business letters, bill -heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
  (II) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

  After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

  (i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated, name of the country. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated. i.e. Baroda.

  (ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda

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

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

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? *(RTP May 22)*

Answer 20

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

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

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

(a) 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 Chapterand such issue does not contravene the provisions of section 388:

Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

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

Sec 389- Registration of Prospectus

Question 21

What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014? *(MTP 5 Marks Apr'24)*

Answer 21

According to section 389 of the Companies Act, 2013:

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

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

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

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

Question 22

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

(MTP 5 Marks Aug'24, SM)

Answer 22

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors ofthe 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 theissue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

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

Question 23

(i) Tokyo Ferro Alloys Limited, a company registered in Japan, started its operations in India by establishing a Marketing Division in Mumbai on 1st April, 2021. Recently, the Company decided to issue certain securities in India and therefore, is planning to circulate in India, a prospectus offering for subscription in securities of the Company. Assuming that all the other formalities in this respect have been complied with, advise the person in-charge of Indian operations regarding the other documents required to be annexed to the prospectus in order to registered the same, referring to the relevant provisions of the Companies Act, 2013 and the rules made thereunder,

(ii) Vibav Pte, a company incorporated in Singapore is having a liaison office in Delhi. The Liaison office seeks your advice regarding the documents to be filed with the Registrar along with the financial statement under the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules,

2014. *(PYP 4 Marks Dec '21)*

Answer 23

(i) According to this Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014,

The Following documents shall be annexed to the prospectus, namely:

(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.

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

Sec 392- Punishment for Contravention

Question 24

In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.

Answer 24

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

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

Question 25

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

machinery.

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

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

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

Answer 25

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

In this given question, XYZ Limited, a company incorporated outside India, has failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, which governs the registration and compliance requirements for foreign companies operating in India.

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

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

Multiple Choice Questions (MCQs)

Sec 2(42)- Foreign Company

1. **Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. Select the incorrect statement from those given below as to the nature of the Radix Healthcare Ltd. in the light of the applicable provisions of the Companies Act, 2013: *(SM)***
   (a) Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.
   (b) Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.
   (c) Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.
   (d) Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.

Ans: (a)

2. **Modern Books Publishers plc., a company incorporated in United Kingdom (UK) has a wholly owned subsidiary by the name Beta Periodicals Limited whose Registered Office is situated at Mumbai and which is engaged in publishing scientific, technical and specialty magazines, periodicals and journals. Beta Periodicals Limited considers itself to be a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company. From the four options given below, you are required choose the one which appropriately indicates whether Beta Periodicals Limited can be considered as a foreign company: .*(MTP 2 Marks, March'22)***
   (a) Beta Periodicals Limited cannot be considered as a foreign company even if it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.
   (b) Beta Periodicals Limited shall be considered as a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.
   (c) Beta Periodicals Limited can be granted the status as a foreign company, if its ho lding company Modern Books Publishers plc. makes an application to the Regional Director having jurisdiction over New Delhi for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.

(d) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the New Delhi Bench of National Company Law Tribunal for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company

Ans: (a)

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

3. **5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act, 2013:**
   (a) Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.
   (b) Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.
   (c) Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.
   (d) Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.

Ans: (d)

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

Ans: (d)

5. **Viwit Su Communications LLC, incorporated in Arizona, USA, has established a principal place of business at Kolkata, West Bengal. It is required to deliver requisite documents to the specified authority. You are required to select an appropriate option from the four given below which indicates the number of days within which such documents shall be delivered:**
   (a) Viwit Su Communications LLC shall, within 10 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
   (b) Viwit Su Communications LLC shall, within 15 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
   (c) Viwit Su Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
   (d) Viwit Su Communications LLC shall, within 45 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

Ans: (c)

Sec 381- Accounts of Foreign Company

6. **Lavender International Entertainment Inc., headquartered and registered in New York City and a prominent name in lifestyle audio innovations, professional audio and lighting solutions, and digital transformation, is present in more than seventy countries including India. Due to certain mis- happenings, the company was unable to file its financial statements along with necessary documents for the year 2023 with the Registrar of Companies (in India) within the stipulated time as permitted by the Companies Act, 2013. Itis**

observed that the ROC may, for any special reason and on an application made in writing by Lavender International Entertainment, extend the 'filing time' maximum up to a certain period. From the following options, choose the correct one in this respect: (*MTP 2 Marks Jul'24*)

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

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

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

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

Ans: (c)

Sec 392- Punishment for Contravention

7. **Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents: *(SM)***

(a) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.

(b) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 20,000 rupees for every day after the first during which the contravention continues.

(c) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

(d) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

Ans: (d)