



**CAtestseries.org<sup>®</sup>**

CA Final | Inter | Foundation Test Series



**CA INTER**

**CORPORATE AND  
OTHER LAWS**

**SEPT 2025 QUESTION BANK**

**THE ULTIMATE  
GUIDE**

**Updated for  
September 2025  
exams**

**ALL ANSWERS UPDATED AS PER THE LATEST FINANCE ACT  
AND SEPTEMBER 2025 EXAMS**





**CAtestseries.org**®

*Celebrating*  
— 10 YEARS —

**CA INTER**  
**CORPORATE AND OTHER**  
**LAW**  
**TOPIC WISE QUESTION**  
**BANK**



**Most Reliable Mock Test Series for  
CA Students as per ICAI Standards**

*Trusted & Awarded by*

*NIRC Chairman*  
**CA ABHINAV AGGARWAL**

*ICAI President*  
**CA ANIKET TELATI**



+91 99884-83167



exam@catestseries.org



www.CAtestseries.org

**CATESTSERIES.ORG**



ICAI President, ICAI F. President & NIRC Chairman

## EMPOWERING FUTURE *CAs*

**C**ATestseries.org is a trusted name among CA students, delivering superior online test series tailored to their needs. Renowned Chartered Accountants

endorse our platform for its exceptional service quality and unwavering commitment to student success. We take pride in helping thousands of aspiring CAs excel in their exams. Our comprehensive and meticulously designed test series simulate real exam conditions, boosting confidence and performance for students aiming for excellence.



ICAI F. President CA Atul Gupta



ICAI F. President CA Aniket Talati

**A** Top leaders in the Chartered Accountancy field applaud CAtestseries.org for its exceptional contribution to shaping future professionals. Their trust and recognition

affirm our dedication to delivering unparalleled support and fostering success for CA aspirants. Our platform stands as a beacon of reliability and efficiency, ensuring every user experiences seamless service. Our exceptional services have earned the trust of industry pioneers and established leaders in the field of Chartered Accountancy.

## Chapter 1 – Preliminary

### Topic: 1 Financial Year

#### MCQ

#### Question 1

Green Ltd. is incorporated on 3rd January, 2022. As per the Companies Act, 2013, what will be the financial year for the company:

- (a) 31st March, 2022
- (b) 31st December, 2022
- (c) 31st March, 2023
- (d) 30th September, 2023

Ans: (c)

Reason:

As per the Companies Act, 2013, the financial year for a company is from 1st April to 31st March of the following year. Since Green Ltd. was incorporated on 3rd January, 2022, its first financial year will start from the date of incorporation and end on 31st March, 2023, which is the end of the financial year for companies in India. Therefore, the first financial year will be from 3rd January, 2022 to 31st March, 2023.

### Topic: 2 Small Company



## Question 2

Roma along with her six friends has incorporated Roma Trading Ltd. in May 2021. The paid-up share capital of the company is Rs 2 crore. Further, in April 2022, she noticed that in the last financial year, the turnover of the company was well below Rs 40 crore. Advise whether the company can be treated as a 'small company'.

(a) Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below Rs 4 crore and also its turnover has not exceeded the threshold limit of Rs 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', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.

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

(Study Material)

Ans: (b)

Reason:

Under the Companies Act, 2013, the term "small company" is specifically applicable to private limited companies and One Person Companies (OPC), not public limited companies. A small company is defined based on its paid-up capital (not exceeding Rs 4 crore) and turnover (not exceeding Rs 40 crore). However, these criteria only apply to private limited companies and OPCs.

Since Roma Trading Ltd. is a public limited company, it cannot be classified as a "small company" even if it meets the paid-up capital and turnover criteria. Therefore, despite fulfilling the financial criteria for a small company, Roma Trading Ltd. is not entitled to the benefits of being treated as a "small company."

### Question 3

**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, 2022, its turnover was less than Rs 40 crore and its paid up share capital was less than Rs 4 crore. Advise.**

- (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'.

**(Study Material)**

**Ans: (c)**

**Reason:**



As per the Companies Act, 2013, a Section 8 company is a "not for profit" company and is formed with the primary objective of promoting commerce, art, science, religion, charity, etc. A Section 8 company, by definition, cannot be a "small company" under the provisions of the Act, even if it meets the financial criteria of turnover (below Rs 40 crore) and paid-up share capital (below Rs 4 crore).

The concept of a "small company" is applicable to private limited companies and One Person Companies (OPCs), but it does not apply to Section 8 companies (not-for-profit companies). Therefore, even though Abhilasha and Amrita's company may meet the financial criteria, it cannot be categorized as a small company due to its nature as a Section 8 company.

## Descriptive Questions

### Question 4

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid up share capital of Rs 2 crore and turnover of Rs 60 crore. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

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

(Study Material)

### Answer 4

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

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

(2) turnover of which as per its last profit and loss account does not exceed two 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 four crores and rupees forty crores respectively.

(i) In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid up share capital of Rs 2 crore and having turnover of Rs 60 crore. Since only one criteria of share capital not exceeding Rs 4 crore is met, but the second criteria of turnover not exceeding Rs 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

#### Question 5

**New Private Ltd. is a company registered under the Companies Act, 2013 with a paid –up share capital of Rs 70 lakh and turnover of Rs 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 Rs 15 crore and the capital is same as Rs 70 lakh?**

**Answer 5**

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

(1) 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

(2) 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.

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

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

**Question 6**

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:



(1) Paid-up equity share capital Rs 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs 10 each.

There is no change in the paid-up share capital thereafter.

(2) The turnover is Rs 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(PYP July '21,) (MTP Oct '23)

**Answer 6**

(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 or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs 10 totaling Rs 50 lakhs). Hence, Smart Solutions

Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (Rs 50 lakhs) and turnover (Rs 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited can be categorised as a small company.

### **Topic: 3 Subsidiary and Holding Company**

**MCQ.**

#### **Question 7**

**A Ltd. is holding 61% shares in B Ltd. and B Ltd. holds 51% in C Ltd. State which is the correct statement here:**

- (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.

**(MTP Sep'22)**

**Ans: (d)**

**Reason:**

- A Ltd. holds 61% of shares in B Ltd.: This means A Ltd. has a controlling interest in B Ltd., making B Ltd. a subsidiary of A Ltd. according to the definition of a subsidiary company under the Companies Act, 2013 (where a company holds more than 50% of the shares in another company).
- B Ltd. holds 51% of shares in C Ltd.: This means B Ltd. has a controlling interest in C Ltd., making C Ltd. a subsidiary of B Ltd.

However, since A Ltd. holds 61% of shares in B Ltd., and B Ltd. holds 51% of shares in C Ltd., A Ltd. is the ultimate holding company of C Ltd. through its control over B Ltd.

Therefore, both B Ltd. and C Ltd. are subsidiaries of A Ltd., as A Ltd. has control over both companies.

#### Question 8

**A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.**

- (a) There is no relationship between A Ltd. and C Ltd.
- (b) C Ltd. is deemed to be the subsidiary of A Ltd.
- (c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
- (d) C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.

**(RTP May '19)**

**Ans: (b)**

**Reason:**



As per the provisions of the Companies Act, 2013, if a company (A Ltd.) is the holding company of another company (B Ltd.), and B Ltd. is the holding company of a third company (C Ltd.), then C Ltd. is deemed to be a subsidiary of A Ltd., even if A Ltd. does not directly hold any shares in C Ltd.

This is based on the concept of indirect control. In this case, A Ltd. holds control over B Ltd., and B Ltd. in turn holds control over C Ltd. Therefore, A Ltd. is considered the ultimate holding company of C Ltd. through its control over B Ltd., making C Ltd. a subsidiary of A Ltd.

Thus, there is a deemed relationship between A Ltd. and C Ltd., even though A Ltd. doesn't directly own shares in C Ltd.

## **Descriptive Questions**

### **Question 9**

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 March 21)

### **Answer 9**

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.

#### Question 10

(Includes concepts of Chap 7- Management & Administration)

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

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

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

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

**(RTP Nov '21, MTP March '22)**

**Answer 10**

This given problem is based on **sub-clause (87)** of Clause 2 read with section 19 of the Companies Act, 2013.

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

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

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

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

Whereas Section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY

Ltd. And PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. Will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020. Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. And PQ Ltd. from 01.08.2020. In the light of sub- clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

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

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01.08.2020), according to the exception to section 19.

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

#### **Question 11**

**The paid-up share capital of Altar Private Limited is Rs 1 crore, consisting of 8 lacs Equity Shares of Rs 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a**



**subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?**

**(RTP May'19 & May'18)**

**Answer 11**

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:

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.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd. However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.

**Question 12**

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 12**

(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.

### **Question 13**

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

**(1) Paid-up equity share capital Rs 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs 10 each.**

**There is no change in the paid-up share capital thereafter.**

**(2) The turnover is Rs 2,00,00,000.**

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions

Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(PYP July '21,) (MTP Oct '23)

**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 or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs 10 totaling Rs 50 lakhs). Hence, Smart Solutions

Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (Rs 50 lakhs) and turnover (Rs 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited can be categorised as a small company.



## Topic: 4 Associate Company

MCQ.

### Question 14

“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:

- (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

(Study Material) (MTP March '23)

Ans: (c)

Reason:

As per the Companies Act, 2013, the term "significant influence" refers to the ability to participate in the financial and operating decisions of a company, but not to control those decisions. The Companies Act defines "significant influence" as the power to participate in the decisions of the company, typically evidenced by holding at least 20% of the voting power in that company.

Therefore, significant influence means holding at least 20% of the total voting power in another company. This threshold is key to determining whether a company can be considered an associate company under the law.

Hence, the correct answer is (c) Control of at least 20% of total voting power.

## **Topic: 5 Listed vs. Unlisted Company**

### **Question 15**

**Kaveri Goods Carriers Private Limited (KGCPL) issued 9% Non-convertible Debentures worth Rs 10 lakhs and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non- convertible debentures of Rs 10 lakhs were listed.**

Which of the following options is applicable in the given situation:

- (a) KGCPL shall be considered as a listed company.
- (b) KGCPL shall not be considered as a listed company.
- (c) KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is Rs 15 lakhs.
- (d) KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum Rs 20 lakhs.

**(Practice question)**

**Ans: (b)**

**Reason:**

Under the Companies Act, 2013, a company is considered a listed company only if its equity shares or debentures are listed on a recognized stock exchange.

In this case, Kaveri Goods Carriers Private Limited (KGCPL) issued non-convertible debentures (NCDs) worth Rs 10 lakhs and subsequently listed them. However, the listing of privately placed non-convertible debentures (NCDs) does not automatically classify the company as a listed company.

For a company to be considered a listed company, it must have equity shares listed on a stock exchange. The listing of debentures alone does not make the company a listed company unless its equity shares are also listed.

Hence, KGCPL will not be considered a listed company based solely on the listing of its privately placed non-convertible debentures. The correct answer is (b).

## **Descriptive Questions**

### **Question 16**

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 Nov '22)

### **Answer 16**

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 subsection

(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.

## **Topic: 6 Related Party**

### **Question 17**

**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 May '22)**

**Answer 17**

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**.

## **Topic 7 Foreign Company**

### **Question 18**

**Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.**

**(PYP Nov'18) (Same concept different figures PYP Nov'19)**

### **Answer 18**

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.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term “electronic mode”, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of **section 2(42)** of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

#### **Question 19**

**Explain the meaning of the followings terms as defined under the Foreign Exchange Management Act, 1999:**

**(i) Authorised person**

**(ii) Currency**

**(MTP Jan 2025)**

#### **Answer: 19**

**(i) Authorised person**

According to section 2(c) of the Foreign Exchange Management Act, 1999, Authorised person means an authorised dealer, money changer, off- shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities.

**(ii) Currency**

According to section 2(h) of the Foreign Exchange Management Act, 1999, Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

### **Topic: 8 Sweat Equity Shares**

#### **Question 20**

**Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with:**

- (a) Equity Shares
- (b) Preference Shares
- (c) Sweat Equity Shares
- (d) Redeemable preference shares

**(RTP Nov 21)**

**Ans: (c)**

#### **Reason:**

Sweat equity shares are issued by a company to its directors or employees as a reward for their hard work and efforts in contributing to the success of the company. These shares are typically issued at a discount or for a consideration other than cash, like providing valuable services or achieving desired results, rather than in exchange for monetary payment.

The key point is that sweat equity shares recognize the contribution of an individual in the form of effort, skills, or expertise, rather than capital investment. This type of equity is

generally offered to directors, employees, or even promoters, to honor their extraordinary contribution to the company.

Therefore, the correct answer is (c) Sweat Equity Shares.

### **Topic: 9 Private vs. Public Company**

#### **Question 21**

**A Public company may be formed by:**

- (a) Only two persons
- (b) Not more than three persons
- (c) Not more than Seven Persons
- (d) Seven or more Persons:

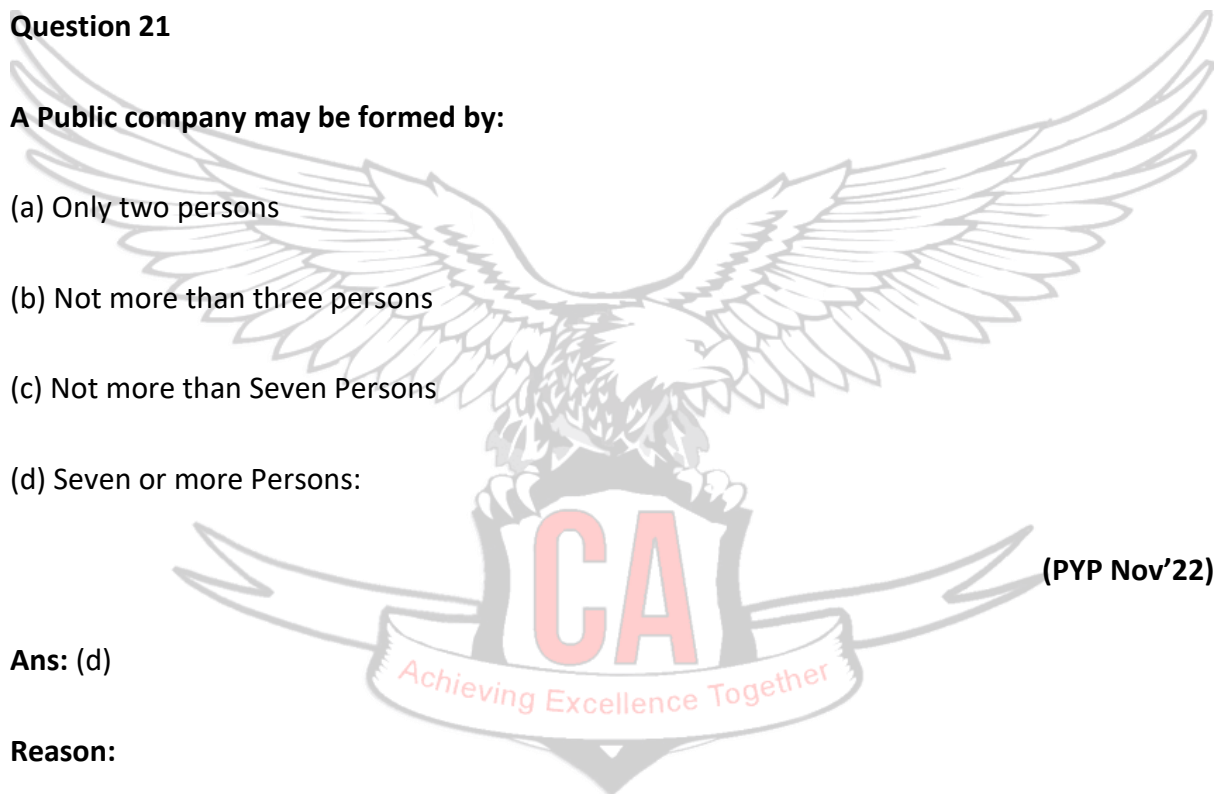
**Ans: (d)**

**Reason:**

As per the Companies Act, 2013, a Public company must have a minimum of seven members to be formed. This is in contrast to a private company, which can be formed with a minimum of two members.

**For a public company:**

- The minimum number of members required is seven.
- There is no maximum limit for the number of members in a public company.



Hence, a public company can be formed by seven or more persons, which makes option (d) the correct answer.

## Descriptive Questions

### Question 22

Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

|     |                                                                        |     |
|-----|------------------------------------------------------------------------|-----|
| (a) | Directors and their relatives                                          | 50  |
| (b) | Employees                                                              | 15  |
| (c) | Ex-Employees (Shares were allotted when they were employees)           | 10  |
| (d) | 5 couples holding shares jointly in the name of husband and wife (5*2) | 10  |
| (e) | Others                                                                 | 145 |

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

(Study Material)

### Answer 22

According to **section 2(68)** of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

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 -



(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,

|       |                               |            |
|-------|-------------------------------|------------|
| (i)   | Directors and their relatives | 50         |
| (ii)  | Directors and their relatives | 5          |
| (iii) | Others                        | 145        |
|       | <b>Total</b>                  | <b>200</b> |

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

\*The provisions relating to conversion of public company to private company is covered in the Chapter 2 –

Incorporation of Company and Matters incidental thereto.

### Question 23

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 Rs 1.5 crore with 40 members and turnover of Rs 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)**

**Answer 23**

According to section 2(10) 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 provision 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 provision 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 provision 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 provision to section 2(10) of the Companies Act, 2013.

#### Question 24

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

**(1) Paid-up equity share capital Rs 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs 10 each.**

**There is no change in the paid-up share capital thereafter.**

**(2) The turnover is Rs 2,00,00,000.**

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the

Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

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

(PYP July '21,) (MTP Oct '23)

**Answer 24**

(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 or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs 10 totaling Rs 50 lakhs). Hence, Smart Solutions

Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (Rs 50 lakhs)

and turnover (Rs 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions 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 (a) to (d):

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

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

### **Topic: 10 Minimum Members for Incorporation**

#### **MCQ**

#### **Question 25**

**A Public company may be formed by:**

- (a) Only two persons
- (b) Not more than three persons



(c) Not more than Seven Persons

(d) Seven or more Persons:

(PYP Nov'22)

**Ans:** (d)

**Reason:**

As per the Companies Act, 2013, a public company can be formed with a minimum of seven members. Unlike a private company, which requires a minimum of two members, a public company must have at least seven members to start.

Additionally, there is no upper limit on the number of members a public company can have, meaning the company can have any number of shareholders beyond seven.

Therefore, the correct answer is (d) Seven or more persons.

### **Topic: 11 Conversion of Public to Private Company**

#### **Question 26**

Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

|     |                                                                           |    |
|-----|---------------------------------------------------------------------------|----|
| (a) | Directors and their relatives                                             | 50 |
| (b) | Employees                                                                 | 15 |
| (c) | Ex-Employees (Shares were allotted when they were employees)              | 10 |
| (d) | 5 couples holding shares jointly in the name of husband and wife<br>(5*2) | 10 |

|     |        |     |
|-----|--------|-----|
| (e) | Others | 145 |
|-----|--------|-----|

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

(Study Material)

#### Answer 26

According to **section 2(68)** of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

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 -

(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,

|       |                               |            |
|-------|-------------------------------|------------|
| (i)   | Directors and their relatives | 50         |
| (ii)  | Directors and their relatives | 5          |
| (iii) | Others                        | 145        |
|       | <b>Total</b>                  | <b>200</b> |

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

\*The provisions relating to conversion of public company to private company is covered in the Chapter 2 –

Incorporation of Company and Matters incidental thereto.

## **Topic: 12 Financial Statements**

### **Question 27**

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)

### **Answer 27**

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 provision 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 startup) 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 28**

**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 Rs 1.5 crore with 40 members and turnover of Rs 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)**

#### **Answer 28**

According to section 2(10) 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 provision 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 provision 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 provision 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 provision to section 2(10) of the Companies Act, 2013.

#### **Question 29**

**The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:**

**(1) Paid-up equity share capital Rs 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs 10 each.**

**There is no change in the paid-up share capital thereafter.**

**(2) The turnover is Rs 2,00,00,000.**

**It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:**

**(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?**

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

**(PYP July '21,) (MTP Oct '23)**

## Answer 29

(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 or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs 10 totaling Rs 50 lakhs). Hence, Smart Solutions

Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (Rs 50 lakhs) and turnover (Rs 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions 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 (a) to (d):

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

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

### Question 30

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

(PYP Nov'18)

### Answer 30

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

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

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

### **Topic: 13 Exemption from Cash Flow Statement**

#### **Question 31**

**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)**

#### **Answer 31**

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 provision 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 startup) 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 32**

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 Rs 1.5 crore with 40 members and turnover of Rs 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)

### **Answer 32**

According to section 2(10) 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 provision 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 provision 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 provision 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 provision to section 2(10) of the Companies Act, 2013.

### **Question 33**

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

(1) Paid-up equity share capital Rs 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs 10 each.

There is no change in the paid-up share capital thereafter.

(2) The turnover is Rs 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

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

(PYP July '21,) (MTP Oct '23)

### **Answer 33**

(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 or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs 10 totaling Rs 50 lakhs). Hence, Smart Solutions

Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company. Further, the paid up share capital (Rs 50 lakhs) and turnover (Rs 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions 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 (a) to (d):

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

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

#### **Question 34**

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

**(PYP Nov'18)**

#### **Answer 34**

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

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

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

## **Topic 14 Promoters**

### **Question 35**

Mr. Kaushal is a Chartered and an 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. Kaushal can be classified as the Promoter of XYZ Limited? Examine the same under the provisions of the Companies Act, 2013.

(MTP Jan 2025)

### **Answer: 35**

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. Kaushal 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 to only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

### **Topic 15 General Clauses Act – Legal Interpretation**

#### **Question 36**

**Explain the following with reference to the provisions of the General Clauses Act, 1897:**

**(i) Person**

**(ii) Document**

**(MTP Jan 2025)**

#### **Answer: 36**

**(i) Person**

According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

**(ii) Document**

According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.

#### **Question 37**

**Explain the following with reference to the provisions of the General Clauses Act, 1897:**

**(i) Affidavit**

**(ii) Good Faith**

**(MTP May 2025)**

**Answer: 37**

(i) "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

(ii) "Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not mala fide, whether it is done negligently or not is presumed to have been done in good faith.

### **Topic 16 LLP Act – Small LLP Definition**

**Question 38**

**Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008.**

**(MTP Jan 2025)**



**Answer: 38**

Small limited liability partnership

According to section 2(1)(ta) of the Limited Liability Partnership Act, 2008, small limited liability partnership means a limited liability partnership:

- (i) the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

### **Topic 17 Legal Drafting – Explanation and Interpretation Rules**

**Question 39**

**Does an explanation added to a section widen the ambit of a section?**

**(MTP May 2025)**

**Answer: 39**

Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

## Chapter 2 – Incorporation of Company and matters incidental thereto

### Topic 1 Incorporation of Companies

#### Multiple Choice Questions (MCQs)

##### Question 1

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

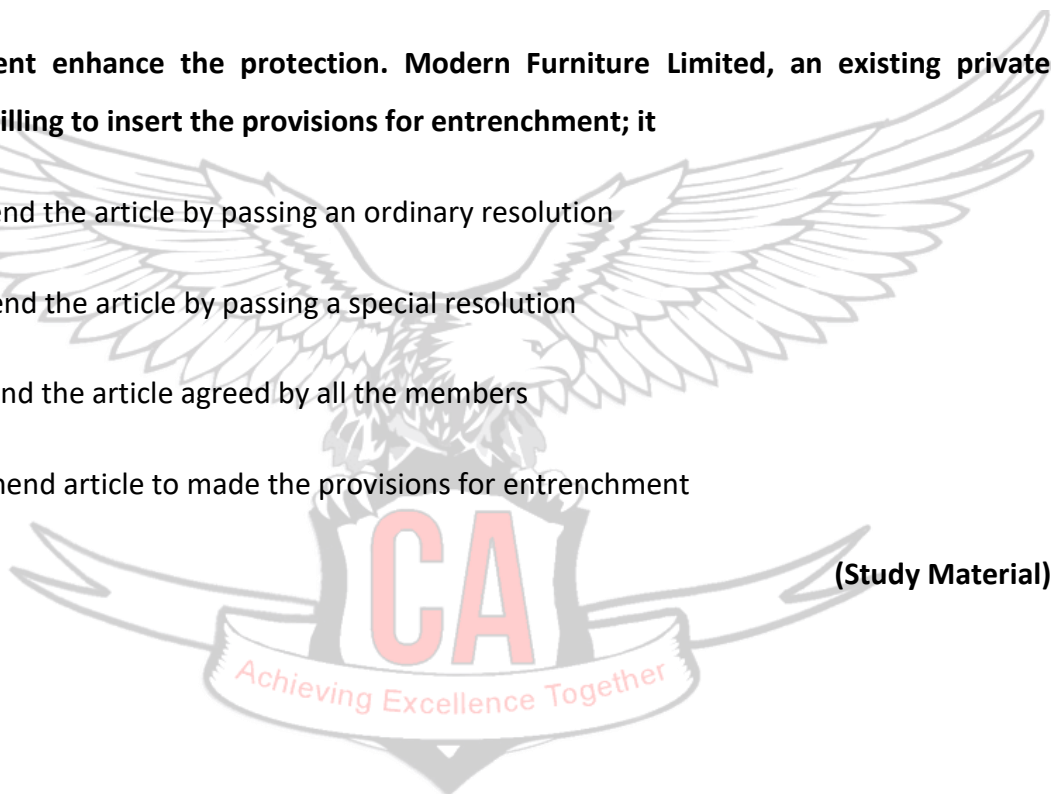
- (a) Can amend the article by passing an ordinary resolution
- (b) Can amend the article by passing a special resolution
- (c) Can amend the article agreed by all the members
- (d) Can't amend article to made the provisions for entrenchment

Ans: (c)

#### Reason:

Entrenchment refers to a process that makes certain provisions in a company's Articles of Association more difficult to amend or remove. In the case of private companies, such provisions can be inserted with a higher level of protection for specific articles.

For a company to insert entrenchment provisions into its Articles of Association, it requires an agreement from all members. This is because entrenchment provisions often make amendments to the articles more challenging by requiring a higher threshold than a simple special or ordinary resolution.



In this context, the company would need the unanimous consent of all the members to amend its articles to include entrenchment provisions, as it effectively gives more protection to specific articles from being altered by a simple resolution.

Hence, the correct answer is (c) Can amend the article agreed by all the members.

## Topic 2 Memorandum of Association (MOA)

### Descriptive Question

#### Question 2

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?

(Study Material)

#### Answer 2

Alteration of Objects Clause of Memorandum

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

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

register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

### **Topic 3 Articles of Association (AOA)**

#### **Multiple Choice Questions (MCQs)**

##### **Question 3**

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

- (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

**(Study Material)**

**Ans: (c)**

**Reason:**

The concept of entrenchment refers to making certain provisions in the Articles of Association of a company more difficult to amend. It is a mechanism that ensures specific provisions are protected from being changed through ordinary procedures.

For a private company, to insert entrenchment provisions in its Articles of Association, it must obtain the agreement of all members. This means that the company cannot simply pass a special or ordinary resolution to introduce entrenchment. Instead, the entrenchment provisions require unanimous approval from all the members of the company.

This is because the entrenchment provisions are intended to safeguard certain rights or clauses, making them harder to alter in the future without the explicit consent of all members. Hence, the company cannot insert such provisions unless all the members agree.

Therefore, the correct answer is (c) Can amend the article agreed by all the members.

### **Descriptive Question**

#### **Question 4**

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

**(MTP April 21)**

#### **Answer 4**

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 its registered office as provided in **subsection (2) of section 12**. Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company.

#### Question 5

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 consideration 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)

#### Answer 5

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. As per amendment a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee for the sole member of an OPC

#### Question 6



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 Dhwanj & 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 Dhwanj & Co. was valid and whether it can be a member in such company?

(RTP May '22)

#### **Answer 6**

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 Dhwanj & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhwanj & Co. can be its member.

#### **Topic 4 Alteration of MOA and AOA**

## Descriptive Question

### Question 7

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?

(Study Material)

### Answer 7

#### Alteration of Objects Clause of Memorandum

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

In the case of alteration to the objects clause, section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

### Question 8

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

(MTP April 21)

### Answer 8

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 its registered office as provided in **subsection (2) of section 12**. Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company.

### Question 9

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 Dhvaj & 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 Dhwas & Co. was valid and whether it can be a member in such company?**

**(RTP May '22)**

**Answer 9**

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 Dhwas & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhwas & Co. can be its member.

**Topic 5 Ultra Vires Doctrine and its Implications**

**Descriptive Question**

**Question 10**

**Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee**

depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

(MTP Aug'18 MTP Mar'19 Old & New SM)

**Answer 10**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

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

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

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

(iii) Where a license is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be

amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

## **Topic 6 Doctrine of Constructive Notice and Indoor Management**

### **Descriptive Question**

#### **Question 11**

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 Jan 21) (MTP 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.

(PYP Nov 18, Old & New SM)

#### **Answer 11**

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 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.

## **Topic 7 One Person Company (OPC) – Eligibility & Restrictions**

### **MCQ**

#### **Question 12**

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

**(Study Material)**

**Ans: (d)**

**Reason:**

**1. First Conclusion (i):** OPC (One Person Company) can only be formed by an Indian citizen. This conclusion is valid because under the Companies Act, 2013, an OPC can only be incorporated by an individual who is an Indian citizen and resident in India.

**2. Second Conclusion (ii):** Mr. Nilanjan's conclusion that he cannot form an OPC because he was not a resident of India in the immediate previous year is invalid. According to the Companies Act, 2013, for an individual to form an OPC, they must be a resident of India in the previous year. However, the law defines a resident as someone who has stayed in India for at least 182 days during the preceding calendar year. Since Mr. Nilanjan returned to India in January 2023, he could be considered a resident of India in the preceding year (2022) if he stayed in India for 182 days or more in 2022. Therefore, the fact that he was abroad for part of the previous year does not automatically disqualify him from forming an OPC, provided he meets the residence requirement.

Thus, the second conclusion is invalid because the residency requirement does not prevent him from forming an OPC if he fulfills the 182 days residency criterion in the previous year.

Hence, the correct answer is (d) Second conclusion is invalid.

### Question 13

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 bionutrient 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:

(a) Both the conclusions are valid

(b) None of the conclusion is valid

(c) First conclusion is invalid

(d) Second conclusion is invalid

(MTP April '23)

**Ans:** (d)

**Reason:**

**First Conclusion (i):** OPC can be formed by Indian Citizen only. This conclusion is valid.

According to the Companies Act, 2013, an OPC can only be formed by an Indian citizen who is a resident of India. Therefore, Mr. Nilanjan, being an Indian citizen, is eligible to form an OPC, assuming he meets the residency requirement.

**Second Conclusion (ii):** He can't form an OPC because in the immediate previous year he was not a resident in India. This conclusion is invalid. The key condition for forming an OPC is that the individual must be a resident of India in the immediate previous year. However, the term resident refers to someone who has stayed in India for at least 182 days during the preceding calendar year.

Since Mr. Nilanjan returned to India in January 2023, he would qualify as a resident of India for the year 2022 if he had stayed in India for 182 days or more in 2022. If he satisfies this criterion, he can still form an OPC, even if he was abroad earlier in 2022.

Therefore, the second conclusion is incorrect, as it assumes he cannot form an OPC based solely on his time abroad, which is not a strict limitation.

Hence, the correct answer is (d) Second conclusion is invalid.

## **Descriptive Question**

### **Question 14**

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

(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?

(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

[PYP May'19]

**Answer 14**

The paid up share capital of S Ltd. is Rs 1,00,00,000 divided into 10,00,000 equity shares of Rs 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. By virtue of section 2(87) of the Companies Act, 2013. In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company.

Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second provision to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

#### **Question 15**

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

**(i) the validity of holding of shares by S Ltd. in H Ltd.**

**(ii) Allotment of Bonus shares by H Ltd. To S Ltd.**

**(PYP Nov 20)**

#### **Answer 15**

As per Section 19 of the Companies Act, 2013, 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. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. In the given case, H Ltd. Has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -



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

(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above provision.

## **Topic 8 Nomination in OPC**

### **Descriptive Question**

#### **Question 16**

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

- (i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- (ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- (iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

[PYP May'19]

#### **Answer 16**

The paid up share capital of S Ltd. is Rs 1,00,00,000 divided into 10,00,000 equity shares of Rs 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. By virtue of section 2(87) of the Companies Act, 2013. In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company.

Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second provision to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

#### Question 17

**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 Jan 21) (MTP 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.**

**(PYP Nov 18, Old & New SM)**

## Answer 17

### 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 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.

## Topic 9 Membership in OPC

### Descriptive Question

#### Question 18

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

- (i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- (ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- (iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

[PYP May'19]

#### Answer 18

The paid up share capital of S Ltd. is Rs 1,00,00,000 divided into 10,00,000 equity shares of Rs 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. By virtue of section 2(87) of the Companies Act, 2013. In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company.

Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second provision to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

### Question 19

**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 Jan 21) (MTP 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.**

**(PYP Nov 18, Old & New SM)**

**Answer 19**

**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.

## Topic 10 Conversion of OPC to Other Types of Companies

### Descriptive Question

#### Question 20

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

(i) The validity of holding of shares by S Ltd. in H Ltd.

**(ii) Allotment of Bonus shares by H Ltd. To S Ltd.**

**(PYP Nov 20)**

**Answer 20**

As per Section 19 of the Companies Act, 2013, 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. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. In the given case, H Ltd. Has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

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

(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above provision.

**Topic 11 Commencement of Business Requirements (Section 11)**

**Descriptive Question**

**Question 21**

**The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain.**

## **Answer 21**

### **Doctrine of Indoor Management**

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

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

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

The doctrine of indoor management is opposite to the 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 safeguard against the possibility of abusing the doctrine of constructive notice.

## **Topic 12 Liability of Subscribers and Directors**

### **Descriptive Question**

#### **Question 22**

Mr. X, in association with his relative formed a company to promote education for the children of poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of

funds were contributed by public for the fulfilment of the benevolent object. However, on the complaint against the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child.

Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013.

(MTP Oct '18)

### Answer 22

As per the Section 8 of the Companies Act, 2013, the Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest. Where a license is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Where a license is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, 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.

According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013. However, an object for which both the Companies formed were promoting different objects. Accordingly, the order passed by the Central Government

after the revocation of license, is not in compliance of the Section 8 of the Companies Act, 2013.

### **Question 23**

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

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

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

**(MTP Oct '18,)**

### **Answer 23**

As per section 2(84) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd. Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

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

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

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company On the basis of the above provisions, following are the answers:

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

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

### **Topic 13 Service of Documents on Members and Registrar**

#### **Descriptive Question**

##### **Question 24**

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

**Decide:**

**(i) Whether the contention of Ashok is valid.**



**(ii) Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held?**

**(Practice question)**

**Answer 24**

According to **section 20(2)** of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under:

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

**Question 25**

**Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal**

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

(MTP April 21)

#### Answer 25

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

### Question 26

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

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

(ii) Whether Suresh can claim damages for it?

(PYP Nov '22)

### Answer 26

Serving of document to Company

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

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

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

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

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

## **Topic 14 Filing of Documents with ROC**

### **Descriptive Question**

#### **Question 27**

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

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

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

**(MTP Oct '18,)**

#### **Answer 27**

As per section 2(84) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd. Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or

transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

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

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

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company On the basis of the above provisions, following are the answers:

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

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

#### **Question 28**

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

**Answer 28**

As per **section 5** of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met. The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner. In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

**Question 29**

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 Dhvaj & 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 Dhvaj & Co. was valid and whether it can be a member in such company?

(RTP May '22)

**Answer 29**



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 Dhewaj & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhewaj & Co. can be its member.

### Question 30

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

**(RTP May '22)**

### Answer 30

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. Abhi 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

#### **Question 31**

**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, and 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.**

**Answer 31**

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.

**Topic 15 Penalties for Non-compliance with Company Law**

### Question 32

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)

### Answer 32

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. As per amendment a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee for the sole member of an OPC

## Topic 16 Appointment and Role of Professionals

### Descriptive Question

### Question 33

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 33

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.

### Topic 17 Section 8 Companies – Formation & Compliance

### Descriptive Question

### Question 34

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability Company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under

**Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013. Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.**

**(MTP Oct 20, PYP May '19 Old & New SM)**

**Answer 34**

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.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

**Question 35**



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

**(RTP May '22)**

**Answer 35**

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. Abhi 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

**Topic 18 Mergers & Amalgamations of Section 8 Companies**

**Descriptive Question**

**Question 36**

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

(MTP Oct 20, PYP May '19 Old & New SM)

### Answer 36

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.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

## Topic 19 Compliance with Prospectus and Allotment Rules (Rule 9A)

### Descriptive Question

#### Question 37

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

(i) the validity of holding of shares by S Ltd. in H Ltd.

(ii) Allotment of Bonus shares by H Ltd. To S Ltd.

(PYP Nov 20)

#### Answer 37

As per Section 19 of the Companies Act, 2013, 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. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. In the given case, H Ltd. Has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

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

(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above provision.

### Question 38

Alok incorporated a One Person Company making his sister Apeksha as the nominee. Apeksha is an Indian citizen. She was born and brought up in Moradabad. However, now Apeksha 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, advise whether Alok can appoint his minor son Shambhu as the nominee of the OPC?

(MTP May 2025)

### Answer: 38

According to Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

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.

As per the facts of the question, Apeksha as the earlier nominee is withdrawing her consent of nomination in the OPC of her brother Alok. Now, Alok is intending to appoint her son Shambhu as the nominee in his OPC.

In the light of the provision of the Companies Act, 2013, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Alok cannot appoint his son Shambhu as a nominee to his OPC.

## **Topic 20 Dematerialisation of Shares (Depositories Act)**

### **Descriptive Question**

#### **Question 39**

Alok incorporated a One Person Company making his sister Apeksha as the nominee. Apeksha is an Indian citizen. She was born and brought up in Moradabad. However, now Apeksha 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, advise whether Alok can appoint his minor son Shambhu as the nominee of the OPC?

(MTP May 2025)

#### **Answer: 39**

According to Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

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.

As per the facts of the question, Apeksha as the earlier nominee is withdrawing her consent of nomination in the OPC of her brother Alok. Now, Alok is intending to appoint her son Shambhu as the nominee in his OPC.

In the light of the provision of the Companies Act, 2013, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Alok cannot appoint his son Shambhu as a nominee to his OPC.





## Chapter 3 – Prospectus and allotment of Securities

### Topic 1 Prospectus and its Contents

#### MCQ

##### Question 1

Trident Limited is in process of making private placement of securities. It received application money on 2nd March 2023. It shall allot its securities by, if failed then repay application money to the subscribers by, else liable to repay that money with interest at the rate of.

- (a) 1st April, 16th April, and 12% respectively
- (b) 1st May, 16th May, and 12% respectively
- (c) 1st April, 16th April, and 6% respectively
- (d) 16th April, 1st May, and 12% respectively

(Study Material)

Ans: (b)

Reason:

As per the provisions related to private placement of securities under the Companies Act, 2013:

- Application money must be paid before the allotment of securities. Once the company receives the application money, it has a specified time frame within which to make the allotment.

- If the company fails to allot securities within the prescribed time limit, it must refund the application money to the subscribers within 15 days from the date of allotment.
- In case the company does not make the allotment and fails to refund the application money within the prescribed time limit, the company is required to pay interest on the application money at the rate of 12% per annum.

**Specifics in this case:**

- The application money is received on 2nd March 2023.
- The company has to allot the securities within 60 days from the date of receipt of application money (i.e., by 1st May 2023).
- If the allotment is not made by 1st May 2023, the company must refund the application money by 16th May 2023.
- If the company fails to refund the money within the prescribed period, the application money will bear interest at the rate of 12% per annum.

Thus, the correct answer is (b) 1st May, 16th May, and 12% respectively.

## **Descriptive Question**

### **Question 2**

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, Old & New SM)

### **Answer 2**

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.

## **Topic 2 Shelf Prospectus**

Achieving Excellence Together

### **MCQ**

#### **Question 3**

**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.

(a) i or ii only

(b) i or iii only

(c) ii or iii only

(d) All of i, ii and iii

(Study Material)

**Ans: (b)**

**Reason:**

Under Section 25 of the Companies Act, 2013, a document containing an offer of securities for sale, which is considered a deemed prospectus, has specific disclosure requirements in addition to the ones under Section 26.

Let's analyze each of the provided requirements:

i. A statement of the net amount received or to be received as consideration for the securities to which the offer relates.

This is a valid requirement under Section 25 of the Companies Act, 2013. A prospectus, whether deemed or otherwise, should disclose the net amount to be received for the securities, ensuring transparency regarding the financial transactions involved in the offering.

ii. The persons making the offer were named in the prospectus as promoters of the company.

This is not a requirement under Section 25. The section does not specifically mandate that the persons making the offer must be named as promoters of the company in the prospectus. The focus of Section 25 is more on the financial aspects, and it doesn't specify that those making the offer must be identified as promoters.

iii. The time and place at which the underlying contract for allotment may be inspected.

This is a valid requirement. A deemed prospectus should provide details about the inspection of underlying contracts, as it is important for investors to know where and when they can inspect the contracts relating to the allotment of securities. This is in line with ensuring transparency.

Thus, the correct answer is (b) i or iii only, because both i and iii are valid requirements under Section 25, while ii is not.

## Descriptive Question

### Question 4

**What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf- Prospectus under the provisions of the Companies Act, 2013 and the Companies (Prospectus and Allotment of securities) Rules, 2014.**

**(Study Material)**

### Answer 4

Shelf prospectus – As per the Explanation given in **Section 31** of the Companies Act, 2013, 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.

Provisions relating to the issue of Shelf-prospectus are as under:

(1) Filing of shelf prospectus with the Registrar: According to **section 31 (1)**, 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.

(2) Filing of Information Memorandum with the Shelf Prospectus:

According to **Section 31 (2)**, a company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

(3) Intimation of Changes: According to Provision to Section 31 (2), where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

According to **Rule 10** of the Companies (Prospectus and Allotment of securities) Rules, 2014, the information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

(4) Information Memorandum together with the Shelf Prospectus is deemed Prospectus: According to Section 31 (3), where an information memorandum is filed, every time an offer



of securities is made under sub- section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

#### Question 5

**Prakhar share capital by issuing Equity Shares in different stages over a certain period of Time Company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?**

(RTP Nov'18)

#### Answer 5

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

(1) According to **Section 31** of the Company Act, 2013 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—

(A) 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

(B) 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.

(2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the

Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus. Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

#### **Question 6**

The Board of Directors of ABC 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 May'22)

#### **Answer 6**

As a financial consultant the Board of Directors of ABC 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, ABC 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.

### Topic 3 Red Herring Prospectus

#### MCQ

##### Question 7

**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:**

- (a) No penalty, as application has been filed
- (b) Penalty on Madhav Casting Limited ranging from Rs 5 lakh to Rs 50 lakh
- (c) Penalty on Madhav Casting Limited ranging from Rs 5 lakh to Rs 50 lakh and every officer of the company who is in default ranging from Rs 50 thousand to Rs 3 lakh

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

**(Study Material)**

**Ans: (c)**

**Reason:**

Under Section 40 of the Companies Act, 2013, every company intending to make a public offer must apply to one or more recognized stock exchanges for the securities to be dealt with in those exchanges. If the company proceeds with the public offer without receiving the necessary permissions from the stock exchanges, it is in violation of this requirement.

**Breakdown of the consequences:**

- **Penalty on the company (Madhav Casting Limited):**

If the company does not comply with the requirement of applying to stock exchanges before making the public offer, it will face a penalty ranging from Rs 5 lakh to Rs 50 lakh.

- **Penalty on officers in default:**

In addition to the company's penalty, every officer of the company who is in default (e.g., responsible for failing to comply with the provisions) will face a penalty ranging from Rs 50 thousand to Rs 3 lakh.

- **No imprisonment clause:**

The penalty does not include imprisonment in this case, as the provisions do not specifically mention imprisonment for this particular violation under Section 40.

Therefore, the correct answer is (c), which outlines the penalty on both the company and the officers of the company who are in default.

### Question 8

**A prospectus which does not include complete particulars of the quantum or price of the securities included therein is called:**

- (a) A deemed Prospectus
- (b) A Shelf Prospectus
- (c) An Abridged Prospectus
- (d) A Red Herring Prospectus

(MTP Oct '21)

**Ans:** (d)

**Reason:**

Under the Companies Act, 2013, a Red Herring Prospectus is a document that is issued by a company in the process of a public offering but does not include the full details of the offering, particularly the price or number of securities being offered. It is used to gauge interest from investors and can be updated later with the complete details.

**Explanation of the options:**

**(a) A deemed Prospectus:** A deemed prospectus refers to any document or communication that is treated as a prospectus under the law, even if it is not a formal prospectus. It typically refers to documents that are required to be provided to investors under certain circumstances but does not specifically address the absence of price or quantum details.

**(b) A Shelf Prospectus:** A shelf prospectus is a type of prospectus that allows a company to issue securities in multiple tranches over a period, rather than all at once. It is generally used by companies planning to raise capital over time. This is not relevant to the context of missing price or quantum details.

**(c) An Abridged Prospectus:** An abridged prospectus is a summarized version of a full prospectus, which includes key information but not the complete details. It does not specifically refer to the omission of price or quantum details as described in the question.

**(d) A Red Herring Prospectus:** This is the correct answer. A Red Herring Prospectus is a preliminary prospectus that provides most of the information, except the price and quantity of securities. It is used primarily in the initial stages of an offering to generate interest and is updated later with the final details once they are determined.

Therefore, the correct answer is (d) A Red Herring Prospectus.

#### Question 9

The Board of Directors of Chandra Mechanical Toys 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.

(Study Material)

#### Answer 9

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.

It is 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 Directors of Chandra Mechanical Toys 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 Central Government to comply with the above stated provisions and make a declaration about such compliance.

#### **Topic 4 Deemed Prospectus**

#### **MCQ**

##### **Question 10**

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.

- (a) 15 days
- (b) 21 days
- (c) 30 days
- (d) 1 month

**(Study Material)**

**Ans: (d)**

**Reason:**

Under Section 31 of the Companies Act, 2013, when a company raises capital through a shelf prospectus, it is required to file an information memorandum with the Registrar of Companies (ROC) before making a second or subsequent offer of securities under the same shelf prospectus.

The information memorandum must be filed at least one month before the second or subsequent offering of securities. This requirement ensures that the company provides all the necessary details and information to the Registrar, and it also allows for adequate review and transparency before any further offerings under the shelf prospectus are made.

**Breakdown of the options:**

**(a) 15 days:** This is too short a period and does not align with the requirements under the Companies Act for shelf prospectus.

**(b) 21 days:** While this is a standard time period in some regulatory contexts, it is not the correct time frame for filing an information memorandum under a shelf prospectus.

**(c) 30 days:** This is close but not the exact period specified in the Companies Act, which is one month.

**(d) 1 month:** This is the correct answer, as one month (or 30 days) is the required time period for filing the information memorandum before the second or subsequent securities offering under a shelf prospectus.

Therefore, the correct answer is (d) 1 month.

## **Descriptive Question**

### **Question 11**

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 Oct'22, MTP Mar'21, PYP Dec '21, Old & New SM)

#### Answer 11

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.

## **Topic 5 Abridged Prospectus**

### **MCQ**

#### **Question 12**

**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:**

- (a) Any two directors including managing directors
- (b) Majority of directors
- (c) Majority of directors including proposed directors
- (d) Every director or proposed director

(Study Material)

**Ans:** (d)

**Reason:**

Under Section 26(1) of the Companies Act, 2013, a prospectus that is filed with the Registrar of Companies must be duly signed by every director or proposed director of the company.

**Explanation:**

The requirement for every director (or proposed director) to sign the prospectus ensures full accountability and transparency regarding the contents of the prospectus. By signing, the directors confirm that the information provided is true and complete to the best of their knowledge.

**(a) Any two directors including managing directors:** This option is incorrect because the law requires signatures from every director, not just two directors.

**(b) Majority of directors:** This option is also incorrect because the law requires signatures from all the directors, not just a majority.

**(c) Majority of directors including proposed directors:** Again, this is incorrect for the same reason as above — all directors, not just a majority, must sign the prospectus.

Therefore, the correct answer is (d) every director or proposed director, as per the requirements laid down in the Companies Act, 2013.

### Question 13

Which of following shall be considered as securities for purpose of section 23 of the Act;

(i) Unit linked insurance policy

(ii) Actionable claim regarding mortgaged debt

(iii) Securities issued by National Asset Reconstruction Ltd

(a) (iii) only

(b) Both (i) and (iii) only

(c) Both (ii) and (iii) only

(d) None of the (i), (ii), and (iii)

(Practice question)

Ans: (c)

Reason:

Under Section 23 of the Companies Act, 2013, the term "securities" refers to instruments issued by a company or financial institutions that can be traded. The specific conditions for what constitutes "securities" under Section 23 are important for companies raising capital and for regulating their issuance.

Let's analyze each option:

**(i) Unit Linked Insurance Policy (ULIP):** While ULIPs are investment products linked to life insurance policies, they are not typically classified as securities under the Companies Act. ULIPs are regulated by IRDAI (Insurance Regulatory and Development Authority of India), not by the Securities and Exchange Board of India (SEBI). Therefore, they do not qualify as securities under Section 23.



**(ii) Actionable claim regarding mortgaged debt:** Actionable claims, such as a mortgage debt (the right to recover a debt), are considered securities under Section 2(h) of the Securities Contracts (Regulation) Act, 1956. They are typically tradable and hence fall under the category of securities. Mortgaged debts can be transferred or assigned, which makes them "actionable claims," thus qualifying as securities for the purposes of Section 23.

**(iii) Securities issued by National Asset Reconstruction Ltd (NARCL):** NARCL is a government-backed entity involved in managing distressed assets, and the securities issued by it are considered securities under Section 23. NARCL's securities are typically tradable, regulated by SEBI, and fall under the scope of the Companies Act.

**Conclusion:**

(i) Unit linked insurance policy is not considered a security.

(ii) Actionable claim regarding mortgaged debt and (iii) Securities issued by NARCL are considered securities.

Thus, the correct answer is (c) Both (ii) and (iii) only.

**Topic 6 Liability for Misstatements in Prospectus**

**Question 14**

**ICAI Illustration (New)**

Company's prospectus was given to a solicitor of the company and he forwarded it to one of his clients despite it was marked strictly private, who applied for share based upon same. Later filed suit for damages. Will this communication amount to an issue to the public and whether the provisions of the Act are attracted?

(Study Material)

**Answer:**

No, this did not amount to an issue to the public and accordingly the provisions of the Act relating to liability for omissions, etc. not attracted here. **(Refer Nash Vs Lynde12)**

#### **Question 15**

##### **ICAI Illustration (New)**

The Board of Directors of a company 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. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

**(Study Material)**

**Answer:**

Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 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. The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the Articles.

#### **Question 16**

**Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.**

**(PYP May '19, Old & New SM)**

**Answer 16**

Irregular allotment: The Companies Act, 2013 does not specifically provide for the term “Irregular Allotment” of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfillment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of **Sections 23, 26, 39 or 40**. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by **section 23**; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4) or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under **section 40** of the Companies Act, 2013.

**Topic 7 Underwriting Commission and its Limits**

## MCQ

### Question 17

In case of variation in terms of contract or objects in prospectus, which of the followings statement are not true;

- (i) Ordinary resolution shall be passed at general meeting
  - (ii) Notice given to shareholder shall also be published in two newspapers
  - (iii) Amount so raised can be invested only in equity share of prescribed class of companies.
- (a) (i) only
- (b) Both (i) and (ii) only
- (c) Both (i) and (iii) only
- (d) Both (ii) and (iii) only

(Practice question)

**Ans:** (d)

**Reason:**

In case of variation in terms of contract or objects in the prospectus, the provisions of the Companies Act, 2013, and the SEBI regulations provide specific requirements. Let's analyze each statement:

**Statement (i):** Ordinary resolution shall be passed at the general meeting.

This statement is true. If there is a variation in the terms of the contract or the objects stated in the prospectus, an ordinary resolution must be passed at a general meeting of

shareholders. This is in accordance with Section 27 of the Companies Act, 2013, which requires a resolution to be passed to approve such variations.

**Statement (ii):** Notice given to shareholder shall also be published in two newspapers.

This statement is false. The law requires that the notice to shareholders regarding the variation in terms of contract or objects must be sent to shareholders, but it does not require the notice to be published in two newspapers. Publication in newspapers is not mandated in this context. It is primarily for transparency and communication to the shareholders.

**Statement (iii):** Amount so raised can be invested only in equity shares of prescribed class of companies.

This statement is false. The amount raised through a prospectus with revised terms or objectives is generally not restricted to investment only in the equity shares of prescribed classes of companies. While the company may outline how the funds will be utilized, there is no specific restriction that limits investment solely to equity shares of prescribed companies unless specified otherwise by regulators or the company's terms.

**Conclusion:**

(i) is correct, but (ii) and (iii) are not true.

Therefore, the correct answer is (d) Both (ii) and (iii) only, because these two statements are false in the context of variations in the terms or objects in the prospectus.

**Question 18**

**When a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar:**

- (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

**(MTP Oct '20 & Sep '23)**

**Ans: (b)**

**Reason:**

Under the Companies Act, 2013, the contract for the payment of underwriting commission, when applicable, needs to be delivered to the Registrar at the time of filing the prospectus for registration. This requirement is in line with ensuring that the Registrar has all necessary documents related to the public offer, including underwriting agreements, when the prospectus is filed for registration.

**Key Points:**

The underwriting agreement outlines the terms of underwriting, including the commission to be paid to underwriters for subscribing to or procuring subscriptions for the securities issued by the company.

This agreement must be submitted at the time of delivery of the prospectus for registration to the Registrar, ensuring full disclosure and compliance with the regulatory framework.

Thus, the correct answer is (b) because the contract for the payment of underwriting commission must be delivered at the time of delivery of the prospectus for registration, as per Section 32 of the Companies Act, 2013.

#### **Question 19**

**Which of the following statements is not true?**

(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.

**(MTP Oct 21)**

**Ans: (c)**

**Reason:**

The statement (c) is incorrect because, under the Companies Act, 2013, the rate of underwriting commission for debentures is not explicitly limited to five percent of the issue price. The limit of 5% applies only to the underwriting commission on shares, but no such specific statutory limit is prescribed for underwriting commissions on debentures.

**Detailed Explanation:**

**(a) Correct:** The Companies Act, 2013, specifies that the rate of underwriting commission for shares cannot exceed 5% of the issue price.

**(b) Correct:** Underwriting commission is also subject to the provisions of the Articles of Association of the company, and the company must not exceed the rate specified therein.

**(c) Incorrect:** As stated earlier, no specific limit on the underwriting commission for debentures is prescribed by law. The 5% limit applies to shares only.

**(d) Correct:** The payment of underwriting commission can indeed be made out of the company's profits, subject to approval and compliance with relevant provisions under the Companies Act.

Thus, the correct answer is (c).

## Descriptive Question

### Question 20

With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement.

Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified

(MTP March'18)

### Answer 20

Under **section 2 (70)** of the Companies Act, 2013, "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which cannot be said to have bought shares on the basis of prospectus

X cannot bring action for deceit against the directors. Hence, X will not succeed. It was also held in the case of Peek vs. Gurney that the above-mentioned remedy by way of damage

will not be available to a person if he has not purchased the shares on the basis of prospectus.

## Topic 8 Minimum Subscription and Application Money

### MCQ

#### Question 21

An applicant who made application for allotment along with advance payment of subscription, if he expresses a desire to withdraw his application after changes reported in information memorandum came to his knowledge. The company;

- (a) May refund the monies at discretion of Board of Directors
- (b) Shall refund the monies after deducting the administrative charges within fifteen days
- (c) Shall refund all the monies received as subscription within fifteen days
- (d) Shall refund the monies after deducting the administrative charges within 30 days

(Practice question)

Ans: (c)

[Refer provision to **section 31(2)**. It is provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof].

Reason:

As per Section 31(2) of the Companies Act, 2013, when an applicant has made an application for allotment of securities along with advance payment, and if there are changes reported in the information memorandum that were not known at the time of application, the company is required to inform the applicants about the changes.

If the applicants choose to withdraw their application after becoming aware of these changes, the company is obligated to refund all the subscription money received within 15 days from the date of such withdrawal, without deducting any administrative charges.

**Detailed Explanation:**

**(a) Incorrect:** The company does not have discretion regarding whether or not to refund the money. The law mandates the refund if the applicant withdraws.

**(b) Incorrect:** The company is not allowed to deduct administrative charges when refunding the money; the full amount must be refunded.

**(c) Correct:** The law specifically requires the company to refund all monies received as subscription within 15 days if the applicant chooses to withdraw after being informed of changes in the information memorandum.

**(d) Incorrect:** The refund should happen within 15 days, not 30 days.

Thus, the correct answer is (c).

**Question 22**

**The minimum amount of subscription in a public issue shall be received within days from the date of issue of prospectus.**

(a) 30

(b) 60

(c) 90

(d) 120

(MTP Oct 21)

**Ans:** (a)

**Reason:**

As per Section 39 of the Companies Act, 2013, the minimum subscription in a public issue must be received within 30 days from the date of the issue of the prospectus. If the minimum subscription is not received within this period, the company is required to refund the application money to the subscribers within 15 days from the date of closure of the issue.

**Explanation:**

**(a) Correct:** The minimum amount of subscription must be received within 30 days from the date of the issue of the prospectus.

**(b) Incorrect:** The period for receiving the minimum subscription is not 60 days, it is 30 days.

**(c) Incorrect:** The correct period is 30 days, not 90.

**(d) Incorrect:** The period for receiving the minimum subscription is not 120 days.

Therefore, the correct answer is (a).

## **Descriptive Question**

### **Question 23**

**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?**

**Answer 23**

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.

**Rule 11 (1)** of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum. 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.

## **Topic 9 Allotment of Securities – Validity & Irregularities**

### **MCQ**

#### **Question 24**

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.

- (a) Deemed Prospectus.
- (b) Shelf Prospectus.
- (c) Red Herring Prospectus.
- (d) Abridged prospectus.

**(MTP Oct'19 & Oct '23)**

**Ans: (b)**

**Reason:**

When a company, such as Dwapar Equipment Finance Limited (NBFC), intends to offer securities in multiple tranches (in this case, three or more), the appropriate type of prospectus to be issued is a Shelf Prospectus. A Shelf Prospectus is a document that allows

the company to raise funds through multiple offerings over a period of time, without having to file a fresh prospectus each time a new tranche is issued.

**Explanation:**

**(b) Shelf Prospectus:** A Shelf Prospectus is used when securities are to be issued in multiple tranches. The initial filing covers all the tranches, and the company doesn't need to file a new prospectus for each subsequent offer, as long as the terms of the subsequent offers are in line with the original prospectus.

**(a) Deemed Prospectus:** This is a term used when a document is considered as a prospectus, even if it's not formally titled as such, usually when the company offers securities to the public without following the proper procedure. It's not relevant in this context, where the company is issuing securities through tranches.

**(c) Red Herring Prospectus:** A Red Herring Prospectus is issued when the company is about to offer its securities to the public but has not yet decided on the exact price or number of securities. It's not applicable when the company is planning multiple issuances of securities over time.

**(d) Abridged Prospectus:** An Abridged Prospectus is a short form of the full prospectus that highlights key information about the securities being offered. It is typically used for the convenience of investors and does not replace the need for the full prospectus in the case of multiple tranches.

Thus, the correct answer is (b) Shelf Prospectus, as it allows the company to offer securities in multiple tranches without the need for a fresh prospectus for each offer.

## **Topic 10 Private Placement vs Public Issue**

### **Descriptive Question**

### Question 25

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 generics 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, May '23)

### Answer 25

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 be liable for any misstatement in a prospectus under the following situations:

**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

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;

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;

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 there under.

#### **Question 26**

Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:

(i) ABC Limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers.

(ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.

(iii) Being a public company can it issue securities in a private placement offers?

(MTP May 2025)

**Answer: 26**

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.

(i) In the given case ABC Limited, though is a public company but the private placement provisions 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.

(ii) 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.

(iii) 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. Hence, ABC Limited can issue securities in a private placement offer.

## Topic 11 Filing Requirements with Registrar and SEBI

### Question 27

The Board of Directors of Reckless Investments Limited, having registered office at Mumbai, has allotted equity shares to the 550 investors of the company without issuing a prospectus. As no prospectus was issued, nothing was delivered to the Registrar of Companies, Mumbai for filing. Explain the remedy available to the investors in this regard.

(Practice question)

### Answer 27

According to **Section 23** of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Further, where the limit crosses 200 investors the issue shall be deemed to be a public offer, as provided by Section 42. **Section 26 (1)** lays down the matters required to be disclosed and included in a prospectus and requires the delivery of the prospectus to the



Registrar for filing before its issue. In the given case, the company has violated the above provisions and therefore, the allotment made by it is void. The company will be required to refund the entire moneys received and will also be punishable under section 26 (9).

#### **Question 28**

**Kapoor Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.**

**(RTP May'18, PYP May'19, Old & New SM)**

#### **Answer 28**

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under Companies

(Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:

- (a) The payment of such commission shall be authorized in the company's articles of association;
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) 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, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles,

whichever is less; Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid. The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

#### **Question 29**

**TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.**

**(PYP May'18)**

#### **Answer 29**

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows: Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in **Rule 13** of the Companies (Prospectus and Allotment of Securities) Rules, 2014. Conditions for the payment of commission:

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;

3. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.

4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars a 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.

5. No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;

6. Copy of contract 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.

## **Topic 12 Listing and Stock Exchange Approval**

### **Descriptive Question**

#### **Question 30**

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 allottee 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?

(3 Dec '21, RTP May'18)

### Answer 30

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.

### Topic 13 Service of Documents and Delivery Modes

### MCQ

#### Question 31

**Part of the capital for which application have been received from the public and shares allotted to them:**

- (a) Nominal capital
- (b) Issued capital

(c) Subscribed capital

(d) Called up capital

(MTP Oct '19)

**Ans:** (c)

**Reason:**

The Subscribed Capital refers to the portion of the capital for which applications have been received from the public and shares have been allotted to them.

**Here's the breakdown of the terms:**

**(a) Nominal capital:** This is the total capital that a company is authorized to raise as specified in its Memorandum of Association. It represents the maximum amount a company can raise by issuing shares.

**(b) Issued capital:** This refers to the portion of the nominal capital that the company offers to the public or shareholders for subscription. It may or may not be fully subscribed.

**(c) Subscribed capital:** This is the portion of the issued capital that has been subscribed by the public or investors. It represents the capital that has been applied for by investors and allotted by the company. It reflects the actual amount the company has committed to receive from investors.

**(d) Called-up capital:** This is the portion of subscribed capital that the company has requested (or "called") the shareholders to pay. The called-up capital may be paid in installments over time.

Therefore, subscribed capital refers to the amount for which applications have been received from the public, and shares have been allotted to them, which is the correct answer.

## Topic 14 Registration of Prospectus

### MCQ

#### Question 32

The paid up share capital of ABC Ltd. is 5000000 shares of Rs. 200 each. 20% of its paid up share capital is held by 4 of its promoters, who want to offload their holding by making an offer of sale to the public by issuing a prospectus. They want to authorise someone to take all actions and complete all formalities related to such offer of sale. From the following who can be authorised by them to do so—

- (a) Any person who has agreed to fulfil all the formalities related to such offer of sale
- (b) Any one or more director of the company.
- (c) Company itself whose shareholding they want to offload.
- (d) Any competent officer of the company.

(MTP Apr '19)

Ans: (c)

Reason:

In the case of an offer for sale (as opposed to a public issue), the promoters who want to offload their shares in the company typically authorize the company itself to handle the formalities of the sale, since the company is involved in the process, and the shares are being sold on behalf of the promoters. The company will be responsible for handling the administrative and legal procedures, including filing the prospectus and coordinating the sale.

Let's analyze the options:



(a) Any person who has agreed to fulfill all the formalities related to such offer of sale: While this may seem reasonable, the company itself typically handles the process in a regulated manner under the Companies Act. Simply appointing any person is less formal and does not comply with the structure of an offer of sale.

(b) Any one or more directors of the company: While directors may oversee the process, they don't typically handle all the formalities themselves. The company as an entity carries out the actual administrative work.

(c) Company itself whose shareholding they want to offload: This is the correct option. The company will handle all formalities, including issuing the prospectus, dealing with applications, and carrying out the offer of sale, since the shares being sold belong to the promoters but the process is managed through the company.

(d) Any competent officer of the company: While a competent officer may assist in the process, the ultimate responsibility lies with the company itself to complete the formalities of an offer of sale.

Therefore, option (c) is correct because the company itself will manage the offer of sale and complete all formalities related to the sale of shares held by the promoters.

## **Topic 15 Consent and Withdrawal by Directors/Signatories**

### **MCQ**

#### **Question 33**

**Extra Limited is a growing Company and requires additional funds for expansion from time to time. They are following the same process for making an offer to public and then issue those shares. This is very time and energy consuming for them. Kindly advise them if there is any way out.**

(a) During first offer they shall file prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;

(b) During first offer they shall file prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;

(c) During first offer they shall file shelf prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;

(d) During first offer they shall file shelf prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required.

(MTP May 20)

**Ans: (c)**

**Reason:**

The concept of a shelf prospectus allows a company to make multiple offers to the public without the need to file a new prospectus for each subsequent offer, as long as the offer is made within the period specified in the shelf prospectus.

**Here's why (c) is the correct answer:**

Shelf Prospectus is a document that allows the company to issue securities in multiple tranches over time. A shelf prospectus is typically valid for one year (although it can be for longer periods as well) from the date of its first filing, depending on the rules set by the regulatory authorities.

Once a company files a shelf prospectus, it doesn't need to file a new prospectus for every subsequent public offer during the validity period of the shelf prospectus. This saves the

company the time and effort of preparing a new prospectus for each offer, making the process more efficient.

**Explanation of other options:**

(a) and (b): These are incorrect because filing a regular prospectus (not shelf prospectus) with a one-year or two-year validity is not the same as using a shelf prospectus. For regular prospectuses, a new one must be filed for each new offer, which defeats the purpose of seeking an efficient way out.

(d): While a shelf prospectus can indeed be valid for two years, the key in this question is that the shelf prospectus is designed to ease the process of issuing multiple offers within a set period (typically one year). A validity of one year is more common and practical, and this is likely the intent of the question.

Therefore, (c) is the most appropriate answer because it aligns with the use of a shelf prospectus that allows multiple offers during its validity period without the need to file a new prospectus each time.

**Topic 16 Returns of Allotment and Filing Requirements**

**MCQ**

**Question 34**

Being in need of further capital, Rimsi Cotton-Silk Products Limited opted to offer 50.00 lacs equity shares of Rs. 1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by serially numbered application form was sent to them after fulfillment of due formalities including passing of special resolution. One of the applicants, Rajan made a written complaint to the company highlighting the fact that the letter of offer was incomplete as well as illegal, for the same did not contain

**‘renunciation clause’ though he wanted to exercise his ‘right of renunciation’ in favour of one of his son Uday. By choosing the correct option, advise the company in this matter.**

(a) As the ‘Right of Renunciation’ cannot be denied, the company needs to rectify its mistake by including the same in the letter of offer and the application form.

(b) The company is prohibited from providing ‘Right of Renunciation’ and therefore, the letter of offer and the application form need not include any such clause.

(c) Instead of absolute prohibition, the company needs to provide ‘Right of Renunciation’ limited to twenty five percent of offering.

(d) Instead of absolute prohibition, the company needs to provide ‘Right of Renunciation’ limited to fifty percent of offering.

**(MTP Oct’19)**

**Ans: (b)**

Reason:

In the case of private placements, the Companies Act, 2013 has laid down specific guidelines and provisions.

Private placement refers to the process where a company offers its securities to a selected group of people (usually identified or high-net-worth individuals) and not to the public at large.

According to Section 42 of the Companies Act, a company can offer shares through a private placement, but such an offer is typically subject to certain limitations.

One of the restrictions for private placements is that renunciation of shares is generally not allowed. The right of renunciation, which allows the original allottee to transfer their allotment to someone else (before they are issued shares), is not available in private placements, unlike in the case of a public offer.

Why option (b) is correct: As per the provisions under Section 42 and the Rules on Private Placement, the right of renunciation cannot be provided to any applicant in a private placement offer. Therefore, the company does not need to include a "renunciation clause" in its offer document or application form.

**Why other options are incorrect:**

(a) is incorrect because private placements are not allowed to provide the right of renunciation as per the Companies Act. So, it's not a mistake on the company's part, and the clause does not need to be added.

(c) and (d) are also incorrect because, as per the provisions of the Companies Act, the right of renunciation is prohibited altogether in the case of private placement, regardless of the percentage offered. There is no flexibility to allow renunciation for a portion of the offering.

Thus, the company is prohibited from providing a "right of renunciation," and the offer and application form need not include such a clause, making (b) the correct answer.

**Topic 17 Role of Information Memorandum**

**MCQ**

**Question 35**

**Which of the following statement is contrary to the provisions of the Companies Act, 2013?**

- (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 Rs 20,000.

(d) A public company can make a private placement of its securities.

(MTP April '23, RTP May'21)

**Ans:** (c)

**Reason:**

The statement in option (c) is contrary to the provisions of the Companies Act, 2013.

According to the Companies Act, 2013, private placement refers to the issuance of securities to a select group of persons, and the minimum subscription for a private placement does not require the market value of the securities offered to be Rs 20,000 per person.

Instead, the Companies Act specifies that a private company or a public company making a private placement must follow the guidelines set in Section 42 of the Act. These guidelines do not require a minimum market value of Rs 20,000 for each offer to be made. The private placement requires the offer to be made to a limited number of persons (not exceeding 200, excluding qualified institutional buyers) and is subject to compliance with specific regulations, such as filing a private placement offer letter with the Registrar of Companies and ensuring that the offer is not to the public at large.

**Why the other options are correct:**

(a) A private company can make a private placement of its securities. This is in line with the provisions of the Companies Act.

(b) The company must pass a special resolution for private placement as required under Section 42(2) of the Companies Act, 2013.

(d) A public company can indeed make a private placement of its securities, subject to compliance with the provisions of the Companies Act.

Thus, (c) is the only statement that contradicts the provisions of the Companies Act, 2013.



### Question 36

#### ICAI Illustration (True/False) (New)

**Statement – The matters specified under section 25(3) need to be stated in substitution of matters stated under section 26.**

(Study Material)

**Answer:**

False [Section 25(3) provides three matters that need to be stated in addition to matters required to be stated in prospectus under section 26.]

### Topic 18 Dematerialisation of Securities

#### MCQ

#### Question 37

Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of Rs 50 crores should be stated as the minimum amount that needs to be subscribed by the prospective subscribers. The funds shall be raised in four instalments consisting of application, allotment, first call and second & final call. Advise the company by which instalment it should receive the minimum subscription stated in the prospectus.

- (a) Along with amount subscribed as application money.
- (b) Along with amount subscribed as final call money.
- (c) Along with amount subscribed as first call money.
- (d) Along with amount subscribed as second and final call money.

**Ans: (a)**

**Reason:**

According to the provisions of the Companies Act, 2013, when a company issues a prospectus, it must ensure that the minimum subscription amount is received before the allotment of securities. This is a key requirement for the issue to be considered valid and for the company to proceed with the allotment.

The minimum subscription refers to the minimum amount that must be subscribed by the investors for the issue to be valid. The Companies Act requires that the company must receive the minimum subscription within 30 days from the date of issue of the prospectus, or before the allotment of securities, whichever is earlier.

In the case of an issue with multiple instalments, the minimum subscription should be received along with the application money, which is the first instalment of the subscription process. This ensures that the company has received the necessary funds to move forward with the allotment process, confirming that there is sufficient interest in the issue before proceeding.

If the company does not receive the minimum subscription by the time the application money is collected, the company is required to refund the application money to the subscribers within 15 days and the issue will be cancelled.

Therefore, option (a) is the correct answer, as the minimum subscription must be received along with the application money to ensure the validity of the issue.

## **Topic 19 Refund of Monies in Case of Default**

**MCQ**

### Question 38

A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:

- (a) 5%
- (b) 2%
- (c) 2.5%
- (d) 2.25%

(RTP Nov 21) (MTP Sep '23)

**Ans:** (b)

**Reason:** In this scenario, the company, A Limited, has authorized the payment of underwriting commission at 2% in its Articles of Association. However, the proposed underwriters, Gama Brokers, have negotiated a higher commission rate of 2.25%.

The Companies Act, 2013 and the Articles of Association of the company govern the payment of underwriting commission. According to the Act, the company is eligible to pay underwriting commission at a rate specified in its Articles of Association, but not exceeding the rate approved by the members in a general meeting. In this case, the Articles of Association specify that the company can pay up to 2% of the issue price as underwriting commission.

Therefore, even though the underwriters have agreed to a rate of 2.25%, the company is only eligible to pay a maximum of 2% under the provisions of the Articles of Association.

Thus, the correct answer is 2%, and option (b) is the right choice.



## Chapter 4 - Share Capital and Debentures

### Topic 1 Types of Shares (Equity, Preference, etc.)

#### MCQ

##### Question 1

Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been received by the company. In the given circumstances, advise as per the provisions of the Companies Act, 2013:

- (a) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh
- (b) Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.
- (c) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh
- (d) Corrupt Limited will give the shares back to Mr. Suresh

(MTP March'19)

**Ans: (d)**

**Reason:**

As per the Companies Act, 2013, and relevant case laws:

- A valid transfer of shares requires both a transferor (Mr. Suresh) and a living transferee (Mr. Ramesh).

- Since Mr. Ramesh died before the registration, the transfer becomes void, as a dead person cannot become a member.
- As no intimation of death was received, the company cannot proceed, but once it learns or suspects the death, it cannot complete the transfer.
- Hence, the company must return the transfer documents to the transferor (Mr. Suresh).

## Question 2

The Authorized share capital clause of LMN & Co. Ltd. consisted of Preference share capital and Equity share capital both. With regard to equity share capital, the article of association of the company has given authorization to issue differential equity shares. Apart from authorization by the Articles, from the following strike out the condition, which is not mandatory to comply with-

- (a) Such issue of shares must be authorized by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be
- (b) The company must have consistent track record of distributable profit for the last five years.
- (c) The company has no subsisting default in the payment of the declared dividend to its shareholders.
- (d) The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares.

(MTP April'19)

Ans: (b)

Reason:

As per Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014, for issuing equity shares with differential rights, the following mandatory conditions must be fulfilled:



- Authorization in the Articles of Association
- Approval by ordinary resolution in general meeting or postal ballot
- No default in filing financial statements and annual returns for the last 3 financial years
- No subsisting default in payment of declared dividend or repayment of loans, deposits, interest, etc.

### Question 3

**Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Which of the following options is best suited in such a situation:**

- (a) Prithvi Cements Limited can issue debentures carrying voting rights if an ordinary resolution is passed permitting such issue.
- (b) Prithvi Cements Limited can issue debentures carrying voting rights if a special resolution is passed permitting such issue.
- (c) Prithvi Cements Limited can issue debentures carrying voting rights if it mortgages land and buildings worth two times the amount of such debentures.
- (d) Prithvi Cements Limited cannot issue debentures carrying voting rights.

**(MTP Oct 20)**

**Ans: (d)**

**Reason:**

As per Section 71(2) of the Companies Act, 2013,

"No company shall issue debentures carrying any voting rights."

This is an absolute restriction, irrespective of passing any resolution or offering security.

Debentures are debt instruments, and holders are creditors, not owners. Hence, they cannot interfere in management by way of voting rights.

**Conclusion:** Issuing debentures with voting rights is strictly prohibited under the Companies Act, 2013.

#### Question 4

**In a company if any change of right of one class also affects the right of other class, then: passed**

- (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

(MTP March 21)

**Ans:** (c)

**Reason:**

As per Section 48(2) of the Companies Act, 2013,

If the variation of rights of one class of shareholders affects the rights of any other class, then consent in writing of holders of at least three-fourths of that other class or a special resolution passed at a separate meeting of that class is mandatory.

So, when rights of one class are impacted due to change in another, approval from the affected class is needed to protect their interest.

Hence, option (c) is correct.

#### Question 5

**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:**

- (a) Equity Shares
- (b) Preference Shares
- (c) Sweat Equity Shares
- (d) Redeemable preference shares

(MTP March '22)

**Ans: (c)**

**Reason:**

As per Section 2(88) of the Companies Act, 2013,

Sweat Equity Shares are equity shares issued by a company to its directors or employees at a discount or for consideration other than cash, in return for:

- Providing know-how,
- Making available intellectual property rights (IPRs), or
- Contributing value additions.

These shares are a reward for contributions other than financial investment, hence classified as sweat equity shares

#### **Question 6**

**Pride Pvt. Limited, a start-up by a few qualified professionals, was incorporated in 2018. 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 1,00,00,000 Equity Shares of Rs 10 each                   | 10          |
| Issued, Subscribed and Paid-up Share Capital 50,00,000 Equity Shares of Rs 10 each | 5           |
| Share Premium                                                                      | 1           |
| General Reserve                                                                    | 3.52        |
| Profit & Loss Account                                                              | 1.58        |

The company decided to issue 30% of its equity share capital as sweat equity shares to a class of directors and permanent employees with the objective of motivating them and making them partners in the company's growth. The proposed sweat equity shares will be subject to a lock-in period of five years.

Accordingly, the company passed a resolution in its general meeting authorizing the issuance of 15 lakh sweat equity shares at a current market price of Rs 25 per share, to be issued for a consideration of Rs 5 per share to the identified class of directors and employees.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, examine the following:

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

(ii) Whether lock-in period was justifiable?

(RTP Sep 2025)

**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 provision 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 of 50% (in case of startup company). 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.

## Topic 2 Issue of Bonus Shares

### Question 7

#### ICAI Illustration True/False

Passing an ordinary resolution is sufficient where the buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company.

(Study Material)

Answer:

False, such buy-back has to be authorised by the Board resolution passed at its meeting.

## Topic 3 Buy-back of Shares

### Question 8

#### ICAI Illustration True/False

CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.

(Study Material)

Answer:

False, the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.



## Question 9

### Case Scenario

Kapoor Limited is a mid-sized listed manufacturing company incorporated in the year 2010 by R.D. Kapoor. Mr. Kapoor has two son, Mr. Vineet and Mr. Aditya. Both Mr. Aditya and Mr. Vineet are working as directors in Kapoor Limited.

Kapoor Limited had some compliance issues in the past. In 2016–17, the company issued redeemable preference shares but later failed to pay dividends on them for some time. In September 2018, the company fixed this by clearing all its loans and paying the pending dividends to the preference shareholders. After resolving these issues, the company proposed to issue new equity shares with differential rights for the financial year 2019–20.

As part of its broader capital raising strategy, the board of directors decided to issue three different securities:

- a rights issue of equity shares to existing shareholders,
- a new class of preference shares offered exclusively to current equity shareholders, and
- a public issue of convertible debentures.

So, for the rights issue, it prepares a simplified document omitting several disclosures required under section 26(1) and for the new preference shares, they created a detailed prospectus but excluded certain financial reporting. But for the convertible debentures, they prepare a complete prospectus with all section 26(1) requirements.

Further, Ms. Roshni, a shareholder, owned 1,500 partly paid equity shares in the company (Rs 8 paid out of Rs 10). On 5th July 2024, she applied to transfer 500 of these shares to Mr. Bakshi, who didn't know about it. The company sent him a notice on 10th July, 2024, which he received on 12th July, 2024. Since Mr. Bakshi was abroad, he saw the notice only on 20th July, 2024. After realizing the shares had unpaid amounts, he sent an objection email on 24th July, 2024. However, the company went ahead with the transfer on 27th

July, 2024, saying his objection came too late. According to the company's rules, the Board can approve the transfer of partly paid shares if they believe the buyer can pay the remaining amount in the future.

In another case, Mr. Varun, one of the shareholders of Kapoor Limited, is the legal representative of a deceased shareholder, Mr. Kartik. He had written an application to the company, to transfer the shares (of Mr. Kartik) in his name. But Mr. Varun did not receive any reply from the company. Mr. Varun went to the company office to inquire about the same. The company refused to transfer the shares in his name, as he is not the registered member of the company.

For your information, the company's financial position as of 31st March, 2024 is as follows:

- Paid-up equity share capital: Rs 200 crore (20 crore shares of Rs 10 each)
- Free reserves: Rs 600 crore
- Securities premium: Rs 150 crore
- Secured loans: Rs 400 crore
- Unsecured loans: Rs 300 crore

The Board of Directors approved a buy-back proposal on 15th September, 2024, to purchase 3 crore equity shares at Rs 60 per share. The company had previously conducted a buy-back of 1 crore shares (Rs 10 crore) in August 2023 during the financial year 2023-24. The new buy-back is planned for October 2024, which falls in financial year 2024-25. The Chief Financial Officer has confirmed that post-buy-back, the debt-to-capital ratio would remain within prescribed limits, and the shares are fully paid-up.

(RTP Sep 2025)

### Multiple Choice Questions

1. Since the default was made good in FY 2018-2019, the company considered to issue new equity share with differential rights. According to the provisions of the Companies

**Act, do you think the company is eligible to issue the shares for the financial year 2019-2020?**

(a) Yes, the company is immediately eligible to issue new shares as it has cleared all the dues and loan by September 2018.

(b) No, the company is ineligible to issue the shares as the company needs to wait three years till March 31, 2022.

(c) Yes, the company is eligible to issue new shares in the next financial year, as the default was made good in the previous FY year 2018-2019.

(d) No, the company is ineligible to issue the new shares as the company needs to wait for five years till March 31, 2024.

**Ans: (d)**

**Reason:**

As per Rule 4(1)(f) of the Companies (Share Capital and Debentures) Rules, 2014,

A company cannot issue equity shares with differential rights if it has defaulted in repayment of loans, interest, dividend, or other dues to creditors or debenture holders, and such default has not been subsisting for at least five years after it was made good.

In this case, the default was cleared in FY 2018–2019, so the company becomes eligible only after five years, i.e., from April 1, 2024.

Hence, option (d) is correct.

**2. According to the provision of the Companies Act, do you consider the company's action of affecting the transfer of partly paid shares to Mr. Bakshi is valid?**

(a) Yes, because the company waited for more than 7 days from the date of dispatch of notice before registering the transfer.

(b) No, because the transferee did not give his explicit consent before the transfer of partly paid shares.

(c) No, because Mr. Bakshi made objection within 2 weeks from the date of receipt of notice.

(d) Yes, because the Board has assessed Mr. Bakshi's financial capability before approving the transfer.

**Ans: (c)**

**Reason:**

As per Section 56(3) of the Companies Act, 2013 and related rules:

When partly paid shares are to be transferred, the company must give notice to the transferee and the transfer shall not be registered if the transferee objects in writing within 2 weeks from the date of receipt of notice.

In this case, Mr. Bakshi objected within the permitted 2-week period, so the company cannot proceed with the transfer.

Hence, the action of the company is invalid, and option (c) is correct.

**3. According to the provision of the Companies Act, can the company deny transferring shares in Mr. Varun's name and what is the company's obligation?**

(a) Yes, the company can refuse the transfer if he is not a registered shareholder.

(b) No, the legal representative has the right to transfer even if they are not registered shareholder.

(c) No, the company can deny if the legal representative's name is not registered with the company.

(d) Yes, the company needs the approval from the Tribunal before transferring the shares.

**Ans: (b)**

**Reason:**

As per Section 56(2) of the Companies Act, 2013,

In case of transmission of shares (e.g., on death of a shareholder), the legal representative is entitled to register the shares in their own name or transfer the shares to someone else, even if not yet registered as a member.

The law recognizes the rights of a legal heir to transfer shares without requiring prior registration in the company's records.

Hence, the company cannot deny the transfer, and option (b) is correct.

**4. Based on the buy-back limitations under the provision of the Companies Act, do you think the proposed buy-back is valid?**

(a) Yes, the buy-back is valid as the total amount (Rs 180 crore) is within 25% of the aggregate paid-up capital and free reserves (Rs 800 crore), and the buy-back in the new financial year is not affected by the previous year's buy-back.

(b) Yes, the buy-back is valid as the number of shares (3 crore) is within the 25% of the total paid-up equity capital (5 crore shares).

(c) Yes, the buy-back is valid as the value of shares being bought back (Rs 180 crore) represents only 22.5% of the aggregate paid-up capital and free reserves (Rs 800 crore).

(d) No, the buy-back is invalid as the total amount (Rs 180 crore) combined with the premium being paid (Rs 150 crore above face value) exceeds 25% of the aggregate paid-up capital and free reserves.

**Ans: (b)**

**Reason:**

As per Section 68 of the Companies Act, 2013, a company can buy back:

- Up to 25% of its total paid-up equity capital in a financial year (in case of equity shares), and
- Up to 25% of the aggregate of paid-up capital and free reserves in terms of buy-back amount.

In this case, 3 crore shares out of 5 crore = 60% of total buy-back limit (i.e., within the permissible 25% of equity capital).

Though Rs 180 crore is within 22.5% of Rs 800 crore, option (b) focuses on the correct legal limit applicable to equity share buy-back, which is based on the number of shares, not just the amount.

Hence, option (b) is correct.

**5. The company had earlier buy-back 1 crore shares in August 2023. Can it legally conduct another buy-back in May 2024?**

- (a) Yes, as both of the gap between the buy backs is more than 1 year
- (b) No, as only one buy-back is allowed in the company's lifetime
- (c) No, only listed companies can do multiple buy-backs
- (d) Yes, but only if Tribunal gives specific permission

**Ans: (a)**

**Reason:**

As per Section 68(2) of the Companies Act, 2013,

A company cannot make a further buy-back within a period of 1 year from the date of the preceding buy-back.



In this case, the previous buy-back was in August 2023, and the new one is proposed in May 2024, which is after a gap of more than 9 months, but less than 1 year, so this appears to be incorrect.

**Correction:** The correct answer should be "No", because the gap is less than 1 year.

**6. If Kapoor Limited's post-buy-back debt-to-equity ratio exceeds 2:1, which of the following applies?**

- (a) Buy-back is still valid if Board approves
- (b) Buy-back will be invalid unless a lower ratio is prescribed for the company
- (c) The ratio rule applies only to private companies
- (d) Company must cancel the buy-back resolution retroactively

**Ans: (b)**

**Reason:**

As per Section 68(2)(d) of the Companies Act, 2013,

A company can proceed with a buy-back only if, after the buy-back, its debt-to-equity ratio does not exceed 2:1, unless a higher or lower ratio is prescribed by the Central Government or regulatory authority (for specific classes of companies like NBFCs or HFCs).

So, if Kapoor Limited's post-buy-back debt-equity ratio exceeds 2:1, the buy-back becomes invalid, unless a lower or exempted ratio is specifically prescribed for that company.

Hence, option (b) is correct.

## **Topic 4 Redemption of Preference Shares**

## Descriptive Question

### Question 10

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

(Study Material)

### Answer 10

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

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

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

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

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

Further, under **section 64** where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration, along with an altered memorandum. The

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

#### Question 11

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?

(Study Material)

#### Answer 11

Jurisdiction of Court, now Tribunal under the Companies Act, 2013: 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 subsections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

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

#### Question 12

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

(Study Material)

#### Answer 12

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 view of the provisions of **Section 55 (3)**, Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs. 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have

not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

### Question 13

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

(Study Material)

### Answer 13

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

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014, The rights, limitations, restrictions and provisions as are for

the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders. Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just about a year old because no such minimum time limit of 2 years in operations is specified under Section 54.

#### **Question 14**

**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 31-3-2020. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.**

**(Study Material)**

#### **Answer 14**

Amount lying to the credit of Securities Premium Account is required to be utilised 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.

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

#### Question 15

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

**(Study Material)**

#### Answer 15

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per **section 67 (3)** of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

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

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of Rs. 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of Rs. 1000 each of OLAF Limited in which he is employed. Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of Rs. 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to 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 Rs. 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.

## **Topic 5 Transfer of Shares – Procedure & Validity**

### **Descriptive Question**

#### **Question 16**

Shenoy Limited is a company with an authorized share capital of 20,00,000 equity shares of Rs100 each. At the Annual General Meeting (AGM), the shareholders proposed to reduce the face value of each share from Rs100 to Rs10 and correspondingly increase the

number of shares from 20 lakh to 2 crore, keeping the total authorized share capital unchanged.

Analyse whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

(RTP May 2025)

**Answer: 16**

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

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

In the given situation, shareholders of Shenoy Limited, in the AGM requested the company to reduce the face value of each share (from Rs 100 to Rs 10) and increase the number of shares than fixed by the memorandum (i.e. from 20 Lakh to 2 crore).

According to the above provision, Shenoy Limited, having authorized capital of 20,00,000 equity shares (face value Rs 100 each) can reduce the face value of each share to Rs 10 each and increase the shares to 2,00,00,000 [thereby keeping the total amount of authorized share capital to Rs 20,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders can be considered.

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.

**Topic 6 Transmission of Shares – Legal Process**

## Descriptive Question

### Question 17

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

(Study Material)

### Answer 17

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

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

### Question 18

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paidup 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 fulfill before the issue of sweat equity shares especially since their company is just a few months old.

(MTP May'20, March'19, RTP May '19, Old & New SM)

**Answer 18**

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.

**OR**

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 provision to 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 provision 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.

#### **Question 19**

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

**(MTP March'18)**

#### **Answer 19**

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

- (i) The existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
- (ii) Employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

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

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

#### Question 20

**Write short notes on the following in respect of the provisions of the Companies Act, 2013:**

**(i) Creation of debenture redemption reserve account.**

**(ii) Appointment of 'Debenture Trustee' by a company.**

**(MTP Aug'18)**

#### Answer 20

(i) Creation of debenture redemption reserve (DRR) account: According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the company except for the redemption of debentures.

(ii) 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.

A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with the prescribed rules.

#### **Question 21**

**Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate.**

**Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.**

**(MTP May 20, RTP Nov '21)**

#### **Answer 21**

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.

#### Question 22

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

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

**Directors of the company seeks your advice in following cases:**

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

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

**(MTP Oct 21, PYP Nov'18)**

## Answer 22

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 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.

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

### Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of Rs 10 lakhs (i.e.,  $\frac{1}{3} \times 30.00$  lakh) which is well within the limit of available amount of Rs 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 Rs 15 lakhs (i.e.,  $\frac{1}{2} \times 30.00$  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 Rs 15 Lakhs is exceeding the available eligible amount of Rs 12 lakhs.

## Topic 7 Appeal to Tribunal under Section 58(4)

### MCQ

#### Question 23



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

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

[PYP May'18]

**Answer 23**

**Section 68(2)** of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless-

- (a) The buy-back is authorized by its articles;
- (b) A special resolution has been passed at a general meeting of the company authorizing the buyback: except where—
  - (1) The buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
  - (2) Such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

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

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

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of Rs 50,00,000. The company planned to buy back shares to the extent of Rs 4,50,000. Referring to the above provisions, the answers will be as follows:

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

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

## **Topic 8 Register of Members – Correction & Dispute Resolution**

### **Descriptive Question**

#### **Question 24**

"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 March '22 & Oct '23, PYP July 21)

**Answer 24**

According to provision to **section 68(2)** of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. **Section 68 (8)** casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under **section 62 (1) (a)** or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

**Question 25**

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

(MTP Oct'19, Old & New SM)

**Answer 25**

**Alteration of Capital:** Under **section 61(1)** of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

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

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

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

Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of **section 13** of the Companies Act, 2013.

#### Question 26

**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 Rs 10 each. The**

BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of Rs 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of Rs 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

(1) Decide whether 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 Oct'22, PYP Nov'20)

#### Answer 26

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 27

Bhuj Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2023 showed the following position:

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

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

(April '23 & March '18) (SM May 22)(RTP (May 21 & Nov 20)

#### Answer 27

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 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. For the issue of bonus shares Bhuj Cement Limited will require reserves of Rs 50,00,000 (i.e. half of Rs 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.

#### Question 28

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

(RTP May'19, MTP March '23, Old & New SM)

#### Answer 28

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**

**Question 29**

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

**(RTP Nov'18)**

**Answer 29**

Issue of Further Shares: **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 the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

(a) Under **section 62 (1) (b)** issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

(b) Under **section 62 (1) (c)** such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

(c) if any equity shareholder to whom the shares are offered in terms of **section 62 (1) (a)** as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

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

## **Topic 9 Rights of Transferee/Transmittee in Case of Dispute**

### **Descriptive Question**

#### **Question 30**

**To prevent excessive concentration of control among a group of shareholders, describe with the help of an example how the Companies Act, 2013, imposes limits and regulates the voting power of shares with differential rights (equity shares)?**

**Answer: 30**

The Companies Act, 2013, allows companies to issue equity shares with differential voting rights (DVRs), which provide different voting power compared to ordinary equity shares. However, to prevent excessive concentration of control in the hands of a few shareholders, the Act places specific restrictions on the total voting power that can be assigned to DVR shares.

Conditions to issue shares with differential rights

1. The company should have filed annual returns and financial statements for the last three financial years.
2. The company must obtain shareholder approval through a ordinary resolution.
3. The company must have a consistent track record of profitability.
4. There should be no default in the payment of dividends, interest, or repayment of loans.

According to Equity Shares with Differential Rights [Rule 4 of the Companies (Share capital and Debenture) Rules, 2014], a company can issue shares with differential voting rights, but the total voting power of such shares cannot exceed 74% of the total voting rights at any point in time. This ensures that at least 26% of the total voting power remains with ordinary equity shareholders, thereby maintaining a balance in decision-making.

Example to understand the above rule.

Hind Ltd. has 2,000 total shareholders, including:

Regular Equity Shareholders (with normal voting rights)

DVR Shareholders (with differential voting rights)

Step 1: Understanding Voting Power Distribution

Let's assume Hind Ltd. issues DVR shares where each shareholder has twice the voting power compared to regular equity shareholders.

Regular Equity Shareholders = 600 shareholders → 600 votes

DVR Shareholders = 400 shareholders → each holding 2 votes → 800 votes

Total Voting Power in the Company = 600 + 800 = 1,400 votes

Step 2: Applying the 74% Rule

74% of 1,400 total votes = 1,036 votes

The DVR shareholders collectively hold 800 votes, which is below 1,036 votes. Hence this provision strikes a balance by allowing companies to issue differential voting rights shares and restrict the over concentration of power with dominating few group of peoples. By capping DVR voting power at 74%, the company ensures that the control is not excessively prejudiced in favor of DVR shareholders.

## **Topic 10 Allotment of Securities – Validity & Irregularities**

### **Question 31**

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of Rs 100 Lakh divided into 10 Lakh equity shares of Rs 10 each. The subscribed and paid-up share capital on that date is Rs 80 Lakh divided into 8 Lakh equity shares of Rs 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 reform 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.

(May '22)

**Answer 31**

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

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

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

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

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

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



### Question 32

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

(PYP May'19)

### Answer 32

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

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

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

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

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-

- (a) Through any subsidiary company including its own subsidiary companies; or
- (b) through any investment company or group of investment companies; or
- (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy- back is not prohibited.

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

### Question 33

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does

Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

(PYP May'18)

### Answer 33

Refusal for Registration of transferred/transmitted securities: According to Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved; In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

#### **Question 34**

**X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them.**

**The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.?**

**(PYP Nov'19)**

#### **Answer 34**

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen day or such less number of days as maybe prescribed (added

as per amendment) and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

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

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the

Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company.

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

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

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

### Question 35

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

of equity share. In the light of the provisions of the Companies Act, 2013, (i) Decide, whether the company's proposal is in order.

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

(PYP Nov'19]

### Answer 35

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

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

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

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

### **[Provision to section 68(2)]**

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

(ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or

other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

## Topic 11 Debentures and Convertible Instruments

### Question 36

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 Nov 21, RTP Nov'21)

### Answer 36

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 provision to **rule 8 (4)**, a startup company, [as defined in notification number **G.S.R.127 (E)**, dated **19<sup>th</sup> 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 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 37

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of Rs100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to Rs10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

(PYP Nov '22)

### Answer 37

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

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

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

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

## **Topic 12 Utilization of Securities Premium Account**

### **Question 38**

Alpha Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of Rs 200 crore. 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 5 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 be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

(MTP, Jan 2025)

### **Answer: 38**

Sweat equity shares of a class of shares already issued.

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

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

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

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

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

Alpha 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.

### Topic 13 Liability and Damages in Case of Refusal of Registration

#### Descriptive Question

##### Question 39

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: | Rs |
|---------------------------|----|

|                                                                                       |             |
|---------------------------------------------------------------------------------------|-------------|
| 1,00,000 Nos. of Equity Shares of Rs100 each Subscribed and Paid-up<br>Share Capital: | 1,00,00,000 |
| 40,000 Nos. of Equity Shares of Rs 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 Nov '22)

Answer 39

I. The amount that can be raised by the Company by issuing Debentures:

**Section 71** of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

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

\*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve. Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

| Particulars                    | Amount    |
|--------------------------------|-----------|
| 8% Non- Convertible Debentures | 30,00,000 |

|                                                    |           |
|----------------------------------------------------|-----------|
| 9.5% Term Loan for Purchase of Plant and Machinery | 20,00,000 |
| Amount already Borrowed (B)                        | 50,00,000 |

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

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

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

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

#### Question 40

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 Rs 10 each) | Rs 5,00,000    |
| (ii) | Issued, subscribed and paid-up Share Capital (20,00,000 equity   | Rs 2,00,00,000 |



|       |                                      |              |
|-------|--------------------------------------|--------------|
|       | shares of Rs 10 each, fully paid-up) |              |
| (iii) | Free Reserves                        | Rs 50,00,000 |
| (iv)  | Securities premium account           | Rs 25,00,000 |
| (v)   | Capital Redemption Reserve           | Rs 25,00,000 |

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

(PYP, May '23)

**Answer 40**

#### **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 paidup;

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

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

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

#### Question 41

Shree Limited has an Authorized Capital of 10,00,000 equity shares of the face value of 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the stock market and requested the company to reduce the face value of each share to 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)

#### Answer 41

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 Shree 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, Shree 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.

#### **Question 42**

**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 Jan 21) (MTP March '23 & Sep '23)**

#### **Answer 42**

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**.

## Topic 14 Special Resolutions for Share Issues

### Descriptive Question

#### Question 43

XYZ LLP was incorporated on 15th March, 2023, with its registered office in Mumbai. The LLP received a legal notice from a supplier at this address. However, the partners claim they never received the notice, as they had shifted their office to Pune on 10th January, 2024, but had not informed the Registrar about the change.

Based on the provisions of the provisions of the Limited Liability Partnership (LLP) Act, 2008, advise whether the service of notice at the Mumbai address is legally valid.

(MTP May 2025)

**Answer: 43**

Registered Office of LLP and Change therein

As per section 13 of the Limited Liability Partnership Act, 2013,

(1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

(3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

In the given question, the registered office of XYZ LLP is at Mumbai. Further, the question informs that the LLP has shifted their office to Pune.

In the light of the provisions of the Act and the facts of question, the registered office of XYZ LLP will be Mumbai as it is registered with the Registrar. The changed office to Pune cannot be treated as a registered office.

Thus, the service of notice at the Mumbai address is legally valid.

**Question 44**

**CATESTSERIES.ORG**

**Vardha Ltd., a textile company, had issued 5,00,000 preference shares of Rs 100 each in 2015, which are now due for redemption in 2025. The company has retained earnings of Rs3 crore and free reserves of Rs2 crore.**

**Being an expert, you are asked to recommend possible options that the management can avail as regard redemption of shares according to the provisions of the Companies Act, 2013?**

**(MTP 2 May 2025)**

**Answer: 44**

The redemption of preference shares is governed by Section 55(2) of the Companies Act, 2013, which outlines specific conditions for redemption and payment of premium on redemption, if any. In the given case, the company can redeem the preference shares out of the following sources:

- Out of profits that would otherwise be available for dividend distribution.
- From the proceeds of a fresh issue of shares, specifically made for the purpose of redemption.

Since the company has retained earnings of Rs 3 crore and free reserves of Rs 2 crore, it can opt for redemption from these sources. Alternatively, it can issue new equity shares to raise funds for redemption.

Where such shares are proposed to be redeemed out of the profits of the company, the sum to be redeemed, shall be transferred to a reserve, called Capital Redemption Reserve (CRR). The Capital Redemption Reserve (CRR) is a mandatory reserve that must be created when preference shares are redeemed using profits or free reserves. The amount to be transferred to CRR should be equal to the nominal value of the shares redeemed.

Accordingly, if the company redeems the shares using retained earnings and free reserves, it must transfer Rs 5 crore (equal to the nominal value of shares) to the CRR account.

However, if the company issues fresh equity shares to fund the redemption, it is not required to create a CRR since the redemption is backed by new capital inflow. Once created, the CRR is treated with the same sanctity as paid-up share capital.



Hence in the present case, the company has two options, firstly if it redeems shares using profits and reserves, it must transfer Rs5 crore to CRR and secondly if it issues fresh equity shares, it does not need to create CRR.

#### **Question 45**

**One X Ltd., a technology-based company, has a paid-up equity share capital of Rs 40 crore. The company previously issued sweat equity shares worth on Rs 8 crore and now plans to issue an additional Rs 7 crore this year.**

**Describe sweat equity shares, and to whom are they issued? What is the overall maximum limit to issue sweat equity share, and does the proposed issuance exceed the limit?**

**(MTP 2 May 2025)**

#### **Answer: 45**

Sweat equity shares are the shares that are issued by a company to its employees or directors at a discount or for consideration, other than cash. These shares are given as a reward for their contribution to the company's growth, such as providing intellectual property, technical expertise, or other valuable services. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

The issuance of sweat equity shares is regulated under Section 54 of the Companies Act, 2013, along with the Companies (Share Capital and Debentures) Rules, 2014.

**Maximum Limit:** To prevent excessive dilution of ownership, the law imposes certain limits on the amount of sweat equity shares a company can issue. As per Sub-rule 4 of the Companies (Share Capital and Debentures) Rules, 2014, a company can issue sweat equity shares within the following limits:

##### **1. Annual Limit:**

The company can issue sweat equity shares up to the higher of the 15% of the existing paid-up equity share capital, or Shares worth Rs 5 crore.

**2. Overall Limit:** At any point in time, the total sweat equity shares issued (including all previous issues) cannot exceed 25% of the total paid-up equity share capital of the company.

In the present case the paid-up share capital of the company is Rs 40 crore. The company has previously issued sweat equity shares worth Rs 8 crore and now plans to issue Rs 7 crore more this year. So according to annual limit imposed, 15% of Rs 40 crore is Rs 6 crore. The fixed limit is Rs 5 crore. So considering the higher value in the current financial year, company can issue up to Rs6 crore in sweat equity shares.

Secondly, as per the overall limit imposed to issue sweat equity shares is 25% of Paid-Up Capital. So 25% of Rs 40 crore is Rs 10 crore. Previously the company issued sweat equity shares worth Rs 8 crore. Since the company has already issued Rs 8 crore worth of sweat equity shares, it cannot issue more than Rs 2 crore under the 25% overall limit.

However, according to the annual limit, the company can issue shares worth Rs 6 crore, but can issue further more upto Rs 2 crore in sweat equity shares while staying within overall legal limits.

Yes, proposal to issue an additional Rs 7 crore this year exceed the limits. Hence if the company wants to issue more sweat equity shares, it will have to increase its paid-up equity share capital to expand the permissible limit.

## Chapter 5 – Acceptance of deposits by Companies

### Topic 1 Definition and Types of Deposits

#### Descriptive Question

##### Question 1

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) Rs 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of Rs 1,50,000, as a non- interest-bearing security deposit under a contract of employment.
- (ii) Textile Traders Limited received a loan of Rs 30,00,000 from R who is one of its directors.

(MTP April 22)

##### Answer 1

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. Rs 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of Rs 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 Rs 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, Rs 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.

## **Topic 2 Eligibility for Accepting Deposits**

### **MCQ**

#### **Question 2**

**No deposits are repayable earlier than from the date of such deposits or renewal thereof.**

- (a) 3 months
- (b) 6 months
- (c) 9 months
- (d) 12 months

(MTP, Oct'19)

**Ans:** (a)

**Reason:**

As per Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014,

No company shall accept or renew a deposit, which is repayable on demand or within a period of less than 3 months from the date of such deposit or renewal.

This means that no deposit is repayable earlier than 3 months, ensuring a minimum tenure for deposits accepted by companies.

Hence, option (a) is correct.

**Question 3**

**A com deposit trust deed at least -- days before issuing the circular or circular in the**

- (a) 7
- (b) 14
- (c) 21
- (d) 28

(MTP April 21)

**Ans:** (a)

**Reason:**

As per Rule 7(1) of the Companies (Acceptance of Deposits) Rules, 2014,

A company intending to issue secured deposits must execute a deposit trust deed at least 7 days before issuing the circular or circular in the form of advertisement.

This ensures that the security arrangements are in place before inviting the public to subscribe to deposits.

Hence, option (a) is correct.

#### Question 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.**

- (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.

(MTP Nov 21, Mar'22)

**Ans: (c)**

**Reasos:**

As per Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014,

The Register of Deposits must be preserved in good order for a minimum period of 8 years from the end of the financial year in which the latest entry is made.

This ensures proper record-keeping and traceability of deposit-related information for regulatory and audit purposes.

Hence, option (c) is correct.



### Question 5

Varsha Limited decides to raise deposits of Rs 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth Rs 15.00 lacs. Which of the following options best describe such deposits:

- (a) Fully secured deposits (except a small portion)
- (b) Unsecured deposits
- (c) Partially secured deposits
- (d) These cannot be classified as deposits

(MTP April 22)

Ans: (b)

Reason:

As per the Companies (Acceptance of Deposits) Rules, 2014,

A deposit is considered secured only if the full amount of the deposit is secured by a charge on tangible assets equal to or more than the deposit amount.

In this case, Varsha Ltd. is securing only Rs 15.00 lacs out of Rs 20.00 lacs, so the deposit is not fully secured.

Partially secured = treated as unsecured under law.

Hence, the entire deposit is legally classified as an unsecured deposit, making option (b) correct.

### Question 6

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

(MTP April 22)

**Ans:** (c)

**Reason:**

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014,

A company cannot accept or renew deposits for a period exceeding 36 months (3 years) from the date of acceptance or renewal.

This limit applies to both members and the public, unless a shorter or longer period is specifically allowed for certain classes of companies by the Central Government.

Hence, the maximum tenure is 36 months, making option (c) correct.

### **Topic 3 Procedure for Accepting Deposits (Private vs Public Companies)**

#### **MCQ**

##### **Question 7**

K Limited decides to raise deposits of Rs 10.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth Rs 5.00 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

(MTP Sep'22, Apr'23)

**Ans:** (c)

**Reason:**

As per the Companies (Acceptance of Deposits) Rules, 2014,

Deposits can be secured, unsecured, or partially secured, depending on whether the entire, none, or a part of the deposit amount is secured by a charge on the company's tangible assets.

In this case, K Limited is securing Rs 5.00 lakh out of Rs 10.00 lakh, meaning only part of the deposit is backed by security.

Therefore, such deposits are correctly classified as partially secured deposits, making option (c) correct.

#### Question 8

**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:**

- (a) 9%
- (b) 14%
- (c) 18%
- (d) 24%

(MTP Sep'22, Apr'23 & Oct '23)

**Ans: (c)**

**Reason:**

As per Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014,

If a deposit (secured or unsecured) has matured and been claimed, but remains unpaid, the company is liable to pay interest at a penal rate of 18% per annum for the overdue period.

This rule ensures prompt repayment of deposits and penalizes delays.

Hence, the correct penal rate is 18% p.a., making option (c) correct.

#### **Question 9**

**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.**

- (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.

(MTP Oct'22)

**Ans: (c)**

**Reason:**

As per Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014,

The Register of Deposits must be preserved in good order for a minimum of 8 years from the end of the financial year in which the latest entry is made.

This requirement ensures availability of deposit records for audit, inspection, and regulatory purposes.

Hence, option (c) is correct.

#### Question 10

**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.**

- (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.

(MTP Oct '23)

**Ans: (c)**

**Reason:**

As per Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014,

Every company accepting deposits must maintain a Register of Deposits, and it shall be preserved in good order for at least 8 years from the end of the financial year in which the latest entry is made.

This ensures proper documentation and compliance with regulatory requirements.

Hence, option (c) is correct.

## Topic 4 Security for Deposits – Fully Secured, Partially Secured, Unsecured

### MCQ

#### Question 11

Varsha Limited decides to raise deposits of Rs 20.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth Rs 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

(Study Material)

Ans: (b)

Reason:

As per the Companies (Acceptance of Deposits) Rules, 2014,

A deposit is treated as secured only if it is fully secured by a charge on tangible assets equal to or exceeding the amount of the deposit.

In this case, Varsha Limited is offering security worth Rs 15.00 lakh for a deposit of Rs 20.00 lakh, i.e., not fully secured.

Therefore, such deposits are legally classified as unsecured deposits, even though part of the amount is secured.



Hence, option (b) is correct.

### Question 12

On 30th June 2023, Sunrise Infratech Limited, raised secured deposits amounting to Rs 160 crore from the public at an interest rate of 12% per annum, repayable after a period of three years. The company created charges within the prescribed time in favour of the trustees for depositors, securing the deposits by creating charges over the following assets:

- Land and Building – Rs 110 crore
- Plant and Machinery – Rs 30 crore
- Factory Shed – Rs 20 crore
- Trademark – Rs 20 crore
- Goodwill – Rs 30 crore

You are required to examine the validity of the charges created, particularly considering the nature of the assets offered as security, with reference to the applicable provisions of the Companies Act, 2013.

(RTP Sep 2025)

### Answer 12

As per second provision 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.

In the given question,

| Particulars                                                              | Amount (in Rs)                                                                  |
|--------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Total value of security (value of assets on which charge can be created) | $110+30+20$ [Land and Building, Plant & machinery and Factory Shed] = 160 crore |
| Total deposits accepted and interest payable thereon                     | $160 + [(160 \times 12\%) \times 3 \text{ years}] = 217.6$ 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.

## Topic 5 Maximum Amount and Tenure for Accepting Deposits

### MCQ

#### Question 13

What is the maximum tenure for which a company can accept or renew deposits from its member's as well as public?

- (a) 12 months
- (b) 24 months
- (c) 36 months
- (d) 48 months

**(Study Material)**

**Ans: (c)**

**Reason:**

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014,

A company can accept or renew deposits from its members or the public for a maximum tenure of 36 months (3 years).

This limit applies to both secured and unsecured deposits, unless a specific exemption is provided by the Central Government.

Hence, the maximum permissible period is 36 months, making option (c) correct.

### **Topic 6 Exemptions and Exceptions under Deposit Rules**

## **Descriptive Question**

### **Question 14**

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, Old & New SM)

#### Answer 14

**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 recognized 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.

## **Topic 7 Manner of Inviting Deposits – Advertisement & Circulars**

### **MCQ**

#### **Question 15**

**Mr. Mudit works as an employee at ABC Private Limited with an annual salary of Rs3,00,000, as specified in his employment contract. Mr. Mudit paid to the company Rs 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:**

- (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)**

**Reason:**

As per Rule 2(1)(c)(x) of the Companies (Acceptance of Deposits) Rules, 2014,

Any non-interest-bearing security deposit received from an employee is not treated as a deposit only if it does not exceed the employee's annual salary.

In this case, Mr. Mudit's deposit of Rs 3,50,000 exceeds his annual salary of Rs 3,00,000, thus it qualifies as a deposit and must comply with the rules for accepting deposits — which the company likely hasn't done.

Hence, it violates the Companies Act provisions, making option (c) correct.

## **Descriptive Question**

### **Question 16**

**Answer the following citing relevant provisions:**

a. Prayas Electricals Limited having paid-up capital of Rs 1 crore availed a term loan of Rs 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 Rs 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?

c. Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of Rs 10 each. His wife



**Answer 16**

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.

(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 Rs 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 Rs 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 17**

**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?**

**(Study Material)**

**Answer 17**

According to first provision to Rule 3 (3), a private company may accept from its member's monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second provision 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 provision 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 18

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

**(Study Material)**

### Answer 18

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

(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 they become due for refund.

#### **Question 19**

**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?**

**(Study Material)**

#### **Answer 19**

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

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

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

(c) Depositing, on or before the 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) Omitted

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

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

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

**Exemption to certain private companies:**

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

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

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

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

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

(b) if the borrowings of such a company from banks or financial institutions or anybody 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.

(g) 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).

## **Topic 8 Deposit Repayment – Default and Interest Liability**

### **Descriptive Question**

#### **Question 20**

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

**(Study Material)**

#### **Answer 20**

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

- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- A written consent shall be obtained from the trustees before their appointment.



- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.

- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

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

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

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

(c) has any material pecuniary relationship with the company;

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

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

- No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

### **Question 21**

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

**(Study Material)**

### Answer 21

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in **Section 76 (1)** of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

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

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

### Question 22

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

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

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

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

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

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

(Study Material)

### Answer 22

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

In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of Rs. 30.00 lacs shall not be considered as deposit.

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

(iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months. However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

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

(ii) such deposits are repayable only on or after three months from the date of such deposits or renewal. In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 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.

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

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

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

### **Question 23**

**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'.

(Study Material) (MTP March'19, PYP Jan 21 & Old & New SM)

### Answer 23

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

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

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

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

### Question 24

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

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

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

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

(Study Material)

Answer 24

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

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

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

## Topic 9 Penalties for Non-compliance with Deposit Rules



## Descriptive Question

### Question 25

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.

(Study Material)

### Answer 25

(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 aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in 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'.

#### **Question 26**

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

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

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

**(MTP May '20)**

#### **Answer 26**

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

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

II. According to section 73 (1) of the Companies Act, 2013, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

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

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

#### Question 27

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

(MTP March '21)

#### Answer 27

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 35% 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 100% of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT- 3.

In the given question, since NIM Private Limited is a private company hence it may accept monies to the extent of Rs. 35.00 lacs as deposits from its members.

#### **Question 28**

**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 April 21, Old & New SM, RTP May'23)**

#### **Answer 28**

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'.

### **Topic 10 Role of Directors/Officers in Deposit Management**

#### **Descriptive Question**

### Question 29

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

(MTP March '22, PYP July '21)

### Answer 29

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

### Topic 11 Declaration by Directors before Accepting Deposits

### Descriptive Question

### Question 30

Sasha Private Limited received Rs 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 Sep'22)

### Answer 30

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. Rs 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 31

Rashmika Ltd. received share application money of Rs 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.



The share application money of Rs 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 Rs 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 Oct'22 Sep '23 & Oct '23 PYP Jan'21)

### Answer 31

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 31.07.2021.

(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.

### Question 32

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

**(RTP May'19)**

### Answer 32

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

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits. Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

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

### **Question 33**

**State, with reasons, whether the following statements are true or false?**

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

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

**(RTP Nov 20, PYP May '19, Old & New SM)**

### **Answer 33**

(i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from

its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

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

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

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

#### Question 34

**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 Rs 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of Rs 1 crore will be considered as deposit?**

**(RTP May '22)**

#### Answer 34

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, Rs 1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

#### **Question 35**

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

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

**(RTP May 23)**

#### **Answer 35**

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

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

### **Topic 12 Register of Depositors and Filing Requirements**

#### **Question 36**

Excel Pvt. Ltd. received Rs50 lakh from Mr. Giver. Mr. Giver was a director of the company at the time of the transaction. However, Mr. Giver did not submit any written declaration stating that the amount was not given out of borrowed funds. The company utilized the said funds for business expansion and disclosed the receipt of money in the Board's report.

Considering the provisions of the Companies Act, 2013, assess the following situations:

1. Was Excel Pvt. Ltd. compliant with the requirements w.r.t acceptance of the money from Mr. Giver?

2. If Mr. Giver had given the money out of funds borrowed from another person, whether this amount will be considered as deposit?

(RTP May 2025)

**Answer: 36**

According to Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, following categories of amounts, inter alia, are not considered as deposit:

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;

However, 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.

Accordingly,

1. Excel Pvt. Ltd. failed to obtain a written declaration from Mr. Giver at the time of receiving the amount. The declaration is mandatory to confirm that the funds are not



borrowed or sourced from loans or deposits from others. Therefore, Excel Pvt. Ltd. was not in compliance with the requirements w.r.t acceptance of the money from Mr. Giver.

2. If Mr. Giver had given the money out of funds borrowed from another person, the transaction would not be eligible under an exempted category under the Companies Act, 2013. Consequently, Excel Pvt. Ltd. would treat such an amount as a deposit.

### Topic 13 Restrictions on Accepting Deposits from Public

#### Descriptive Question

##### Question 37

State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies?

(PYP Nov'18, Old & New SM)

##### Answer 37

Acceptance of deposit by 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 fulfillment of the following conditions, namely—

By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the

amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular; Depositing such sum which shall not be less than 20% of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";

Providing such deposit insurance in such manner and to such extent as may be prescribed; Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such nonpayment and for such other orders as the Tribunal may deem fit. Exemptions to Private Limited Companies In case of private company - Points (a) to (e) above shall not apply to private Companies which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or which is a start-up, for five years from the date of its incorporation; or which fulfils all of the following conditions, namely:-

It is not an associate or a subsidiary company of any other company;

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 such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

### Question 38

Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

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

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

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

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

(PYP Nov 20)

### Answer 38

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

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of **section 180**, may accept deposits by means of an ordinary resolution. Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital: Rs 70 crores Free Reserves: Rs 20 crores Securities premium: Rs 20 crores **Total:** Rs 110 crores Hence, Viki Limited is an eligible company, since its Net worth is in excess of Rs 100 crores.

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

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

**Maximum Amount of Deposits:** As per Rule 3(4) (b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with

the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five percent of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

**For Plan A:** Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten percent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

**Maximum amount of deposits:** 10% of 110 crores (70 + 20 + 20) = 11 crores.

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

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

### Question 39

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 Rs 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 Rs 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 Rs 400 crore as per last audited financial statement and net worth is Rs 50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013?**

**(PYP Dec '21)**

**Answer 39**

(i) In terms of Rule 2 (1) (c) (xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a startup 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 Rs 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 Rs 25.00 lacs. Hence, the amount of Rs 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 percent 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 Rs 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 Rs 400 crore and net worth of Rs 50 crore. Hence, it cannot be termed as an eligible company and thus cannot accept deposits from the public.

#### Question 40

**Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.**

**(PYP May 18, Old & New SM)**

#### Answer 40

Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement. No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee - 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; is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; has any material pecuniary relationship with the company; has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; is related to any person specified in clause (a) above.

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

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

## **Topic 14 Special Provisions for NBFCs and Exempted Companies**

### **Descriptive Question**

#### Question 41

Explain the provision relating to 'Credit Rating' which an 'Eligible Company' should follow to raise public deposits as per the Companies Act, 2013.

(PYP May'22, Old & New SM)

#### Answer 41

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

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

#### Question 42

Samay Publishing 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 Rs 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner? Give your answer as per the provisions of the Companies Act, 2013.

(MTP Jan 2025)

#### Answer: 42

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.

In the given question, Samay Publishing Limited wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors. Since there is a prohibition, Samay Publishing Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.



## Chapter 6 - Registration of Charges

### Topic 1 Definition and Types of Charges

#### Question 1

The registrar shall keep a register of charges which shall be open to inspection by on payment of fee:

- (a) The company
- (b) The charge holder
- (c) Holder
- (d) Any person

(April 22 & Oct '23)

Ans: (d)

Reason:

As per the Companies Act, 2013, the Registrar of Companies (ROC) is required to maintain a register of charges, which contains information about the charges created by a company on its assets. This register is open for inspection by any person on payment of a prescribed fee.

This provision ensures transparency in the financial affairs of companies, as any person (including shareholders, creditors, or potential investors) can inspect the register to gain insight into the charges that a company has secured against its assets.

Thus, the correct answer is (d): Any person, as they can inspect the register of charges by paying a fee.

## **Descriptive Question**

### **Question 2**

**What is 'Floating Charge'? When does it get crystallised?**

**(Study material)**

### **Answer 2**

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 3**



Define the term “charge” and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

(Study material)

### Answer 3

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 complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under **section 77**, he shall be liable for action under **section 447** (punishment for fraud).

## Topic 2 Creation of Charge – Process and Requirements

### MCQ

#### Question 4

Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company—

(a) For minimum 8 years from the date of creation of charge

- (b) For minimum 10 years from the date of creation of charge
- (c) For minimum 8 years from the date of satisfaction of charge
- (d) Permanently, without any time limit

(MTP April'19)

**Ans: (c)**

**Reason:**

As per the Companies Act, 2013, the company is required to maintain and preserve the instruments of charges (documents related to the creation, modification, or satisfaction of charges) for a minimum period of 8 years from the date of satisfaction of the charge.

The reason for this is to ensure that records are preserved for a reasonable period after the charge is satisfied, which could be necessary for legal or financial purposes such as proving the discharge of debt or for auditing.

Thus, the correct answer is (c) because the company is required to maintain the instruments of charges for at least 8 years from the date of satisfaction of the charge.

#### **Question 5**

Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of Rs. 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of Rs. 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of Rs.50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry?

(a) It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.

(b) It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.

(c) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds Rs. 1.00 crore.

(d) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds Rs. 2.00 crores.

(MTP Oct '19, RTP Nov'19)

**Ans: (b)**

**Reason:**

According to the Companies Act, 2013, a company is required to register a charge with the Registrar of Companies (ROC) within 30 days of creating a charge, even if the charge has been registered with a Central Registry (such as the Central Registry of Securitization Asset Reconstruction and Security Interest of India - CERSAI). The registration with the ROC is an additional requirement for the charge to be legally effective against third parties.

This ensures that the charge is publicly recorded, giving notice to all concerned parties (including creditors and investors) regarding the encumbrance on the company's assets.

Therefore, even if the mortgage is registered with the Central Registry, the company must also register the charge with the ROC as per the requirements of the Companies Act, 2013. The Central Registry's registration does not replace the requirement for ROC registration.

Thus, the correct answer is (b).

### Question 6

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.

- (a) 5
- (b) 7
- (c) 8
- (d) 15

(MTP March 21, MTP Oct'22)

**Ans:** (c)

**Reason:**

According to the Companies Act, 2013, the instrument creating a charge or modification thereof must be preserved for a minimum period of 8 years from the date of satisfaction of the charge by the company. This requirement ensures that the company keeps a record of charges, modifications, and their satisfaction for a reasonable period, which is important for verifying the status of liabilities and safeguarding the interests of the creditors.

This applies specifically to the company's obligation to preserve the relevant documents regarding the charge, ensuring transparency and proper record-keeping in case of future reference or dispute.

Thus, the correct answer is (c) 8 years.

### Question 7

An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:

- (a) Debt
- (b) Charge
- (c) Liability
- (d) Hypothecation

**(Study Material)**

**Ans: (b)**

**Reason:**

A charge is an interest or lien created on the property or assets of a company or its undertakings (either whole or part) as a form of security to secure the repayment of a debt or liability. It is a way of providing collateral for a loan or other financial obligation.

**A charge can either be:**

**Fixed:** Where the assets charged are specific and cannot be sold or transferred without the lender's consent.

**Floating:** Where the assets charged are not specifically identified and the company is free to deal with them in the ordinary course of business until an event of default occurs.

Unlike hypothecation (which is specifically related to movable assets) or general liabilities, a charge specifically secures a debt or financial obligation with the assets of the company.

Therefore, the correct answer is (b) Charge.

### **Topic 3 Registration of Charge with ROC – Procedure and Time Limits**

**MCQ**

### Question 8

On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar:

- (a) 14
- (b) 21
- (c) 30
- (d) 300

(MTP Oct'19)

**Ans:** (a)

**Reason:**

According to the provisions of the Companies Act, 2013, when the company receives intimation regarding the satisfaction of charge, the registrar is required to issue a notice to the holder of the charge. This notice will call for a show cause within a specified time period (not exceeding 14 days) as to why the payment or satisfaction of the charge should not be regarded as intimated to the Registrar.

The objective of this provision is to ensure that the Registrar has an opportunity to verify the satisfaction of the charge and to officially update the company's records accordingly.

Thus, the correct answer is (a) 14 days.

### Question 9

Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?



**Answer 9**

**Charge:** According to section 2(16) of the Companies Act, 2013 “charge” has been defined 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.

Why creating a charge is a necessity for companies? The answer to this lies in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets.

Once charge is registered and filed, it becomes an information in public domain as to how much company has borrowed against its assets and from whom.

Time limit for registration of charge with the registrar: 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 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 creation. Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time from the Central Government in accordance with section 87.

## Topic 4 Consequences of Non-registration of Charge

### MCQ

#### Question 10

With a view to augment its production, Surya Techno-Products Limited availed a loan of Rs 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth Rs 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno- Products.

- (a) Yes, the bank can recover the fees paid by it for registration of charge.
- (b) No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
- (c) Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.
- (d) Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company.

(RTP Nov'19)

**Ans:** (a)

**Reason:**

According to the provisions of the Companies Act, 2013, the company is responsible for registering the charge with the Registrar of Companies (ROC) within the prescribed time. If

the company fails to do so, the charge-holder (in this case, the bank) can take the necessary steps to get the charge registered, as the bank has a vested interest in securing its loan.

The Act allows the bank to recover the fees paid for the registration of the charge from the company since it was the company's responsibility to initiate the registration within the prescribed time. The bank can claim back the amount spent for the registration process from Surya Techno-Products Limited.

Thus, the correct answer is (a) Yes, the bank can recover the fees paid by it for registration of charge.

#### Question 11

**A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of Rs. 1.00 crore availed from Next Gen Commercial Bank Limited through a instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration.**

(a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th April, 2019.

(b) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17th April, 2019.

(c) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2nd May, 2019.

(d) The company cannot now get the charge register as the time prescribed by Law has expired.

**Ans: (b)**

**Reason:**

As per Section 77 of the Companies Act, 2013, a charge created by a company must be registered with the Registrar of Companies (ROC) within 30 days of its creation. In this case, the charge was created on 16th February, 2019. Therefore, the statutory period within which the company must register the charge is 30 days from that date.

30 days from 16th February 2019 brings us to 18th March 2019 as the last day for registering the charge without incurring any additional fees.

However, if the charge is not registered by the 18th March, the company can still register the charge but will be required to pay additional fees. This grace period is allowed up to 300 days after the date of creation of the charge.

The company needs to register the charge before the expiry of the 300-day period, which is 16th December, 2019.

To avoid paying the additional fees, the company must ensure the charge is registered by 17th April, 2019, which is within 30 days of the warning given by the bank. This ensures that no penalties or additional fees are levied, provided the registration is done promptly within the given grace period.

Therefore, the correct answer is (b).

## **Question 12**

**Cyplish Games and Toys Limited was sanctioned a term loan of Rs 60.00 lacs by Zawnn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed.**

However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge.

(a) Special Fees.

(b) Ad-valorem Fees.

(c) A Late Registration Fees

(d) Ad-valorem Duty.

(RTP Nov'19)

**Ans: (b)**

**Reason:**

Under the provisions of the Companies Act, 2013, a company is required to register a charge with the Registrar of Companies (ROC) within 30 days from the date of creation of the charge (Section 77 of the Companies Act, 2013). If the charge is not registered within this period, a late registration fee is applicable.

In this case, Cyplish Games and Toys Limited failed to get the charge registered within the statutory 30-day period and also failed to register it within the extended period provided under the law. Due to this delay, the company is now required to pay late registration fees for the registration of the charge with the ROC. This fee is in addition to the standard registration fees and is intended to penalize late registrations.

Thus, the correct answer is (c) A Late Registration Fees.

**Question 13**

**Raj Limited purchased a property from ABC Limited which was mortgaged to DEF Bank against a loan of Rs 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?**

(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.

**(Sep '23)**

**Ans: (b)**

**Reason:**

Under Section 77 of the Companies Act, 2013, once the charge has been satisfied (i.e., the loan secured by the charge has been repaid), the company (or the charge-holder) is required to file particulars of satisfaction of charge with the Registrar of Companies (ROC).

In the given scenario, Raj Limited has settled the dues of DEF Bank and the settlement has been registered with the sub-registrar. As Raj Limited has settled the loan and the charge on the property has been cleared, they are entitled to have the charge registered as satisfied with the ROC.



Even though DEF Bank and ABC Limited were the original parties to the mortgage, Raj Limited, as the new owner of the property, can directly request the Registrar to update the records and file the particulars of satisfaction, since they have settled the dues and the charge is no longer applicable to the property.

Thus, the correct option is (b) Raj Limited can directly request the Registrar to file particulars of satisfaction noting the release of charge.

#### Question 14

**Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from:**

- (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)**

**Reason:**

According to Section 77 of the Companies Act, 2013, a charge created on a company's property must be registered with the Registrar of Companies (ROC) in order for it to be valid against third parties. The registration of the charge serves as public notice and provides transparency regarding the encumbrances on the company's property.

When a person acquires property on which a charge is registered, they are deemed to have notice of the charge from the date of its registration. This means that once the charge is

officially registered with the ROC, it becomes a matter of public record and is legally binding on anyone who acquires the property subsequently.

Therefore, the correct answer is (d) the date of such registration, as this is when the charge becomes publicly known and enforceable against third parties.

#### Question 15

A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of Rs 1 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th 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

(Study material)

**Ans:** (b)

**Reason:**

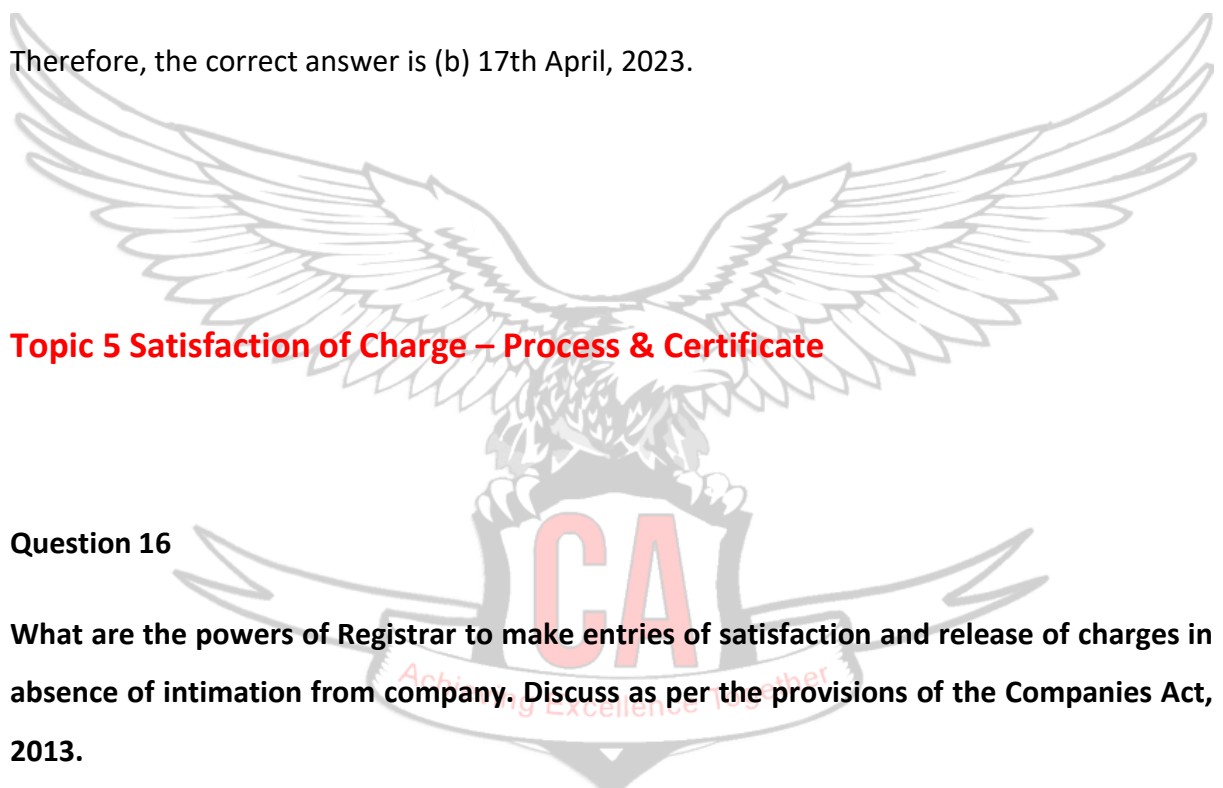
According to the provisions of the Companies Act, 2013, when a company creates a charge, the charge must be registered with the Registrar of Companies (ROC) within 30 days from the date of creation of the charge. In this case, the charge was created on 16th February

2023, so the last date to register the charge without incurring any penalty is 16th March 2023 (30 days from the creation of the charge).

However, if the company fails to register the charge within this initial 30-day period, it can still register the charge within an additional period of 30 days (i.e., a total of 60 days from the creation of the charge), but ad valorem fees (additional fees based on the amount of the loan) will apply during this extended period.

Thus, to avoid paying ad valorem fees, the company must register the charge by 17th April, 2023 (i.e., 60 days from the creation of the charge, counting from 16th February 2023).

Therefore, the correct answer is (b) 17th April, 2023.



### Topic 5 Satisfaction of Charge – Process & Certificate

#### Question 16

What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013.

(MTP Oct'18, RTP Nov'19)

#### Answer 16

**Section 83** of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

(i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge-

(a) That the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that 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, enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that 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, as the case may be, despite the fact that no intimation has been received by him from the company.

(ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under **section 81(1)**.

According to the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge-

(1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the registrar along with the fee.

(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of **section 82 or 83**, he shall issue a certificate of registration of satisfaction of charge.

#### Question 17

**Mr. Prakash purchased a commercial property in Mumbai belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Prakash came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Prakash's name contending that he ought to have the knowledge of charge created on the property of the company. In line with the provisions of the Companies Act, 2013, advise whether the contention of PQR Limited is correct?**

(MTP Jan 2025)

**Answer: 17**

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. Prakash, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property.

In view of above, the contention of PQR Limited is correct.

**Topic 6 Liability and Penalties for Default in Registration**

**Question 18**

Define the term “charge” and also explain what the punishment for default with respect to registration of charge is as per the provisions of the Companies Act, 2013.

(MTP April'19, Old & New SM, RTP Nov '21)

**Answer 18**

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.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI, If any company is in default in complying to with any of the provision of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company in default shall be liable to a penalty of fifty thousand Rupees.

## **Topic 7 Inspection of Register of Charges**

### **MCQ**

#### **Question 19**

**Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:**

- (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

**(Study material)**

**Ans: (c)**

**Reason:**



Under the Companies Act, 2013, the register of charges and instruments of charges maintained by a company are open to inspection during business hours. However, there are conditions on who can inspect these registers and without any fees.

Members of the company and creditors of the company are entitled to inspect the register of charges and related documents without paying a fee. These stakeholders have a direct interest in the company's financial obligations and security interests.

Persons other than members and creditors of the company are not entitled to inspect the register and instruments of charges without paying a fee. These persons would need to pay a fee to inspect the register.

Thus, the correct answer is (c) Persons other than member and creditor of the company, as they cannot inspect the register without paying a fee.

### **Descriptive Question**

#### **Question 20**

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 May '22)

#### **Answer 20**

**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.

## Topic 8 Place of Keeping Register of Charges

### Descriptive Question

#### Question 21

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges.

[MTP Aug '18 & March'18]

#### Answer 21

**(1) Rectification by Central Government in register of charges:** Section 87 of the Companies Act, 2013 empowers the Central Government to make rectification in register of charges.

According to the provision-

**(1) The Central Government on being satisfied that—**

(i) (a) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

(b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(ii) on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

**(2) Condonation of delay and rectification of register of charges.** - (1) Where the instrument creating or modifying a charge is not filed within a period of 300 hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

**a.** The application for condonation of delay and for such other matters covered in sub-clause (a), (b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government along with the fee.

**b.** The order passed by the Central Government under section 87(1) of the Act shall be required to be filed with the Registrar along with the fee as per the conditions stipulated.

## **Question 22**

**Answer the following in the light of the companies Act, 2013 -**

**(i) MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.**

**(ii) Mr. Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr. Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?**

**(MTP Oct '19, Old & New SM)**

## **Answer 22**

**(i)** The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02- 11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. **[Section 77 (1)]**. In this case particulars of charge were not filed within the prescribed period of 30 days.

(ii) However, the Registrar is empowered under clause (b) of first provision to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision MNC Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2<sup>nd</sup> May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Provision 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 advalorem fees. Since first sixty days from creation of charge were expired on 11th May, 2019, MNC Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

**Notice of Charge:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under **section 77** of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered. Thus, the contention of NRT Ltd. is correct.

### Question 23

Briefly explain the provisions enforced by the Companies (Amendment) Act, 2019 when a charge created before 02-11-2018 [before the commencement of Companies (Amendment) Act, 2019] is not registered within the prescribed period of thirty days as provided in Section 77 (1) of the Companies Act, 2013.

(MTP May 20, Old & New SM)

### Answer 23

As per **Section 77 (1)** of the Companies Act, 2013 every company creating a charge:

- a. within or outside India,
- b. on its property or assets or any of its undertakings,
- c. whether tangible or otherwise, and
- d. situated in or outside India, is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 [before the commencement of Companies (Amendment) Act, 2019] and it was not registered within the prescribed period of thirty days of its creation, clause (a) of the first Provison to PSaecgtieon124 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation. According to clause (a) of the Second Provison to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

### Question 24



Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

(Oct 20, MTP Sep'22, RTP Nov 20, Old & New SM)

#### Answer 24

**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.

### Question 25

ABC Limited created a charge in favour of Z 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.

(MTP Oct 20, Old & New SM)

### Answer 25

The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013. Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

- (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 Z 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.

### **Question 26**

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

**(MTP March 21, Old & New SM)**

### **Answer 26**

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 27**

**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 March 21, MTP Nov 21, Apr 22, Old & New SM, RTP May 18)**

**Answer 27**

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 28**

**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 Nov 21)**

**Answer 28**

**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 29

**Mind Limited realised on 2nd May, 2018 that particulars of charge created on 12th March, 2018 in favour of a Bank were not filed with Registrar of Companies for Registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2018 instead of 12th March, 2018? Examine with reference to the relevant provisions of the Companies Act, 2013.**

**(MTP March '18, Aug '18)**

#### Answer 29

According to **section 77(1)** of the Companies Act, 2013, the prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge. In the present case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under provision to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, Mind Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

There will be no change in the situation if the charge was created on 12th February, 2018.

### Question 30

Krish (Private) Limited on 7th May 2022 obtained Rs 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and Rs 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

(MTP Oct'22)

### Answer 30

As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it.

Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.



## Topic 9 Furnishing False or Incomplete Information

### Descriptive Question

#### Question 31

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 Oct'22)

#### Answer 31

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.

### Question 32

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 April '23, PYP Jan 21)

### Answer 32

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 33

Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013.

(RTP May '22)

### Answer 33

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 provision 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) Krish 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 provision to section 77 (1), Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Provison 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, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non- registration of charge.

#### **Question 34**

**The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.**

[PYP May'19]

#### **Answer 34**

According to the provison to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is true.

#### **Question 35**

**The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.**

**Answer 35**

As per 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 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 creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Hence, the given statement is true.

**Question 36**

Rose (Private) Limited on 3rd April 2019 obtained Rs 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and Rs 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

- (i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?
- (ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

(PYP Nov 20)

**Answer 36**

As per the provisions of **Section 2(16)** of the Companies Act, 2013, “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

(i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for Rs 30 Lakhs working capital loan, it is required to create a charge on it.

Rose (Private) Limited is not required to create a charge for Rs 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

(ii) As per the provisions of Section 77 of the Companies Act, 2013, in case the above 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.

## **Topic 10 Procedure for Late Registration of Charge**

### **Descriptive Question**

#### **Question 37**



Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

(Study material)

### Answer 37

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018. Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first provision to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation. If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Provision to **Section 77 (1)** provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees. Since the first sixty days from creation of charge have expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed ad valorem

fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

## Topic 11 Effect of Registered Charge on Subsequent Purchasers

### Descriptive Question

#### Question 38

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 Sep 2025)

#### Answer: 38

The provisions of **section 77** relating to registration of charges shall, so far as may be, apply to:

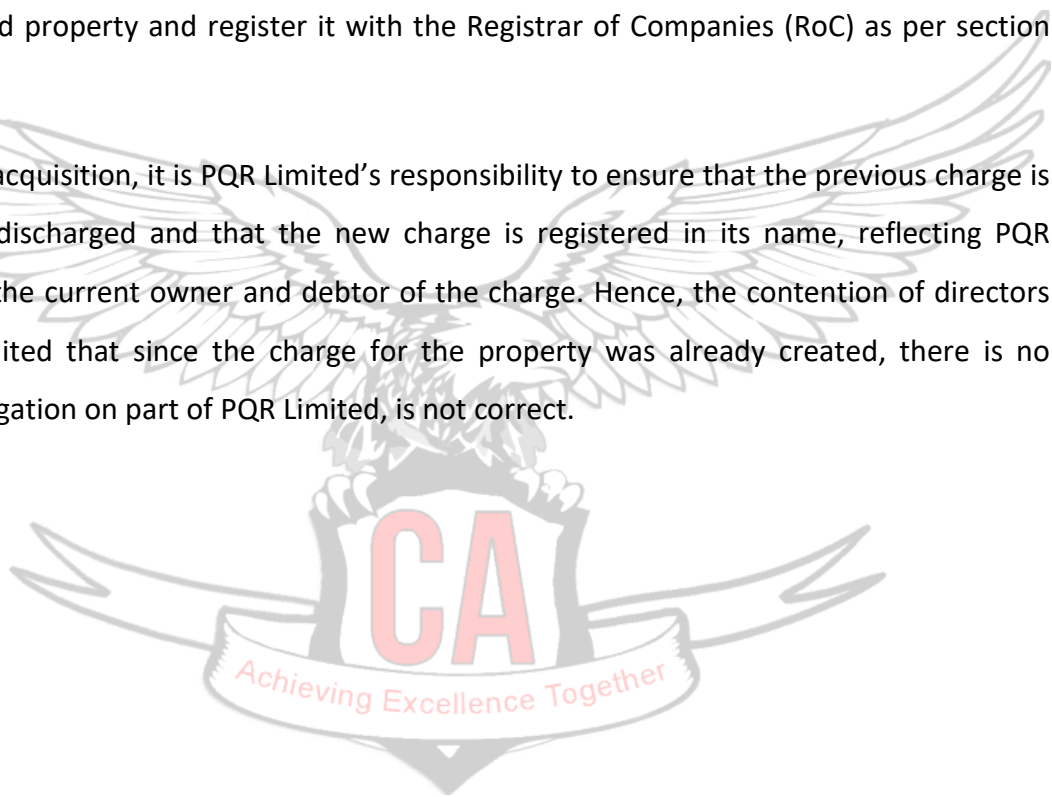
- a. a company acquiring any property subject to a charge within the meaning of that section;
- or

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 as its own. This means that PQR Limited must create a fresh charge over the 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 Limited that since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.



## Chapter 7- Management & Administration

### Topic 1 Types of Meetings

#### Descriptive Question

##### Question 1

Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

(RTP Nov '21)

##### Answer 1

According to **section 92(4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

**Sub-section (5) of Section 92** also states that if any company fails to file its annual return under subsection (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

In the above case, the annual general meeting of Nutty Buddy Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

### **Question 2**

PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2<sup>nd</sup> September 2019 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 member's personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard. What would be your answer in the above case, if PQ Limited is a Private company?

**(PYP Nov 20)**

### **Answer 2**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of **section 103(1) (b)**, in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

## **Topic 2 Notice of Meeting – Content, Manner & Time Requirements**

### **Descriptive Question**

#### **Question 3**

**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 voting power, demanded for**



**poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.**

**(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.**

**(Study Material)**

### **Answer 3**

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 in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid- up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll 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.

### Topic 3 Quorum – Meaning, Rules, Computation

#### MCQ

##### Question 4

Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advise the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution?

- (a) 60 Votes
- (b) 80 Votes
- (c) 41 votes
- (d) 20 votes

(MTP March '19)

**Ans:** (a)

**Reason:**

A Special Resolution is passed when it receives the approval of at least three-fourths (75%) of the members who are present and voting. The number of members present and voting is the key factor for passing the resolution, not the total number of members in the company.

**Let's break this down:**

1. Total members in the company: 120
2. Members who did not attend the meeting: 20
3. Members who attended the meeting:  $120 - 20 = 100$  members

4. Members who abstained from voting: 20

5. Members who actually voted:  $100 - 20 = 80$  members

For a Special Resolution to pass, it needs approval from at least 75% of the members who are present and voting.

75% of 80 members (members who voted) = 60 members

Thus, for the resolution to be passed as a Special Resolution, at least 60 members need to vote in favor.

Hence, the correct answer is (a) 60 Votes.

#### Question 5

ABC Ltd., a pharmaceutical company was having its manufacturing plant in Solan, Himachal Pradesh. The address of its registered office as informed to the Registrar of Companies was of one of its Director's office, situated at Mumbai, Maharashtra. To comply with the provisions of the Companies Act, 2013 it was keeping all its books of accounts, other relevant papers and financial statements at its registered office. After sometime Directors of the company found it difficult to maintain such books etc. at the registered office, so in a duly convened meeting of the Board of the Directors, it was decided that the books of accounts and other relevant papers be kept at the office situated in Solan. Within which time period the Registrar must be given notice about such decision of the board –

(a) Within 30 days from the date of taking such decision by the board.

(b) Within 15 days from the date it starts maintaining its books of accounts at the office situated at Solan.

(c) Within 30 days from the date it starts maintaining its books of accounts at the office situated at Solan.

(d) Within 7 days from the date of taking such decision by the board.

(MTP April '19)

**Ans:** (d)

**Reason:**

As per the provisions of the Companies Act, 2013, specifically Section 128, a company is required to maintain its books of accounts and other financial documents at its registered office or such other place within India, as the Board of Directors may decide.

If the company decides to change the location where its books of accounts and financial records are maintained, it must inform the Registrar of Companies (ROC).

The law requires that the company must notify the Registrar within 7 days from the date of the decision taken by the Board of Directors to shift the books of accounts or other relevant papers to a new location.

Therefore, the correct answer is (d) Within 7 days from the date of taking such decision by the board.

#### Question 6

**ABC Infrastructures Limited is a listed company quoted at National Stock Exchange. The company closed its Register of Members in June and August, 2017 for 12 and 21 days respectively. The CFO of company has informed the company secretary to consider closing of register in December for another 15 days for some strategic reasons. Referring to the provisions of Companies Act, 2013, examine the validity of above action of the company.**

(a) Valid, as the closure of register of members by company each time is not exceeding 30 days.

(b) Invalid, as company cannot go for closure of Register of members more than twice in a year.

(c) Invalid, as the period of closing register of members exceeding 30 days in a year.

(d) Invalid, as the period of closing the Register of members by the company is exceeding 45 days in a year.

**(MTP April '19)**

**Ans: (d)**

**Reason:**

As per Section 91 of the Companies Act, 2013, a listed company can close its register of members for a maximum period of 30 days in a financial year. The closure of the register of members is generally done for determining the shareholders eligible for dividend or other shareholder benefits.

**The key points to note:**

The total period for which the register of members can be closed in a financial year cannot exceed 30 days.

If the company intends to close the register for a period beyond 30 days, it would be in violation of the provisions of the Companies Act, 2013.

In the case mentioned, the company has already closed its register for 12 days and 21 days, making it a total of 33 days in the same financial year. If it decides to close the register again for 15 days in December, the total would be 48 days (12 + 21 + 15), which exceeds the maximum permissible period of 30 days for the closure of the register.

Therefore, the action of closing the register for another 15 days, making the total closure period 48 days, is invalid, as it exceeds the statutory limit of 30 days in a financial year. Hence, the correct answer is (d) Invalid, as the period of closing the Register of members by the company is exceeding 45 days in a year.

**Question 7**

**The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Ananat, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least before the meeting:**

- (a) 24 hours
- (b) 1 day
- (c) 2 days
- (d) 3 days

**(MTP April '19)**

**Ans: (d)**

**Reason:**

As per Section 113 of the Companies Act, 2013, a shareholder has the right to inspect the proxies lodged with the company. If a shareholder requests to inspect the proxies before the Annual General Meeting (AGM), the company must provide notice for inspection.

The notice must be given at least three days before the meeting. This provision ensures that the shareholder has enough time to review the proxies lodged with the company prior to the AGM.

Therefore, the correct answer is (d) 3 days, because the shareholder must give at least 3 days' notice to inspect proxies before the meeting.

### **Question 8**

**In the current financial year Zunee Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it**



**is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means.**

(a) Since the company has more than 500 members it is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means.

(b) The company is not required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.

(c) Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a onetime measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.

(d) Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

**(MTP, Oct'19)**

**Ans: (b)**

**Reason:**

As per the provisions of Section 108 of the Companies Act, 2013 and the Companies (Management and Administration) Rules, 2014, companies having more than 1,000 members are required to provide an electronic voting facility (e-voting) for their members to exercise their voting rights at the Annual General Meeting (AGM).

Since Zune Traders Limited has 556 members, which is less than 1,000, the company is not mandated to provide e-voting for the AGM.

Therefore, the correct answer is (b), as the company is not required to provide the facility for e-voting because its membership is fewer than 1,000 members.

### Question 9

**Which one of the following requires ordinary resolution?**

- (a) to change the name of the company
- (b) to alter the articles of association
- (c) to reduce the share capital
- (d) to declare dividends.

(MTP May 20)

**Ans: (d)**

**Reason:**

Under the Companies Act, 2013, an ordinary resolution is required for decisions that are passed by a simple majority (more than 50%) of the votes cast by members present at the meeting.

Declaring dividends is a decision that requires an ordinary resolution as it is considered a routine matter that does not involve any major changes to the company's structure or operations. The board of directors usually recommends the dividend, but shareholders approve it by an ordinary resolution at the Annual General Meeting (AGM).

**Let's review the other options for clarity:**

**(a) Change the name of the company:** This requires a special resolution, as it involves a significant change to the company's identity.

**(b) Alter the articles of association:** This also requires a special resolution, as it alters the fundamental governing documents of the company.

**(c) Reduce the share capital:** This requires a special resolution, as it involves modifying the company's financial structure.

Therefore, the correct answer is (d) because declaring dividends is a routine decision that requires an ordinary resolution.

#### Question 10

**Neha is a director of Primus Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Neha for how long such declaration shall be valid.**

- (a) 1 month
- (b) 6 month
- (c) 1 year
- (d) She has to furnish declaration for each meeting separately

**(MTP March 21)**

**Ans: (c)**

**Reason:**

As per the Companies Act, 2013 and the rules for video conferencing and other means of participation in meetings, a director who wishes to participate in the board meetings through video conferencing can give a general declaration to the chairperson at the beginning of the calendar year. This declaration remains valid for the entire year, and the director does not need to submit a separate declaration for each individual meeting.

Thus, Neha's declaration would be valid for 1 year, as it is given at the beginning of the calendar year and covers all board meetings held within that year.

**Let's clarify the other options:**

**(a) 1 month:** This would not be correct because the declaration for video conferencing is valid for the entire year, not just one month.

**(b) 6 months:** This is not accurate, as the declaration is valid for the entire calendar year.

(d) She has to furnish a declaration for each meeting separately: This is incorrect because a general declaration can be made for the entire year, and no separate declaration is required for each meeting.

Therefore, the correct answer is (c), as the declaration made at the beginning of the calendar year remains valid for one year.

### Question 11

**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.**

- (a) Twice
- (b) Three times
- (c) One third
- (d) One fourth

(MTP April 21)

**Ans: (b)**

**Reason:**

As per the Companies Act, 2013, a special resolution is one that is passed when the number of votes cast in favor of the resolution is not less than three times the number of votes cast against the resolution.

**To elaborate:**

For a special resolution to be passed, a majority of votes must be in favor of the resolution.

Specifically, the votes cast in favor of the resolution must be at least three times the votes cast against it.

This is different from an ordinary resolution, where the majority of members who are present and voting must vote in favor of the resolution.

Thus, the correct answer is (b) Three times.

#### Question 12

Lalit made an offer to Managing Director (MD) of a company. MD accepted the offer though he had no authority to do so. Subsequently Lalit withdrew the offer but the company had already ratified the MD's acceptance. State which of the statement given hereunder is correct:

- (a) Lalit is bound with the offer due to ratification
- (b) An offer once accepted cannot be withdrawn
- (c) Both option (a) & (b) is correct
- (d) Lalit is not bound to an offer.

(MTP April 21)

**Ans: (c)**

**Reason:**

In this scenario, the offer made by Lalit to the Managing Director (MD) of the company was accepted by the MD, even though the MD did not have the authority to do so initially. However, the company ratified the MD's acceptance later, which is an important aspect in determining whether Lalit is bound by the offer.

**Here's the reasoning behind the correct answer:**

Lalit is bound by the offer due to ratification (Option a):

Even though the MD did not have the authority to accept the offer initially, the company's ratification of the MD's acceptance makes the acceptance valid and binding.

Ratification refers to the process where an act done on behalf of a company is approved after the fact, which validates the initial action that was taken without proper authority.

An offer once accepted cannot be withdrawn (Option b):

Once the offer is accepted by the MD, and subsequently ratified by the company, Lalit is bound by the acceptance.

Even if Lalit tries to withdraw the offer after the acceptance, it's too late because the company has already ratified the acceptance.

A valid acceptance creates a binding contract, and once it has occurred, the offeror (Lalit) cannot withdraw it.

Thus, both statements (a) and (b) are correct, and the correct answer is (c).

### Question 13

**The Annual General Meeting of Brother Limited was held on 25 May 2021. According to the provisions of Companies Act, 2013, till what date the company should submit report of AGM to the registrar?**

- (a) 04.06.2021
- (b) 09.06.2021
- (c) 24.06.2021
- (d) 25.06.2021

(MTP Nov 21)



**Ans: (c)**

**Reason:**

According to the provisions of the Companies Act, 2013, the report of the Annual General Meeting (AGM) must be filed with the Registrar of Companies (ROC) within 30 days from the date of the AGM.

In this case, the AGM of Brother Limited was held on 25 May 2021. Therefore, the 30-day period from this date would be 24 June 2021.

The report should be submitted by 24 June 2021 to comply with the legal requirements.

If the company fails to submit the report within this time frame, it may be subject to penalties under the Companies Act.

Hence, the correct answer is (c) 24.06.2021.

#### **Topic 4 Chairman of the Meeting – Appointment & Responsibilities**

#### **MCQ**

##### **Question 14**

**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:**

- (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.

**(MTP Nov 21, Mar'22, Oct'22, RTP May'20)**

**Ans: (c)**

**Reason:**

As per the provisions of the Companies Act, 2013, the minute book of general meetings of a company must be kept at the registered office of the company. The act mandates that the minutes of all meetings, including board meetings and general meetings, must be recorded in the minute book, and the book must be kept at the company's registered office.

This ensures that the records are readily available for inspection by the directors, shareholders, and auditors, and it provides transparency regarding the decisions taken in the meetings.

Hence, the correct answer is (c) Registered office of the company Gama Limited.

**Question 15**

**Vinod is a director of Prem Limited. He intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Vinod for how long such declaration shall be valid.**

- (a) 1 month
- (b) 6 month
- (c) 1 year
- (d) She has to furnish declaration for each meeting separately

**(MTP March '22)**

**Ans: (c)**

**Reason:**

As per the provisions of the Companies Act, 2013 and the rules under the Act, a director intending to participate in board meetings through video conferencing or other audio-visual means is required to give notice to the company in advance. If Vinod has already intimated his intention to participate in the meetings via video conferencing at the beginning of the calendar year, that declaration will be valid for 1 year. This is because a general declaration made at the beginning of the year is valid for that calendar year.

Therefore, he does not need to provide a separate declaration for each meeting during the year, as long as it was submitted at the start of the year.

Hence, the correct answer is (c) 1 year.

#### Question 16

**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:**

- (a) Twice
- (b) Three times
- (c) Three fourth of
- (d) Two third of

**(MTP April 22 & Oct '23)**

**Ans: (b)**

**Reason:**

As per the Companies Act, 2013, a special resolution is one where the number of votes cast in favor of the resolution is at least three times the number of votes cast against it. This is a key requirement for passing a special resolution in a company.

**To clarify:**

A special resolution requires that the votes in favor of the resolution are three times greater than the votes against.

This is different from an ordinary resolution, which only requires a simple majority (more votes in favor than against).

Therefore, the correct answer is (b) Three times.

#### Question 17

**Shreya is a director of Shree Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Shreya for how long such declaration shall be valid.**

- (a) 1 month
- (b) 6 month
- (c) 1 year
- (d) She has to furnish declaration for each meeting separately

(MTP Oct'22)

**Ans: (c)**

**Reason:**

As per the Companies Act, 2013, and the rules regarding the participation of directors in board meetings through video conferencing, a director can give a general declaration of their intention to participate in board meetings through video conferencing for the entire calendar year. This declaration remains valid for one year from the date it is provided.

Therefore, once Shreya submits the declaration at the beginning of the calendar year, it will be valid for 1 year. She does not need to submit a declaration for each meeting separately.

Thus, the correct answer is (c) 1 year.

### Question 18

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.

- (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.

(MTP Oct'22, Nov'21)

**Ans:** (d)

**Reason:**

As per the Companies Act, 2013 and relevant rules, the Chairman of the company is typically responsible for signing the report of the Annual General Meeting (AGM). However, in the event that the Chairman is unavailable (e.g., due to being abroad, as in this case), the report must be signed by two directors, and one of those directors should be the Managing Director (if there is one).

If there is no Managing Director, the Company Secretary can sign the report along with another director.

In this scenario, since one of the signatories is an Additional Director and there is no mention of the Managing Director or Company Secretary being involved, the signing of the report is not in order.

Thus, the correct answer is (d).

### Question 19

**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?**

- (a) 75% of members entitled
- (b) 90% of members entitled
- (c) 91% of members entitled
- (d) 95% of members entitled

(MTP Oct'22, Mar'19)

**Ans: (d)**

### Reason:

As per the provisions of the Companies Act, 2013, an Annual General Meeting (AGM) typically requires a notice of 21 clear days. However, the notice period can be reduced if the members entitled to vote at the meeting consent to it. In such cases, the consent must be given in writing or by electronic mode.

The specific provision states that at least 95% of the members entitled to vote must give their consent for the meeting to be called with a shorter notice.



This requirement ensures that the decision to shorten the notice period has a substantial level of agreement among the members.

Thus, the correct answer is (d) 95% of members entitled.

#### Question 20

**First annual general meeting of the company should be held within ..... from the closing of the first financial year.**

- (a) 6 months
- (b) 9 months
- (c) 12 months
- (d) 18 months

(MTP March '23)

**Ans: (b)**

**Reason:**

According to Section 96(1) of the Companies Act, 2013, the first Annual General Meeting (AGM) of a company must be held within 9 months from the end of the first financial year of the company. The financial year of a company typically ends on 31st March, so the first AGM must be conducted within 9 months from this date.

This provision ensures that the company holds its first AGM within a reasonable time frame after the end of its first financial year. If the company fails to comply with this requirement, it could face penalties as per the provisions of the Act.

Thus, the correct answer is (b) 9 months.

### Question 21

**In case of a Private company, quorum of Annual General Meeting is:**

- (a) 1 member personally present
- (b) 2 members personally present
- (c) 3 members personally present
- (d) 5 members personally present

(MTP April '23)

**Ans: (b)**

**Reason:**

According to Section 103 of the Companies Act, 2013, the quorum for the Annual General Meeting (AGM) of a Private Company is 2 members personally present.

This is different from public companies, where the quorum may vary based on the number of members (typically 2 for a public company unless otherwise specified in the Articles of Association). For private companies, the law mandates that at least two members must be present for the AGM to be valid, as private companies usually have a smaller number of members than public companies.

Hence, the correct answer is (b) 2 members personally present.

### Question 22

**All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so?**

- (a) Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.

(b) Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.

(c) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.

(d) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM.

(RTP Nov' 19)

**Ans: (c)**

**Reason:**

According to Section 101 of the Companies Act, 2013, an Annual General Meeting (AGM) must be called with a 21 days' clear notice to all members, directors, and auditors of the company. However, the AGM can be called at a shorter notice if members holding not less than 95% of the total voting power give their consent in writing or by electronic mode.

In this case, there are 40 members in total, and 95% of 40 equals 38 members. Therefore, at least 38 members must give their consent in writing or by electronic mode for the company to convene the AGM at a shorter notice.

Thus, the correct answer is (c).

### **Question 23**

**The minute book of General meetings of Alpha Limited will be kept at:**

(a) That place where members of Alpha Limited will decide.

(b) That place where all employees of Alpha Limited will decide.

(c) Registered office of the company Alpha Limited.

(d) That place where senior officials of Alpha Limited will decide.

(RTP May'20)

**Ans:** (c)

**Reason:**

According to Section 101 of the Companies Act, 2013, an Annual General Meeting (AGM) must be called with a 21 days' clear notice to all members, directors, and auditors of the company. However, the AGM can be called at a shorter notice if members holding not less than 95% of the total voting power give their consent in writing or by electronic mode.

In this case, there are 40 members in total, and 95% of 40 equals 38 members. Therefore, at least 38 members must give their consent in writing or by electronic mode for the company to convene the AGM at a shorter notice.

Thus, the correct answer is (c).

## **Topic 5 Proxy – Rights, Appointment, Revocation**

### **Descriptive Question**

#### **Question 24**

Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned?

(Study Material)

#### Answer 24

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.

**Topic 6 Voting – Methods (Show of Hands, Poll, E-voting), Joint Shareholders**

## Descriptive Question

### Question 25

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2021, for laying down the financial statements relating to the Financial Year ended 31st March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the annual return for the year ending 31st March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

(Study Material)

### Answer 25

The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92 (4) states that every company has to file an annual return with the RoC within 60 days from the date on which Annual General Meeting is held or where no Annual General Meeting is held in any year, it shall be filed 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.

In the above case, the Annual General Meeting should have been held by 30th September, 2021 but it did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of Section 92 of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in Section 92 (5) of the Act.



### Question 26

Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra- ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?

(Study Material)

### Answer 26

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. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

### Question 27

Consider a situation where directors are also the shareholders of the company.

(Study Material)

### Answer 27

Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director shall vote in the same manner as a common shareholder would have voted in a general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

### **Question 28**

**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 ground that the quorum was not present in the meeting.**

**(PYP Dec '21) (MTP Oct '23)**

### **Answer 28**

(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 requisitionists and the requisitionists 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 requisitionists 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 requisitionists or by a requisitionists duly authorised in writing by all other requisitionists 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 requisitionist 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.

## **Topic 7 Resolutions – Ordinary, Special, and Resolution Requiring Special Notice**

### **Descriptive Question**

#### **Question 29**

In a general meeting of a company, the shareholders passed a special resolution regarding some special matters. There were 30 members present in the meeting. Out of which 15 voted in favour of the resolution, 6 voted against it and 5 votes were found invalid. The remaining 4 members abstained from voting. The chairman of the meeting declared the resolution as passed. With reference to provisions of the Companies Act, 2013 examine the validity of chairman's declaration.

**(MTP May 2025)**

#### **Answer: 29**

According to section 114 of the Companies Act, 2013, a resolution shall be a special resolution when the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times

the number of the votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (15) being not more than 3 times of the votes cast against (6), therefore the decision of the chairman is not in order.

### **Question 30**

**A company intends to hold its Annual General Meeting (AGM) on shorter notice due to urgent business requirements. However, some shareholders argue that their larger shareholding should grant them greater influence in approving the short notice. Based on the provisions of the Companies Act, 2013, clarify whether their argument is valid and substantiate why the number of shareholders matters more than the number of shares they hold in such cases.**

**(MTP May 2025)**

### **Answer: 30**

Under normal circumstances, companies must provide shareholders with a statutory notice period before conducting an AGM. However, as per Section 101 of the Companies Act, 2013, an AGM can be convened on shorter notice if a specific percentage of shareholders approve it. In this case, the approval is determined by the number of shareholders rather than the number of shares they hold.

Conditions for Holding an AGM on Short Notice:

- An AGM may be conducted on shorter notice only if at least 95% of the members entitled to vote consent in writing or through electronic means.

- Unlike other general meetings (such as an EGM), where both the number of members and their shareholding percentage are considered, AGMs strictly require 95% approval from shareholders, irrespective of the number of shares they own.

Hence, this provision ensures that an AGM or other general meetings can be held on only when a majority of shareholders agree, thereby preventing any unfair advantage to a small group of shareholders or the board of directors. It strikes a balance and flexibility to deal with urgent company matters as well as to protect the shareholder rights.

Thus, in the case of an AGM, the argument of larger shareholders having more influence is invalid, as the Companies Act prioritizes shareholder consensus over shareholding percentage for short-notice approvals.

## **Topic 8 Minutes of Meeting – Preparation, Signing, Filing**

### **Descriptive Question**

#### **Question 31**

M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

- (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
- (ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

(PYP May'18 Old & New SM)

#### **Answer 31**

(i) Maintenance of the Register of Members etc.: As per **section 94(1)** of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under **section 92** shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per **section 94(2)** of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company. Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

[**Note:** A presumption may be taken with respect to payment of fees. In such a case, any other person (other than specified above) may also inspect the Register of members of company]

## **Topic 9 Annual Return and its Certification Requirements**

### **Descriptive Question**

#### **Question 32**

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.**

**(Study Material)**

**Answer 32**

(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:

**a.** 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.

**b.** 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 33**

**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 Oct '21)**

### **Answer 33**

**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 subsection 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 percent 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 cannot be said to be validity called.

## **Topic 10 Inspection of Proxies and Voting Papers**

### **Descriptive Question**

#### **Question 34**

**Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for**

inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)?

(MTP Aug '18, Old & New SM)

#### **Answer 34**

Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. In the given case, Sirhj has given proper notice.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

### **Topic 11 Scrutiny of Votes and Declaration of Results**

#### **Descriptive Question**

##### **Question 35**

Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.

**Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?**

**(PYP May'19)**

**Answer 35**

According to **section 103(1)(a)(i)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company. In the instant case, the quorum for the public company will be 5 members personally present.

In the said company, two members are bodies corporate and one member is the President of India. Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

As per **section 113** of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per **section 112** of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

## **Topic 12 Effect of Non-compliance with Meeting Procedures**

### **Descriptive Question**

### Question 36

Give the points of distinction between ordinary resolution and special resolution.

(PYP May '19)

### Answer 36

**Difference between ordinary resolution and Special resolution Ordinary Resolution—**

**Section 114(1)** of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting. Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it. Special Resolution—

As per **Section 114(2)** of the Act, a resolution shall be a special resolution, when—

(a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) The notice required under this Act has been duly given; and

(c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

### Question 37

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)

### Answer 37

According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.

(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 provision 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.

### **Question 38**

**Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minute's 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 minute's book on behalf of him by signing a power of authority?**

**(PYP July 21)**

### **Answer 38**

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 minute's book and so to have soft copies of the same up to last three years.

(ii) As provision does not specify anything on authorizing anyone else to inspect the minute's book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minute's book on behalf of him.

### **Question 39**

**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 Dec '21)(MTP Oct '23)**

### **Answer 39**

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 evoting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

#### **Question 40**

**New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2020. The notice was posted to the members on 16th August 2020. 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 Dec '21, PYP May'19, RTP Nov 20)**

#### **Answer 40**

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting, are excluded for sending the notice.

Further, **Rule 35(6)** of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected-in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

#### Question 41

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

(PYP May '22)

#### Answer 41

(i) **Section 96(2)** of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a

National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given Question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

(ii) **Section 102** of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.

Effect of non-disclosure: As per **section 102(4)**, if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.

If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [**Section 102(5)**].

#### Question 42

TST Limited has Equity Share Capital of 10000 shares @ Rs10 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 Nov'22)**

**Answer 42**

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 paidup 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 Rs 30,000 (each holding Rs 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

#### **Question 43**

The paid-up share capital of Golden Shoes Limited is Rs 25,00,000 divided into 2,50,000 equity shares of Rs 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

**(RTP Nov '23)**

#### **Answer 43**

**Section 88 (4)** of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

#### Question 44

A General Meeting of ABC Private Ltd was scheduled to be held on 15th April, 2024 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2024 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?

(MTP Jan 2025)

#### Answer: 44

Validity of Resolution passed in the EGM called by the Requisitionists

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. Section 105(4) provides that a proxy received 48 hours before the meeting will be valid. 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.

Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

#### **Question 45**

**Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:**

- (i) The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.**
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 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.**

**(MTP Jan 2025)**

#### **Answer: 45**

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 city, 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 is 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) Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.

(ii) Kedar 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 98 members out of 100 have given their consent for conducting the meeting in Lonavala.

#### **Question 46**

Form Limited is engaged in the business of manufacturing shoes for kids. It is required to hold its Annual General Meeting (AGM) for the financial year ending 31st March 2024 by 30th September 2024. However, due to internal disputes among the directors, the company was unable to convene the AGM by the due date.

Explain the relevant provisions of the Companies Act, 2013, with respect to the filing of the financial statements with the Registrar in this case.

(MTP Jan 2025)

#### **Answer: 46**

As per section 137 of the Companies Act, 2013, where the Annual General Meeting 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 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

#### **Question 47**

ABC Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2024 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 member's personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.

On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Advise, as per the provisions of the Companies Act, 2013:

(i) Whether the original meeting was validly adjourned?

(ii) Whether the adjourned AGM was validly conducted?

(MTP May 2025)

#### Answer 47

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day (i.e. 2nd September 2024) of meeting of ABC Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required

quorum was not present. However, as per the provisions of section 103, in the adjourned meeting, the members present shall be considered as quorum.

In the light of provision of law and facts of the case:

- (i) The original meeting was validly adjourned, as the required quorum was not present.
- (ii) The adjourned AGM was validly conducted as members present shall be considered as quorum.





## Chapter 8 - Declaration and Payment of Dividend

### Topic 1 Definition and Types of Dividend

#### MCQ

##### Question 1

When the dividend is declared at the Annual General Meeting of the company, it is known as ....

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

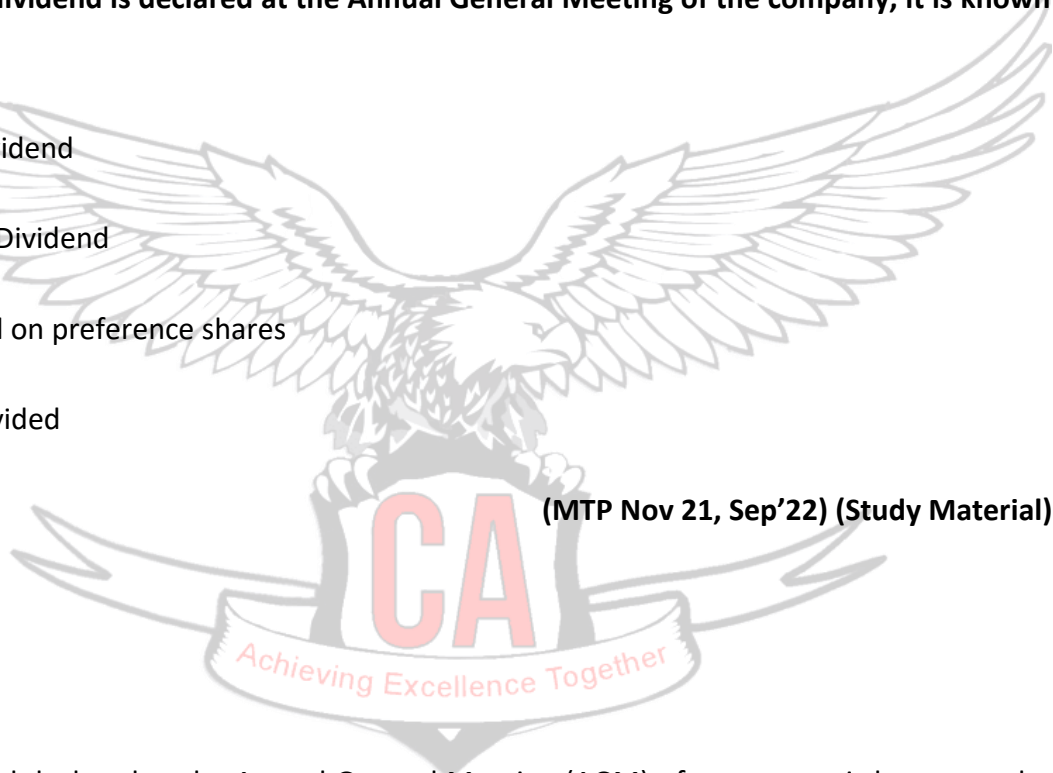
Ans: (a)

##### Reason:

The dividend declared at the Annual General Meeting (AGM) of a company is known as the final dividend. This is because, during the AGM, the company's shareholders formally approve the proposed dividend for the financial year. The final dividend is determined based on the company's performance and profits for the year, and it is paid out to the shareholders after approval at the AGM.

##### In contrast:

Interim dividend is declared by the Board of Directors during the financial year before the AGM, based on the company's performance up to that point.



Dividend on preference shares is a fixed dividend paid to preference shareholders.

Scrip dividend is an option given to shareholders to receive dividends in the form of additional shares instead of cash.

Thus, the correct answer is (a) Final Dividend.

## Topic 2 Conditions for Declaration of Dividend

### MCQ

#### Question 2

The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2021 but the company has incurred loss during the current financial year up to the end of June, 2021. However, it is noted that during the previous five financial years i.e., 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21, 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.

- (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%.

(MTP Oct 21)

Ans: (b)

Reason:

As per Section 123 of the Companies Act, 2013, a company can declare an interim dividend even if it has incurred a loss during the current financial year, provided certain conditions are met. Specifically, the company can declare an interim dividend up to the average rate of dividend declared in the previous 3 years.

In the case of Vidyut Limited, the company has incurred a loss during the current financial year (up to June 2021), but it has declared dividends in the previous five financial years at rates of 8%, 9%, 12%, 11%, and 10%, respectively.

To determine the maximum rate at which the company can declare an interim dividend, we calculate the average of the last three years (2018-19, 2019-20, and 2020-21):

2018-19: 12%

2019-20: 11%

2020-21: 10%

**The average dividend rate for the last three years is:**

$$\frac{12+11+10}{3} = 11\%$$

Thus, the maximum rate at which the company can declare the interim dividend is 11%, as this is the average rate of the last three years.

Therefore, the correct answer is (b) Maximum at the rate of 11%.

### Question 3

The Board of Directors of ABC 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 and 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.

- (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%.

**(Study Material) (MTP May 2025)**

**Ans: (b)**

**Reason:**

According to Section 123 of the Companies Act, 2013, a company can declare an interim dividend even if it has incurred a loss during the current financial year. However, the amount of the interim dividend that can be declared cannot exceed the average rate of dividend declared in the previous three financial years.

In this case, ABC Limited has incurred a loss for the current financial year (up to June 2024), but has declared dividends in the previous five financial years as follows:

2019-20: 8%

2020-21: 9%

2021-22: 12%

2022-23: 11%

2023-24: 10%

To calculate the maximum rate of interim dividend that can be declared, we need to take the average rate of dividend declared in the last three financial years. This is calculated as:

$$\frac{12+11+10}{3} = 11\%$$

Hence, the maximum rate of interim dividend that can be declared is 11%, as it is the average rate of the last three financial years (2021-22, 2022-23, and 2023-24).

Therefore, the correct answer is (b) Maximum at the rate of 11%.

## Descriptive Question

### Question 4

Alex limited is facing loss in business during the financial year 2022-2023. 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?

(Study Material)

### Answer 4

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 2022-2023.

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 2022-2023 is not valid.

#### Question 5

TAT Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

(MTP May'20, March'19, Aug'18, PYP May '18 & May '19, MTP Apr'21 & Apr'22)

#### Answer 5

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

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

In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e.  $(12+15+18)/3 = 45/3 = 15\%$ ]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.



### Question 6

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?

Justify your answer with reference to provisions of the Companies Act, 2013.

(PYP May '23)

### Answer 6

**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%.

#### Question 7

Green Ltd., a power generating company, attracted numerous investors due to its strong growth potential. Mr. Arju, one of the investor purchased a significant number of shares in Green Ltd., expecting regular returns in the form of dividends. Over the years, Green Ltd. performed well and consistently declared dividends. However, in 2023-2024, despite reporting profits, the board of directors decided not to distribute dividends, citing the need to reinvest earnings for future expansion.

Seeing this, Mr. Arju argued that as a shareholder, he had an absolute right to receive dividends. He believed that since the company was in profitable state, dividends should be mandatorily distributed. He raised his concerns at the Annual General Meeting (AGM), questioning the board's decision. Looking at the given scenario, assess the argument of Mr. Arju in the light and support of the relevant legislation.

(MTP May 2025)

**Answer: 7**

Section 2(35) of the Companies Act, 2013, defines the term “dividend” as any distribution of profits by a company to its shareholders, whether in cash or in kind, out of free reserves available for the purpose.

The above statement implies that shareholders do not have an inherent or guaranteed right to receive dividends from a company.

The decision to declare dividends lies with the board of directors, subject to shareholder approval and legal provisions under the Companies Act, 2013. The board of directors has the authority to recommend dividends. If they believe distributing dividends is not in the best interest of the company, they may choose not to declare them, even if the company has sufficient profits. Shareholders cannot force the company to declare dividends.

**A company can declare dividends only out of:**

- a. Current year’s profits after providing for depreciation.
- b. Previous year’s profits transferred to reserves.
- c. Money provided by the government (in case of guaranteed companies).

Before declaring a dividend, the company must set aside a specified percentage of profits in reserves if required.

Shareholders can approve the dividend recommended by the board at the Annual General Meeting (AGM), but they cannot demand a higher dividend.

The board may declare an interim dividend before the final accounts are prepared if they find it appropriate. If dividends remain unpaid for 30 days, the company must transfer them to a separate Unpaid Dividend Account.

Thereby, the distribution of dividends is subject to multiple considerations, including the company’s profitability, legal compliance, and the board’s discretion. The Companies Act, 2013, ensures that dividends are declared in a financially responsible manner, protecting both the company and its investors. Since shareholders cannot demand dividends as a

matter of right, it is evident that dividends are not an absolute right but a discretionary benefit provided when the company deems it appropriate.

**Validity of the Argument:**

As per the stated facts, Mr. Arju argued that as a shareholder, he had an absolute right to receive dividends. He believed that since the company was in profitable state, dividends should be mandatorily distributed. His expectation of dividends was based on his investment, but the law does not guarantee an absolute right to dividends. The board has the authority to withhold dividends if it deems reinvestment necessary for the company's long-term growth. Therefore, while shareholders have a reasonable expectation of returns, they do not possess an unconditional entitlement to dividends.

Therefore, the argument of Mr. Arju is invalid in the light of the legal provision given in section 123 of the Companies Act, 2013.

**Topic 3 Time Limits and Procedures**

**MCQ**

**Question 8**

**In how many days from the date of declaration of interim dividend, it shall be deposited in a separate bank account**

- (a) 5 days
- (b) 7 days
- (c) 15 days
- (d) 21 days

**(MTP April-19)**

**Ans: (a)**

**Reason:**

According to Section 123 of the Companies Act, 2013, when a company declares an interim dividend, it is required to deposit the amount of the interim dividend into a separate bank account within 5 days from the date of declaration. This is to ensure that the company has sufficient funds set aside to pay the declared dividend to its shareholders.

Therefore, the correct answer is (a) 5 days.

**Question 9**

**After Declaration of dividend, it should be paid within**

- (a) 14 days
- (b) 21 days
- (c) 30 days
- (d) 45 days

**(MTP April-19)**

**Ans: (c)**

**Reason:**

According to Section 123 of the Companies Act, 2013, after the declaration of the dividend, the company is required to pay the dividend within 30 days from the date of declaration. This ensures that shareholders receive their dividend promptly after it is declared at the Annual General Meeting (AGM) or through the board's decision.

Thus, the correct answer is (c) 30 days.

### Question 10

**Amount to be transferred to reserves out of profits before any declaration of dividend is**

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

**(MTP Oct 21, Apr'22)**

**Ans:** (d)

**Reason:**

According to Section 123 of the Companies Act, 2013, there is no fixed percentage prescribed for the amount to be transferred to reserves before declaring a dividend. The company's board of directors has the discretion to decide the amount to be transferred to reserves. However, it is expected that a company should transfer a portion of its profits to reserves based on its financial stability and future growth needs.

Therefore, the amount to be transferred to reserves is at the discretion of the company, as long as the company adheres to the provisions set out in the Act. Hence, the correct answer is (d).

### Question 11

**Komal Ltd. declares a dividend for its shareholders in its Annual General Meeting held on 27<sup>th</sup> September, 2019. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:**

- (i) The dates during which Komal Ltd. is required to pay the dividend?**



**(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?**

**(MTP May 20, PYP Nov '18)**

**Answer 11**

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

**(i) Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days, 27/09/2019 will be excluded and last 30<sup>th</sup> day, i.e. 27/10/2019 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).

**(ii) Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2019 to 3rd November, 2019 (both days inclusive).

**Question 12**

**Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016 -17, except in the following two cases:**

**(i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.**

**(ii) Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.**

**You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.**

**(MTP Oct '19, Old & New SM)**

#### **Answer 12**

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

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

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

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

## Topic 4 Transfer to UDA and IEPF

### MCQ

#### Question 13

Sumitra Healthcare and Hospitality Limited had issued 9% non-convertible debentures which matured four years back. However, 1000 such debentures of Rs. 100 each are still remaining unclaimed and unpaid even after the maturity. State the period after which the company needs to transfer them to Investor Education and Protection Fund (IEPF) if they remain unclaimed and unpaid.

- (a) After the expiry of five years from the maturity date.
- (b) After the expiry of six years from the maturity date.
- (c) After the expiry of seven years from the maturity date.
- (d) After the expiry of eight years from the maturity date.

(MTP Oct '19, RTP Nov'19)

Ans: (c)

Reason:

According to the provisions of the Investor Education and Protection Fund (IEPF) under the Companies Act, 2013, any money or amount remaining unpaid or unclaimed for a period of seven years from the due date of maturity must be transferred to the Investor Education and Protection Fund (IEPF). This applies to dividends, debentures, or any other unpaid amount.

In this case, as the 9% non-convertible debentures matured four years ago, they will have to be transferred to the IEPF if they remain unclaimed and unpaid for a period of seven years from the maturity date.

Hence, the correct answer is (c) After the expiry of seven years from the maturity date.

## Descriptive Question

### Question 14

**State any 6 amounts that can be credited to the Investor Education and Protection Fund.  
Give your answer as per the provisions of the Companies Act, 2013.**

**(MTP April-19)**

### Answer 14

Credit of amount to the Fund: There shall be credited to the Investor Education and Protection Fund the following amounts—

Amount given by the Central Government- the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilized for the purposes of the Fund;

Donations by the Central Government- donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

Amount of Unpaid Dividend Account- the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under **section 124(5)**;

Amount of the general revenue account of the Central Government- the amount in the general revenue account of the Central Government which had been transferred to that account under **section 205A (5)** of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;

Amount in IEPF- the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956; Income from investments- the interest or other income received out of investments made from the Fund;

Amount received through disgorgement or disposal of securities- The amount received under section 38(4) i.e. amount received through disgorgement or disposal of securities under section 38(3) shall be credited to the IEPF provided under section 38(4);

Application money- the application money received by companies for allotment of any securities and due for refund;

Matured deposits- matured deposits with companies other than banking companies;

Matured debentures- matured debentures with companies;

Interest- interest accrued on the amounts referred to in clauses (h) to (j);

Amount received from sale proceeds- sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

Redemption amount- redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and other amount- such other amount as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

### Question 15

**Mr. R, holder of 1000 equity shares of Rs 10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of Rs 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 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 April '23 & Sep '23, PYP Jan 21)**

**Answer 15**

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 (Rs 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of Rs 2,000 (declared in Annual General Meeting on 31.8.2014).

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 16**

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2193 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. State in the light of the given facts, whether the allegation marked by shareholders and claim for the dividend amount, against RST Ltd. is justifiable?

**(RTP May'19)**

#### **Answer 16**

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web- site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed. Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of **section 124** of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under **section 124(1)** to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. If RST Ltd fails to comply to with any of the requirements of this section, such a company shall be liable to a penalty of one lakh rupees and in case of continuing failure with a further penalty of five hundred rupees for each day after the first during which the failure continues subject to maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty five thousand rupees and in case of continuing failure with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of two lakh rupees.

#### **Question 17**

**X-Sale Ltd. declared a dividend in 2015, but some shareholders did not claim it. As per the Companies Act, 2013, the unclaimed dividend was transferred to the Unpaid Dividend Account. After 2022, the unclaimed amount was transferred to the Investor Education and Protection Fund (IEPF).**

**On the basis of above given facts answer the following question-**

**(i) Define IEPF and write what amounts are credited to the IEPF?**

**Answer: 17**

(i) The Investor Education and Protection Fund (IEPF) is a fund established by the Central Government under Section 125 of the Companies Act, 2013. It is meant to collect and utilize unclaimed or unpaid amounts related to investments, such as dividends, matured deposits, and debentures, and to promote investor awareness and protection.

The following amounts inter alia are credited to the IEPF:

- Unpaid dividends that remain unclaimed for seven years.
- Matured deposits and debentures unclaimed for seven years.
- Proceeds from fractional shares due to mergers or bonus issues.
- Application money for securities that were never allotted and remained unclaimed.
- Interest accrued on unclaimed deposits and debentures.
- Donations, grants, and income from investments of the fund.

**Topic 5 Adjustment of Dividend against Calls in Arrears**

**MCQ**

**Question 18**

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?

- (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.

**(MTP Nov 21)**

**Ans: (b)**

**Reason:**

In the scenario described, Mr. Guru has unpaid call money on his shares in Real Consultancy Services (RCS). However, according to the provisions of the Companies Act, 2013, dividends cannot be adjusted against unpaid call money.

The unpaid call money is a liability owed by the shareholder to the company, and dividends represent a distribution of profits to shareholders. These are separate financial transactions.

Dividends are paid out of profits to the shareholders, whereas the call money is a liability on the shareholder for any unpaid portion of the share value.

The company cannot adjust the dividend against the unpaid call money without the consent of the shareholder, and in general, dividends and call money are treated as separate obligations.

Thus, the correct answer is (a) Dividend cannot be adjusted against the unpaid call money.

#### **Question 19**

**Karan, holder of 5000 equity shares of Rs. 100 each of M/s. Rachit Leather Shoes Limited did not pay final call of Rs. 10 per share. M/s. Rachit Leather Shoes Limited declared**

**dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.**

**(Study Material)**

**Answer 19**

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

Thus, as per the given facts, M/s. Rachit Leather Shoes Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e.  $5,00,000 \times 10/100 = 50,000$ . Hence, call money of Rs. 50,000 not paid by Karan can be adjusted fully from the entitled dividend amount of Rs. 50,000 payable to him.

**Question 20**

**Mr. Alok, holding equity shares of face value of Rs 10 lakhs, has not paid Rs 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.**

**(Study Material)**

**Answer 20**

Yes. As per clause (d) of Provision to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to Rs 80,000 is justified and therefore, no punishment is attracted.

Applicability of Section 127 to Nidh is In terms of Notification No. GSR 465 (E), dated 05-06-2015, **Section 127** dealing with punishment shall apply to the Nidh is, subject to the following modification:

In case the dividend payable to a member is Rs 100 or less, it shall be sufficient compliance of the provisions of the 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 Nidh is for at least 3 months.

#### **Question 21**

The Director of Rom Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. They seek your opinion on the following matters:

Mr. A, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(MTP Oct '18)

#### **Answer 21**

The given problem is based on the provision 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 Rs. 10 Lakhs and has not paid an amount of Rs. 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an



amount of Rs. 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.

#### **Question 22**

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 Rs 10 lakhs has not paid an amount of Rs 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(MTP Oct 21, RTP May 18) (Same concept different figures PYP May '22)

#### **Answer 22**

The given problem is based on the provision 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 Rs 10 Lakhs and has not paid an amount of Rs 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get Rs 1.20 lakh towards dividend, out of which an amount of Rs 1 lakh can be adjusted towards call money due on his shares. Rs 20,000 can be paid to him in cash or by cheque or in any electronic mode.

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

### **Topic 6 Penalty for Non-Payment of Dividend**

## MCQ

### Question 23

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.

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

(Study Material)

**Ans:** (d)

**Reason:**

As per the provisions of the Companies Act, 2013, if a company fails to pay the declared dividends or fails to post dividend warrants within 30 days of declaration, the company is required to pay simple interest at the rate of 18% per annum for the period during which the default continues.

This requirement is designed to protect the interests of shareholders by ensuring that the company compensates them for any delay in the payment of dividends.

Thus, the correct answer is (d) 18% p.a.

### Question 24

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2019, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to

**Mr. Ranjan, an equity shareholder, up to 25th July, 2019. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.**

**(Study Material)**

**Answer 24**

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

(a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

**Question 25**

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.**

**(Study Material)**

**Answer 25**

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

Further, according to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment. In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its

decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

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

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee one thousand for everyday during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

#### Question 26

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 March 21, MTP Oct'22, Old & New SM, PYP May '19)

#### Answer 26

**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 noncompliance of his direction regarding payment of dividend. Hence, the penal provisions under **section 127** will be attracted.

### Question 27

The Board of Directors of Dew 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 Nov 21, RTP Nov'21, Old & New SM, PYP Dec '21)

### Answer 27

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 Dew 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.

Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

The Board of Directors of Dew 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:

If a company fails to comply with any of the requirements of this section, such a company shall be liable to a penalty of one lakh rupees and in case of continuing failure with a further penalty of five hundred rupees for each day after the first during which the failure continues subject to maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty five thousand rupees and in case of continuing failure with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of two lakh rupees.)

The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

#### **Question 28**

**The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, 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, 2022. 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 Sep'22, MTP Mar'23, MTP Oct'19, Old & New SM)

#### Answer 28

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:

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 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.

### Topic 7 Exceptions to Penalty

#### Question 29

**Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018- 19, except in the following case:**

**(i) 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**

**(Study Material)**

**Answer 29**

(i) 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 30**

**Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016 -17, except in the following two case:**

**(i) Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.**

**You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.**

**(MTP Oct '19, Old & New SM)**

**Answer 30**

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

## **Topic 8 Eligibility and Entitlement to Dividend**

### **Descriptive Question**

#### **Question 31**

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2022-2023. The company announced 28th September 2023 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 30th September 2023.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been entered in the register of members on 18<sup>th</sup> June, 2023. Who will be entitled to the above dividend?

**(Study Material)**

#### **Answer 31**

According to section 123, dividend shall be paid by a company only to the registered shareholder of such share. Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e. Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan

### **Question 32**

The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2022-23. The same was approved at the Annual General Meeting of the company held on 25th June, 2023.

Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2023, but the same were transferred by him to Mr. Raj, whose name was registered on 20 th April, 2023 in the Register of Members State as to who will be entitled to the dividend declared by the company.

(Practice question)

### **Answer 32**

According to section 123(5), dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker. Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April, 2023.

Since, Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June, 2023, he will be entitled to the dividend.

Note: In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only Rs 5 (face value Rs10) on each share held by them. In case of declaration of dividend at the rate of Rs 5 per share, the company, if authorised by its articles, shall be justified in paying dividend of Rs 2.50 per share in respect of such partly paid shares.

### Question 33

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends. Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend?

(PYP May'19) (Same concept different figures RTP May'18)

### Answer 33

**Payment of dividend:** According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members.

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

## Topic 9: Regulatory Authority & Tribunal Applications

### MCQ

### Question 34



ABC Ltd., a listed company proposed a dividend @ 15% on equity shares for the financial year ended on 31st March 2018. The Annual General Meeting (AGM) of the company was held on 15th July 2018 and the proposed dividend was approved and declared in the same. Due to some technical issues, dividend on 600 shares neither be paid within the time limit prescribed by the Act nor was transferred to unpaid dividend account. In such a situation which regulatory authority can take action against the company and its officers in default?

- (a) Central Government
- (b) SEBI
- (c) Tribunal
- (d) Investor Education and Protection Fund Authority

(MTP April 19)

**Ans:** (b)

**Reason:**

Since ABC Ltd. is a listed company, it is regulated by the Securities and Exchange Board of India (SEBI).

As per Section 124 of the Companies Act, 2013 and SEBI's regulations:

Failure to pay declared dividend within 30 days or to transfer unpaid dividend to the Unpaid Dividend Account is a compliance violation for listed companies.

In such cases, SEBI has the authority to take regulatory and penal action against the company and its officers in default.

Hence, option (b) is correct.

**Question 35**

During the half year ended September 2021, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2019. Further during the year ended March 2022, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2021. You are required to state the validity of the acts of the Board of directors.

- (a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
- (b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
- (c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
- (d) 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)**

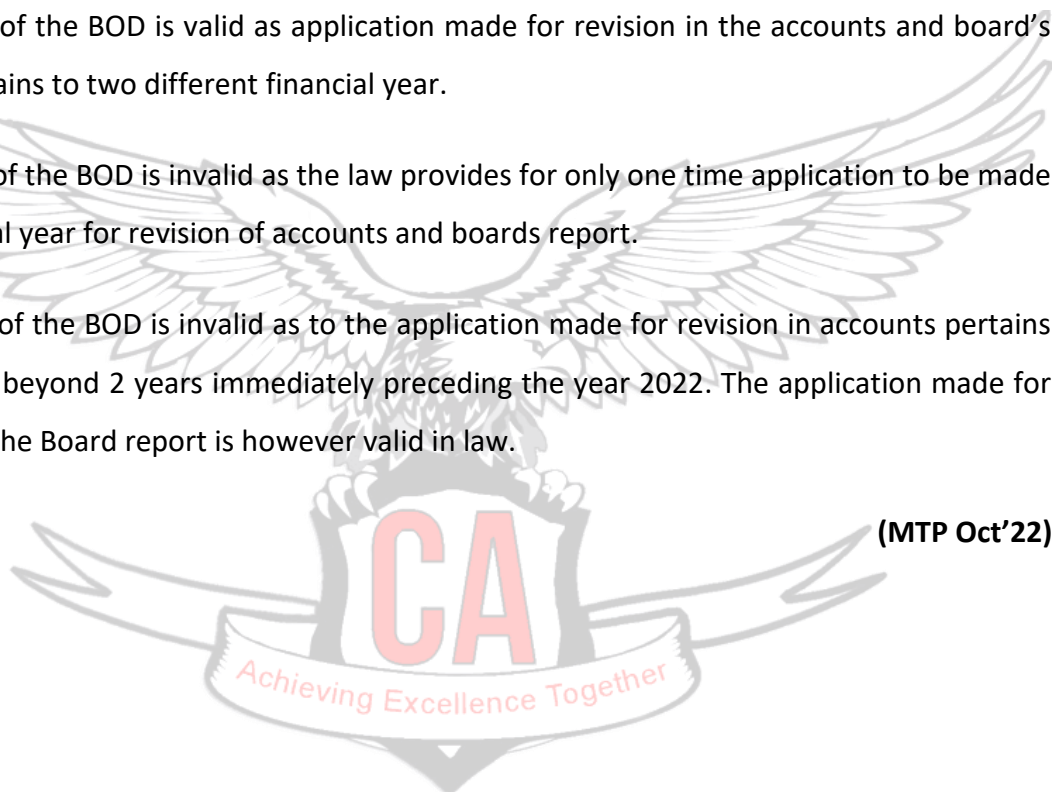
**Reason:**

As per Section 131 of the Companies Act, 2013,

A company can revise its financial statements or Board's Report only with the approval of the Tribunal, and only for any of the 3 preceding financial years, and only once in a financial year.

In this case:

- Revision of accounts for FY 2018-19, applied in half-year ended Sep 2021, is invalid as it falls outside the 3-year limit from FY 2021–22.
- Revision of Board's Report for FY 2020–21 is valid, as it falls within the prescribed time.



Hence, option (d) correctly reflects the partial validity of the Board's actions.

## Topic 10 Revaluation Surplus and Distributable Profit

### MCQ

#### Question 36

Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of Rs 20,00,000. The Board of Directors is keen to utilize Rs 20,00,000 along with free reserves of Rs 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2019. Advise the company.

- (a) Rs 20,00,000 are to be excluded from the distributable profits as the same cannot be utilized towards declaration of dividend.
- (b) Only 25% of Rs 20,00,000 can be utilized as distributable profits towards declaration of dividend.
- (c) Up to 50% of Rs 20,00,000 can be utilized as distributable profits towards declaration of dividend.
- (d) Up to 60% of Rs 20,00,000 can be utilized as distributable profits towards declaration of dividend.

(RTP Nov '20)

Ans: (a)

Reason:

As per Section 123 of the Companies Act, 2013,

Dividend can be declared only out of:

- Profits of the current year,
- Undistributed profits of previous years, or
- Free reserves (excluding unrealized gains, notional gains, or revaluation reserves).

The Rs 20,00,000 arising from revaluation of land is unrealized revaluation profit, and as such, cannot be treated as free reserves or used for dividend.

Hence, the company must exclude this amount, making option (a) correct.

## Topic 11 Utilization of IEPF

### MCQ

#### Question 37

**The amount accumulated in the Investor Education and Protection Fund shall not be used for:**

- (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.

**(Study Material)**

**Ans: (c)**

**Reason:**

The Investor Education and Protection Fund (IEPF) is a fund established by the Government of India under the provisions of the Companies Act, 2013. The primary purpose of this fund is to protect the interests of investors by utilizing the unclaimed dividends, matured deposits, matured debentures, and unclaimed application money.

According to the provisions, the amount accumulated in the IEPF can be used for specific purposes such as:

Refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund, and interest thereon.

Reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.

Distribution of disgorged amounts among eligible and identifiable applicants who have suffered losses due to fraudulent activities.

However, the IEPF cannot be used for making grants or donations to the Central Government for investor education and training. Instead, the fund is dedicated to the protection and compensation of investors directly impacted by unclaimed amounts and legal actions.

Thus, the correct answer is (c) Grants or donation to the Central Government for the purpose of investor's education and training.

## **Topic 12 Miscellaneous / Interpretation Issues**

## Descriptive Question

### Question 38

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018- 19, except in the following two cases:

(i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.

You are required to analyse this case with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

(Study Material)

### Answer 38

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non- compliance was not communicated to him. In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under **section 127** will be applicable.

### Question 39

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally



with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

(Study Material)

**Answer 39**

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

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about noncompliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

**Question 40**

During the financial year 2016-17, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor, to accommodate the said interim dividend.

(i) Examine the validity of the Board's decision under the provisions of the Companies Act, 2013.

(ii) Examine what will be your answer, if the Board proposes to transfer more than 10% of the profits of the company to the reserves for the current year before the declaration of any dividend?

(MTP March'18)

**Answer 40**

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 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.

Further a dividend when declared becomes a debt and a shareholder is entitled to recovery of the same after expiry of 30 days as prescribed under **Section 127** of the Companies Act, 2013. **Section 2(14 A)** of the Act defines dividend to include interim dividend. Therefore, dividend once declared becomes a debt and payable within 30 days of declaration.

In the present case, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor.

However, in view of the above, the Board of directors cannot revoke the second interim dividend. Therefore, decision of the Board to revoke the declared 2nd Interim dividend is invalid.

#### Question 41

Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016 -17, except in the following two cases:

(i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.

(MTP Oct '19, Old & New SM)

#### Answer 41

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

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

#### Question 42

ABC Pvt. Ltd. is a One Person Company (OPC) incorporated in 2024. The company has not appointed a company secretary due to its small scale of operations. At the end of the financial year 2024-25, the company needs to file its annual return. The director in state of dilemma, consulted the company law expert whether they need to submit a full-fledged annual return or an abridged version and who should sign the document.

Based on the provisions of the Companies Act, 2013, advise on the following:

- (i) What form should ABC Pvt. Ltd. use to file its annual return?
- (ii) Who is authorized to sign the annual return?

(RTP May 2025)

#### Answer: 42

According to **section 92(1)** of the Companies Act, 2013, every company shall prepare a return (referred to as the Annual Return) in the prescribed form containing the specified particulars as they stood on the close of the financial year. In terms of Second Provision to section 91 (1), 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. Accordingly, as per Rule 11 (1), One Person Company and small company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

However, in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Accordingly, following are the advise given by the expert:

(i) As per Section 92 and Rule 11(1), since ABC Pvt. Ltd. is a One Person Company (OPC), it should file its annual return in Form MGT-7A (abridged form) for the financial year 2024-25.

(ii) In the absence of a company secretary, the annual return should be signed by the sole director of the company as per the provisions applicable to One Person Companies.



## Chapter 9 - Accounts of Companies

### Topic 1 Books of Accounts & Preservation

#### Question 1

##### ICAI Illustration True false

**Statement – Vouchers need not to be preserved as part of requirement of preserving books for period of 8 years.**

(Study Material)

**Answer:**

**(False)** Reason – As per section 128(5) of the Companies Act 2013, the books of account, 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.

#### Question 2

##### ICAI Illustration

**Can XYZ limited maintain its books of account on cash basis?**

(Study Material)

**Answer:**

The Companies Act 2013 vide **section 128 (1)** requires every company to prepare books of account and other relevant books and papers and financial statement for every financial

year on accrual basis and according to double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of account on cash basis.

### Question 3

#### ICAI Illustration

**The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?**

(Study Material)

**Answer:**

**Section 129(2)** of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

Further **section 134(7)** provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of

- a. Any notes annexed to or forming part of such financial statement;
- b. The auditor's report; and
- c. The Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable.



## **Descriptive Question**

### **Question 4**

The registered office of the Bharat Ltd. is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Please advise.

**(Study Material)**

### **Answer 4**

According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. The provision to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the above mentioned procedure.

### **Question 5**

(i) Ravi Limited maintained its books of accounts under Single Entry System of Accounting. 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?

(Study Material)

#### 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 should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books 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 Accounting by Ravi Limited is not permitted.

(ii) Persons responsible to maintain books: As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of 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 in electronic mode shall remain accessible in India at all times so as to be usable for subsequent 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 daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

#### Question 6

**Whether a Company can keep books of Accounts in electronic mode accessible only outside India?**

**(MTP Oct 20)**

#### Answer 6

A Company has the option of keeping its books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India, at all times so as to be usable for subsequent reference.

(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

As per amendment- Provided that for the financial year commencing on or after the 1st day of April, 2022, 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.

#### Question 7

**State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013.**

**(MTP Jan 2025) (MTP March 21, Oct'21, RTP Nov '22)**

#### Answer 7

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.

#### **Question 8**

**Green Limited is a company dealing in trading of spices. It has maintained its books of accounts under Single Entry System of Accounting. The company has recently hired a new accountant. The new accountant, Mr. Dubey, is doubtful that the accounts can be maintained under Single Entry System. Advise the company whether it is allowed to do so?**

**(MTP March 21)**

#### **Answer 8**

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 should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books 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 Accounting by Green Limited is not permitted.

#### **Question 9**

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of accounts

(MTP April 22)

#### Answer 9

(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 provision 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 provision 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 10

**I. Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?**

(PYP Nov'19)

**II. State the person 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.**

(PYP Nov'19, Old & New SM)

#### Answer 10

According to **Section 128(1)** of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts 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 Accounting by Ravi Limited is not permitted. Persons responsible to maintain books

As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

A Company have 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) Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India at all times so as to be usable for subsequent reference.

(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

## **Topic 2 XBRL Filing Requirements**

### **MCQ**

#### **Question 11**

Modern Furniture Limited (MFL) is required to prepare the financial statement that comply with accounting standards and shall be in form specified in schedule III. But the financial statement prepared and presented are not in compliance with applicable accounting standards, therefore MFL required to disclose which of following:

i. Deviation

ii. Reason of deviation

iii. Financial effects arise out of such deviation.

- (a) Only i
- (b) Only i and ii
- (c) Only i and iii
- (d) All of i, ii, and iii

(Practice question)

Ans: d)

Reason:

According to the Companies Act, 2013, if a company like Modern Furniture Limited (MFL) prepares its financial statements in a manner that does not comply with the applicable Accounting Standards (AS), it is required to disclose the following:

**Deviation (i):** MFL must disclose the deviation from the applicable accounting standards. This is a mandatory requirement to ensure transparency in financial reporting, especially if the company has made departures from the established norms.

**Reason for Deviation (ii):** MFL must also provide the reason for the deviation. This helps the users of financial statements understand why the company has not followed the standard practice.

Reasons could include practical challenges, a change in accounting policies, or unique circumstances affecting the company's financial reporting.

**Financial Effects of Deviation (iii):** The Company is also required to disclose the financial effects that arise from the deviation. This is crucial because the deviation from accounting standards may have a material impact on the financial statements, and stakeholders need to know the effect of such deviation on the company's financial position.

Therefore, as per the Companies Act, 2013, and Accounting Standards, MFL is required to disclose all of the above, which includes the deviation, the reason for the deviation, and the financial effects of the deviation.

Thus, the correct answer is (d) All of i, ii, and iii.

#### Question 12

**A Housing Finance Ltd. is a housing finance company having a paid up share capital of Rs 11 crores and a turnover of Rs 145 crores during the financial year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.**

(PYP Nov'18 Old & New SM)(Study Material)

#### Answer 12

Filing of financial statements in XBRL Mode As per Rule 1 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under **section 137** of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-

- (i) 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 in accordance 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.

### Topic 3 Cash Flow Statement Applicability

#### MCQ

#### Question 13

Which of the following is not mandatorily required to include cash flow as part of its financial statement.

- (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

(MTP April '23)

Ans: (c)

#### Reason:

Under the Companies Act, 2013, and as per Indian Accounting Standard (Ind AS), certain companies are mandated to include a Cash Flow Statement as part of their financial statements. However, not all companies are required to prepare it. Here's the breakdown:

(a) Shiv Limited: This is a regular company, and it is required to prepare a Cash Flow Statement as part of its financial statements under Ind AS if it is a listed company or exceeds the threshold limits set for turnover and paid-up share capital.

(b) Shiv Private Limited (not a start-up company): A Private Limited Company (not a start-up) with paid-up share capital or turnover exceeding the thresholds prescribed by the Companies Act, 2013, is required to prepare a Cash Flow Statement.

(c) Shiv (OPC) Private Limited: A One Person Company (OPC) is exempt from preparing a Cash Flow Statement. According to Schedule III of the Companies Act, 2013, and Ind AS, OPCs are not mandated to include a Cash Flow Statement in their financial statements, irrespective of their turnover or capital.

(d) Shiv Limited, having paid-up share capital of 3 crore and turnover of 30 crore: This company exceeds the prescribed thresholds for the requirement of a Cash Flow Statement and must include it in its financial statements.

Therefore, Shiv (OPC) Private Limited is not required to include a Cash Flow Statement, making the correct answer (c).

#### Question 14

**Nath Private Limited is a start-up company Mr. P has been appointed as Accounts Manager of Nath Private Limited. The Board meeting for approval of accounts is to held be on 01.08.2024. For this he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. P about the statements that are required to be prepared.**

**(MTP Jan 2025)**

#### Answer: 14

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 provision 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. P has to prepare the prescribed financial statements except Cash Flow Statement; since Nath Private Limited is a start-up private company.

#### Question 15

**Sriram Private Limited is a start-up company. Mr. Lovely has been appointed as Accounts Manager of Sriram Private Limited. The Board meeting for approval of accounts is to be held on 1st August, 2024 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. Lovely about the statements that are required to be prepared.**

(MTP May 2025)

#### Answer: 15

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 provision 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. Lovely has to prepare the above financial statements except Cash Flow Statement; since Sriram Private Limited is a start-up private company

#### **Question 16**

**Vishal Limited is an unlisted public company, having five directors in its board which includes two independent directors.**

**Sam (P) Limited, is subsidiary company of Vishal Limited, actively carrying on its business, having paid up capital of Rs 1.5 crore with 40 members and turnover of Rs 18 crore, respectively and the said company is not a start-up company.**

**It is also provided that Sam (P) Limited is not a startup company.**

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

**Whether Sam (P) Limited is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?**

**Provide your answer by analyzing Sam (P) Limited into following category of companies:-**

**(i) Small company, and**

**(ii) Dormant company, respectively.**

**(RTP Sep 2025)**

**Answer: 16**

According to section 2(10) 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 of cash flow statement in case of Sam (P) Limited, it is required first to analyze that Sam (P) Limited does not fall in the following categories:

- (i) Small company – A company which is a subsidiary company cannot be categorized as a small company as per provision to section 2(85). Thus, even though its paid up capital and turnover are within the prescribed limits, as Sam (P) Limited is a subsidiary company of Vishal Limited, it cannot be considered as small company.
- (ii) 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.

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

Thus, it can be concluded that Sam (P) Limited 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 provision to section 2(10) of the Companies Act, 2013.

#### **Topic 4 Corporate Social Responsibility (CSR)**

#### **MCQ**

##### **Question 17**

Amex limited is a public company having a net- worth of Rs. 950 crores, turnover of 200 crores (the company is just 5 years since the date of its incorporation) during the immediately preceding financial year, has to constitute a Corporate Social Responsibility (CSR) Committee. It has 9 Directors (A, B, C, D, E, F, G, H and I). Further, Mr. F, G, H and I are independent directors. Out of the following statements which statement is correct:

- (a) CSR committee may constitute of A, B and C
- (b) CSR committee may constitute of A, B and D
- (c) CSR committee may constitute of A, F and G
- (d) There is no need to constitute a CSR committee as the turnover is just 200 crores during the immediately preceding financial year

**(MTP March '19)**

**Ans: (c)**

**Reason:**

As per Section 135 of the Companies Act, 2013, a Corporate Social Responsibility (CSR) Committee must be constituted by companies that meet any of the following criteria:

1. Net worth of Rs. 500 crores or more.
2. Turnover of Rs. 1,000 crores or more.
3. Net profit of Rs. 5 crores or more during the immediately preceding financial year.

In this case, Amex Limited has a net worth of Rs. 950 crores, which satisfies the requirement to form a CSR committee, even though the turnover is Rs. 200 crores (below the Rs. 1,000 crore threshold).

Thus, the correct answer is (c) CSR committee may constitute of A, F, and G.

**Question 18**

**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 Rs. 20,000 per month or less, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

**(MTP Nov 21) (Study Material)**

**Ans: (b)**

**Reason:**

Under Section 135 of the Companies Act, 2013, a company is required to spend on Corporate Social Responsibility (CSR) activities, which must be in line with the specified activities listed under Schedule VII of the Act. These activities are designed to benefit the society at large and not the employees of the company.

Specifically, CSR funds cannot be used for activities that benefit only the employees of the company or their families, as the purpose of CSR is to engage in activities that contribute to societal development and welfare.

Therefore, the correct answer is (b) No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

#### **Question 19**

**Pratham Limited has decided to spend Rs 40 lakhs on project of CSR. The average net profit of the company is Rs 10 crores. But due to some reasons, company was able to spend only Rs 30 lakhs. Now what will be the option for the company for the rest Rs 10 lakhs.**

(a) Penal provision will be applicable for unspent amount of Rs 10 lakhs.

(b) No penal provision but explanation is required in Board report for not spending Rs 10 lakhs

(c) No penal provision



(d) The company is required to transfer the amount to separate fund.

(MTP March '23)

**Ans:** (c)

**Reason:**

As per Section 135 of the Companies Act, 2013, companies are required to spend at least 2% of their average net profit of the last three years on Corporate Social Responsibility (CSR) activities. If the company does not spend the full amount in a particular year, they must explain the shortfall in their Board report.

In this case, Pratham Limited had decided to spend Rs. 40 lakhs but only spent Rs. 30 lakhs, leaving Rs. 10 lakhs unspent. The company is not subject to penal provisions for the unspent amount, but it must provide an explanation for the shortfall in the Board report, stating the reasons for not fully spending the allocated amount.

Therefore, the correct answer is (b) No penal provision but explanation is required in the Board report for not spending Rs 10 lakhs.

#### Question 20

**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:**

- (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

(MTP March 23)

**Ans:** (d)

**Reason:**

Under Section 135 of the Companies Act, 2013, and the Companies (Corporate Social Responsibility Policy) Rules, 2014, CSR activities are specifically defined, and the law outlines the areas where companies are allowed to spend their CSR funds. The activities eligible for CSR spending are related to the promotion of education, health, environment, rural development, gender equality, and other similar causes that contribute to the welfare of society at large.

However, spending on the health insurance of employees is not considered a permissible CSR activity. The expenditure on the health of employees, including skilled and semi-skilled workers, is considered an employee welfare expenditure rather than a CSR activity. CSR funds are meant for activities that benefit the broader community and society, not for internal employee benefits.

Therefore, the correct answer is (d) such expenditure is not permissible under eligible CSR activities.

#### **Question 21**

**The Corporate Social Responsibility Committee of the board shall consist of:**

- (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

(MTP March '23)

**Ans: (b)**

**Reason:**

As per Section 135(1) of the Companies Act, 2013, every company that is required to constitute a Corporate Social Responsibility (CSR) Committee must ensure that the committee consists of three or more directors, and at least one of them must be an Independent Director.

This provision is made to ensure that there is adequate oversight and transparency in the CSR initiatives of the company, with the Independent Director providing an unbiased view in the decision-making process related to CSR.

Therefore, the correct answer is (b) Three or more directors out of which at least one director shall be Independent Director.

## Question 22

**Victory Limited was incorporated in January 2015. How much expenditure Victory Limited shall ensure to spend in pursuance of its Corporate Social Responsibility Policy:**

(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.

**(MTP March '23)**

**Ans: (b)**

**Reason:**

As per Section 135 of the Companies Act, 2013, every company falling under the specified criteria (based on net worth, turnover, or net profits) is required to spend on Corporate Social Responsibility (CSR) activities. The amount to be spent is mandated to be at least 2% of the average net profits of the company made during the three immediately preceding financial years.

However, since Victory Limited was incorporated in January 2015, it needs to follow the CSR provisions once it meets the applicable criteria for CSR applicability (i.e., it has a net worth of Rs. 500 crore or more, turnover of Rs. 1000 crore or more, or net profit of Rs. 5 crore or more in a financial year).

Therefore, the correct answer is (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.

### **Question 23**

**Compute 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 Rs 30 crore, Rs 25 crore and Rs 32 crore respectively.**

(a) Rs 87 lac

(b) Rs 1.14 crore

(c) Rs 1.64 crore

(d) Rs 58 lac

(MTP April '23)

**Ans:** (d)

**Reason:**

As per Section 135 of the Companies Act, 2013, a company is required to spend at least 2% of the average net profits made during the three immediately preceding financial years on Corporate Social Responsibility (CSR) activities.

Given the net profits for Natraj Limited for the years 2019-2020, 2020-2021, and 2021-2022, the required CSR expenditure for the year 2022-2023 will be calculated as follows:

**Net profits for the preceding years:**

2019-2020: Rs 30 crore

2020-2021: Rs 25 crore

2021-2022: Rs 32 crore

Step 1: Calculate the average net profit over the last 3 financial years.

$$\text{Average Net Profit} = \frac{\text{Net Profit in 2019-2020} + \text{Net Profit in 2020-2021} + \text{Net Profit in 2021-2022}}{3}$$

$$\text{Average Net Profit} = \frac{30 + 25 + 32}{3} = \frac{87}{3} = 29 \text{ crore}$$

Step 2: Calculate the CSR expenditure (2% of average net profit).

$$\text{CSR expenditure} = 2\% \times \text{Average net profit}$$

$$\text{CSR expenditure} = 2\% \times 29 \text{ crore} = 0.58 \text{ crore} = \text{Rs } 58 \text{ lakh}$$

Thus, Natraj Limited is required to spend a minimum of Rs 58 lakh on CSR for the year 2022-2023.

Therefore, the correct answer is (d) Rs 58 lac.

#### **Question 24**

**G Ltd. (a company having CSR Committee as per the provision of Section 13 of the Companies Act, 2013) decides to spend and utilize half of the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of G Limited and the remaining half of the amount of Corporate Social Responsibility on the activities for the benefit of family members of employees of G Limited As per the provision of Companies Act, 2013 this would mean that: -**

- (a) Total Amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
- (b) No amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
- (c) Half amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
- (d) Half amount spent on Corporate Social Responsibility Activities and remaining half amount spent on Other Activities by G Limited for that financial year

**(RTP May'20)**

**Ans: (b)**

**Reason:**

As per Section 135 of the Companies Act, 2013, the spending of Corporate Social Responsibility (CSR) funds must be directed towards activities that benefit the general public or society at large and should not be limited to the benefit of the company's employees or their families.



Under the provisions of the Act and the CSR Rules, activities that directly benefit employees or their family members do not qualify as legitimate CSR activities. This is because CSR aims to promote the welfare of society, not merely the company's internal stakeholders.

In this case, G Ltd. plans to spend half of its CSR amount on activities for the benefit of employees and the other half on activities for the benefit of family members of employees. These activities are not considered eligible CSR activities because they do not extend to the broader community or the public.

Therefore, no amount will be considered as spent on CSR activities, as the expenditure does not meet the criteria for eligible CSR activities under the Companies Act.

Thus, the correct answer is (b) No amount spent on Corporate Social Responsibility Activities by G Limited for that financial year.

#### **Question 25**

**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:**

- (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

**(Study Material)**

**Ans: (b)**

**Reason:**

According to the provisions of Section 135 of the Companies Act, 2013, any surplus arising out of CSR activities must not be treated as a business profit. Specifically:

Surplus arising out of CSR activities is not to be used for the benefit of the company's business or shareholders.

The surplus should not form part of the business profit of the company and must be utilized in accordance with CSR objectives.

If the surplus arises, it must either be used for CSR activities in the subsequent financial year or be transferred to a designated CSR fund.

The correct statement in the context of CSR provisions is that the surplus cannot form part of the business profit of the company.

Therefore, (b) The surplus shall not form part of the business profit of a company is the correct answer.

#### **Question 26**

**Compute the minimum amount that Modern Furniture Limited is required to spend on account of Corporate Social responsibility year 2022-2023. MFL was incorporated in August 2020. Net-profit made during the financial years 2020-2021 and 2021-2022 are Rs 20 crore, and Rs 38 crore respectively.**

(a) Rs 76 lac

(b) Rs 1.16 crore

(c) Rs 58 lac

(d) Since the company has not completed the period of three financial years since its incorporation, hence no CSR spending is required.

**(Practice question)**

**Ans: (c)**

**Reason:**

According to Section 135 of the Companies Act, 2013, the requirement for a company to spend on Corporate Social Responsibility (CSR) depends on its net profit and its completion of the minimum required number of financial years of operation.

In the case of Modern Furniture Limited (MFL), which was incorporated in August 2020, it has been in operation for only two financial years (2020-21 and 2021-22). As per the provisions of the Companies Act, a company is required to spend on CSR only if it has completed three financial years.

However, since MFL has only completed two financial years at the time of calculating the CSR spend for the year 2022-2023, it is not yet required to allocate any CSR spend for that financial year.

Therefore, based on the legal framework, MFL is not required to make CSR expenditures, as it has not completed three financial years of operation yet.

Hence, the correct answer is (d) Since the company has not completed the period of three financial years since its incorporation, hence no CSR spending is required.

## **Question 27**

### **ICAI Illustration**

**ABC Ltd is a company with a turnover of more than Rs 1000 crores in each of the preceding three financial years and have incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?**

**(Study Material)**

**Answer:**

As per **section 135(1)** of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

#### **Question 28**

##### **ICAI Illustration**

**Can an international organisation be engaged for implementation of CSR project?**

**(Study Material)**

**Answer:**

Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programs as permits CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

#### **Question 29**

The directors of Ninja Ltd. having a paid- up capital of Rs. 1500 crores have approached you to state them the provisions of the Companies Act, 2013 and rules thereunder, regarding which companies are required to constitute CSR Committee? Also, state the composition of CSR Committee.

**(MTP March'18)**

**Answer 29**

Which Company is required to constitute CSR committee:

Every company including its holding or subsidiary, and a foreign company defined under **section 2(42)** of the Companies Act, 2013 having its branch office or project office in India, having

(1) net worth of rupees 500 crore or more, or

(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and **section 198** of the Act.

Net worth” **[Section 2(57)]** means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.  
Composition of CSR Committee:

(a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.

(b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.

(c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.

(e) The Board's report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee

### Question 30

Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

| Financial year Amount | (Rs In crores) |
|-----------------------|----------------|
| 2012-13               | 20             |
| 2013-14               | 40             |
| 2014-15               | 30             |
| 2015-16               | 70             |
| 2016-17               | 50             |

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.

(ii) State the composition of the CSR committee unlisted company and a private company.

(RTP May-18)

### Answer 30

Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility. As per the given facts, following are the answers in the given situations-

(i) **Amount that Company has to spend towards CSR:** According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in



every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

**(ii) Composition of CSR Committee:** The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under **section 135(1)** which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

### Question 31

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 31

According to fourth provision 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 its financial statement audited, the requirements of the fourth provision 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 32**

**Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of Rs 100 crore, net profit Rs 3 crore, accumulated loss of Rs 50 crore and securities premium Rs 300 crore as per the audited accounts of the company for the Financial Year 2016-17. The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013.**

**The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.**

**(PYP May'18)**

### **Answer 32**

Corporate Social Responsibility Committee: According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having - (1) net worth of rupees 500 crore

(2) Turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during (as per amendment- the immediately preceding financial year) shall constitute a Corporate Social Responsibility Committee of the Board.

“Net worth” [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous

expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

**In the present case,**

- Turnover of Rera Ltd. is Rs 100 crore,
- Net profit of Rs 3 crore and
- Net worth of Rs 253 crore (Net profit + securities premium - accumulated loss =  $3 + 300 - 50 = 253$  crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

[**Note 1:** - It can also be presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[**Note 2:** Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

## **Topic 5 Appointment of Internal Auditor**

### **MCQ**

#### **Question 33**

**Excellent Art Private Limited has a paid up capital of Rs.50 crore, Turnover of Rs.25 crore and borrowing of Rs.25 crore and outstanding deposits of Rs.30 crore. Decide if the Company needs to comply with internal audit requirements under the Act?**

- (a) No. The provisions of internal audit are not applicable on private companies.

(b) Yes. Company is having paid up capital of Rs.50 Crore and outstanding deposits more than Rs.25 crore.

(c) No. Because the borrowings are less than Rs.100 crore and Turnover is less than Rs.200 crore

(d) None of the above

**(MTP March '19)**

**Ans: (c)**

**Reason:**

Under Section 138 of the Companies Act, 2013, the requirement for internal audit applies to certain categories of companies based on their financial parameters. Specifically, the provisions related to internal audit apply to the following types of companies:

Public companies (listed or unlisted) with a paid-up share capital of Rs. 50 crore or more.

Private companies which are required to get their financial statements audited and have either a turnover of Rs. 200 crore or more or an outstanding borrowings or deposits of Rs. 100 crore or more.

**In this case, Excellent Art Private Limited has the following financial parameters:**

Paid-up capital: Rs. 50 crore

Turnover: Rs. 25 crore

Borrowing: Rs. 25 crore

Outstanding deposits: Rs. 30 crore

Although the company has a paid-up capital of Rs. 50 crore, which could trigger internal audit requirements, its turnover is less than Rs. 200 crore and borrowings are less than Rs. 100 crore.

Hence, the company does not meet the financial criteria for the application of the internal audit requirements under Section 138 of the Companies Act, 2013, because neither its turnover exceeds Rs. 200 crore nor its borrowings exceed Rs. 100 crore.

Therefore, the correct answer is (c) No. Because the borrowings are less than Rs.100 crore and Turnover is less than Rs.200 crore.

#### **Question 34**

##### **ICAI Illustration**

Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co. LLP, as its internal auditors for the year ended 31st March 2023. However, for the financial year 2023-24, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co. LLP as its internal auditors. Please advise.

(Study Material)

##### **Answer:**

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co. LLP.

#### **Descriptive Question**

##### **Question 35**

Natraj Limited is an unlisted Public company having paid up share capital of Rs 80 crores during the preceding financial year 2016-17. The turnover of the company was Rs 110



crores for the same period. Referring to the provisions of the Companies Act, 2013, discuss the answer to the following:

(i) Is it mandatory for the above company to appoint an internal auditor for the financial year 201718?

(ii) What are the qualifications of the Internal Auditor?

(MTP March '18)

**Answer 35**

(i) Class of companies required to appoint Internal Auditor: Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:

1. Every listed company;

2. Every unlisted public company having –

(a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or

(b) Turnover of 200 crore rupees or more during the preceding financial year; or

(c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or

(d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

3. Every private company having –

(a) Turnover of 200 crore rupees or more during the preceding financial year; or

(b) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

As per the facts given in the question, Natraj Limited is an unlisted public company with the paid up share capital of Rs 80 cores during the preceding financial year with the turnover of Rs 110 crores. Since, Natraj Limited fulfills one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is mandatory for the Natraj Limited to appoint an internal auditor for the financial year 2017-18.

(ii) Qualifications of Internal Auditor

(a) Internal Auditor shall either be a chartered accountant or a cost accountant or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Here, the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

**Question 36**

**Aura Ltd. is a listed company having a paid-up share capital of Rs 25 crore as at 31st March, 2021 and turnover of Rs 100 crore during the financial year 2020-21. The Company Secretary has advised the Board of Directors that Aura Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.**

**(MTP March '22 & Sep '23) (PP Jan 21)**

**Answer 36**

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to

appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) Every listed company;

(2) Every unlisted public company having-

(A) Paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) Turnover of 200 crore rupees or more during the preceding financial year;

(C) Outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(D) Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, Aura limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company). Hence, the advice of the Company Secretary is not correct.

### Question 37

**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 Sep'22)**

### Answer 37

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;

(2) every unlisted public company having-

(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year; or

(C) Outstanding loans or borrowings from banks or 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 38

The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of units and recasting the financial statements for the financial year 2011-12. Examine the validity of action filed by the Income Tax Authorities to NCLT.

(MTP April '23, MTP Oct 20, Old & New SM, PYP May'19, RTP May 21)

### Answer 38

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 2011-2012 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. 2022-2023, is invalid.

#### **Question 39**

**Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of Rs 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 39**

According to section 138 read 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 Rs 45 crore and turnover of Rs 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than Rs 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020 -21.

#### **Question 40**

**KSR Limited, an unlisted company furnishes the following data:**

**(a) Paid-up share capital as on 31-3-2021 Rs 45 Crore.**

**(b) Turnover for the year ended 31-3-2021 Rs 175 Crore**

**(c) Outstanding loan from bank as on 3-3-2021 Rs 105 crore (Rs 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 Rs 90 crore after repayment.**

**Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022?**

**(PYP July '21)**

#### **Answer 40**

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 body corporate. In the given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., Rs 105 crore on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

#### **Question 41**

ABC Private Limited was incorporated on 30th September 2020. It has a paid up share capital of Rs 45 crore. The company had a turnover of 250 crore for the financial year 2023-24. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2024-25. The management of the company have approached you to advise them about the appointment of internal auditor, as per the provisions of the Companies Act, 2013.

(MTP May 2025)

#### **Answer 41**

According to section 138 read 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 Rs 45 crore and turnover of Rs 250 crore for the financial year 2023-24.

Since, the company is fulfilling the criteria of turnover (i.e. more than Rs 200 crore), hence, it is required to appoint an internal auditor for the financial year 2024-25.

## Topic 6 Reopening of Books of Account

### MCQ

#### Question 42

A company can re- open / recast its book of accounts on an application to Tribunal made by:

- (a) Registrar
- (b) Member
- (c) Board of Directors
- (d) Income –tax authorities

(MTP April'19)

Ans: (d)

Reason:

As per Section 130 of the Companies Act, 2013,

A company can re-open and recast its books of accounts or financial statements only on an order of the Tribunal, which may be passed on an application made by:

- Central Government,
- Income Tax Authorities,
- SEBI, or

- Any other statutory regulatory body or authority.

Neither the Board nor Members nor Registrar alone can initiate this, unless acting through a statutory authority.

Hence, option (d) is correct.

#### Question 43

ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2021, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?

- (a) 2016-2017
- (b) 2014-2015
- (c) 2011-2012
- (d) 2012-2013

(MTP April 22 & Oct '23)

**Ans:** (d)

**Reason:**

According to Section 230 of the Companies Act, 2013, and as per the rules laid down by the Securities and Exchange Board of India (SEBI), the Tribunal can order the reopening of the books of accounts for a company in case of fraud or irregularities discovered in the filings, provided the irregularity is discovered within 5 years of the financial year under consideration.

This means that if SEBI seeks to reopen the books of accounts, it can only do so for the last five financial years. Since the current financial year is 2020-2021, the company can be required to reopen its books for the period from 2015-2016 to 2020-2021. Hence, the latest financial year for which the books can be reopened is 2012-2013.

Therefore, the correct answer is (d) 2012-2013.

#### **Question 44**

**During the half year ended September 2020, 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 2018. Further during the year ended March 2021, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2020. You are required to state the validity of the acts of the Board of directors.**

- (a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
- (b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
- (c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
- (d) 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 2021. The application made for revision in the Board report is however valid in law.

**(MTP Oct 21 & Sep '23)**

**Ans: (b)**

**Reason:**

Under the provisions of the Companies Act, 2013, the Board of Directors (BOD) can apply to the Tribunal for the revision of financial statements and board reports. However, such applications are subject to certain conditions:

**Revision of Accounts:** An application for revision of accounts can only be made within two years from the end of the financial year to which the accounts pertain. In this case, the application made by the BOD for the revision of accounts for the year March 2018 is not valid, as it is beyond the 2-year period from the end of the year 2020 (i.e., it should have been applied by March 2020).

**Revision of Board Report:** Similarly, the application for the revision of the Board's report for the financial year March 2020 is valid because it pertains to the financial year ended on March 2020, which is within the allowed revision period.

Since these two applications pertain to different financial years, the revision request for the board's report for March 2020 is valid. However, the revision request for the accounts of March 2018 is not valid due to the 2-year limitation period from the end of the relevant financial year.

Therefore, the correct answer is (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 years.

#### Question 45

ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, 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?

(a) 2018-2019

(b) 2016-2017

(c) 2013-2014

(d) 2014-2015

**(Study Material)**

**Ans: (d)**

**Reason:**

As per the provisions of Section 130 of the Companies Act, 2013, a company can apply to the Tribunal for reopening and revision of its books of accounts if it is found that:

The books of account were not prepared in accordance with the provisions of the Companies Act,

Or the accounts contain material misstatements.

However, the key limitation is that applications for reopening of books of accounts must pertain to the financial years which are within eight years from the end of the current financial year.

Since the current financial year is 2022-2023, the earliest financial year that can be considered for reopening of books of accounts is 2014-2015. This is because, as per the law, a period of eight years is the maximum allowed for such a revision.

2022-2023 (current year) minus 8 years = 2014-2015.

Thus, the earliest financial year that can be quoted for reopening the books of account is 2014-2015.

Therefore, the correct answer is (d) 2014-2015.

**Question 46**



During the half year ended September 2022, 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 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.

- (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.

(Practice question)

**Ans: (b)**

**Reason:**

According to the provisions of Section 130 of the Companies Act, 2013, a company can apply to the Tribunal for reopening and revision of its accounts if:

The accounts were not prepared in compliance with the provisions of the Companies Act, or  
They contain material misstatements.

The law allows such an application to be made for revisions of accounts and board's report but places the restriction that the revision can be requested only once for the same financial year. However, if the application for revisions is made for two different financial years, then there is no restriction.

In this scenario:

The first application pertains to the financial year March 2020 (prior to the half year ended September 2022).

The second application pertains to the financial year March 2022 (in the year ended March 2023).

Since both applications relate to separate financial years, they are valid under the law. The Tribunal allows such revisions when they pertain to different periods.

Thus, the act of the Board of Directors is valid because the applications for revision were made for two different financial years, and there is no prohibition against submitting applications for different years.

Therefore, the correct answer is (b).

#### **Question 47**

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

**(Study Material)**

#### **Answer 47**

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year. In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009 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. 2019-2020, is invalid.

#### Question 48

The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re-opening of accounts on court's or Tribunal's order.

(MTP Oct '18)

#### Answer 48

According to **section 130** of the Companies Act, 2013,

(1) On Filing of an application: 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 regulatory 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:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income- tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

(2) Nature of Revised Accounts: The accounts so revised or re-cast shall be final.

(3) Time Period: 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: Provided that where a direction has been issued by the Central Government under the provision to subsection (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

#### Question 49

The directors of Element Ltd. want to voluntarily revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

(RTP Nov'18)

#### Answer 49

(1) Preparation of revised financial statement or revised report on the approval of Tribunal:

If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board, do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:  
Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(2) Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

- a. the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
- b. the making of any necessary consequential alternation.

(3) Framing of rules by the Central Government in relation to revised financial statement or director's report: The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

- a. make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

- b. make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
- c. require the directors to take such steps as may be prescribed.

#### Question 50

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 2015-16 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, May '23)

#### Answer 50

**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 section 130

(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.

## **Topic 7 Filing of Financial Statements with ROC**

### **Question 51**

#### **ICAI Illustration**

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2022, was notheld. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

**(Study Material)**

#### **Answer:**

In the present case, though AGM was not held, it ought to be held by 30 September 2022 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, 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 i.e. by 30 October 2022 along with such fees or additional fees as may be prescribed.

### **Question 52**

## ICAI Illustration

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2022 but the same were not adopted by the shareholders?

(Study Material)

### Answer:

Since the AGM has been held in time on 27 September 2022, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

## Descriptive Question

### Question 53

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

(Study Material) (PYP May'19 Old & New SM)

### Answer 53

According to first provision 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 provision to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed. In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM But Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2018.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

#### Question 54

Explain the following as per the provisions of the Companies Act, 2013:

(i) Who shall sign Board's Report

(ii) Filing of financial statements with the Registrar when AGM is not held

(MTP March '23)

#### Answer 54

I. Signing of Board's Report [**Section 134(6)**]: The Board's report and any annexures thereto under **section 134(3)** shall be signed by its chairperson of the company if he is authorised by

the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

II. Annual General meeting not held [Section 137(2)]: Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for 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.



### **Topic 8 Board's Report and Directors' Responsibility Statement**

#### **Question 55**

#### **ICAI Illustration**

**Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can state that controls are adequate and operating efficiently?**

**(Study Material)**

#### **Answer:**

Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not. Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here, adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

## Descriptive Question

### Question 56

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 enumerate any four matters to be furnished in the said statement.

(MTP Oct'22, Aug'18 & Oct '23, PYP Dec '21, PYP May 18)

### Answer 56

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.

(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.

## **Topic 9 Consolidated Financial Statements**

### **Question 57**

#### **ICAI Illustration**

RELM Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of RELM Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, RELM Industries Limited has placed its audited financial statement including consolidated financial statement on its website. RELM Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its country of incorporation. You are required to examine whether RELM Industries Limited has complied with the provisions of section 136?

**(Study Material)**

#### **Answer:**

No, RELM Industries Limited has not complied with the provisions of section 136 because RELM Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RELM Industries Limited in this case) may place such unaudited financial statement on its



website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

#### **Question 58**

#### **ICAI Illustration**

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2021, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

**(Study Material)**

#### **Answer:**

Vandana Ltd. Would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per its accounting policies for the purpose of consolidation.

Further, as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. Would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further, the format of accounts of Italian 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 59

**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 Dec '21)**

### Answer 59

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 subsection (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.

### Question 60

**Madan Pvt. Ltd. is a partially owned subsidiary of Puri Ltd., holding 90% of its shares. The company does not have any listed securities and is not in the process of listing on any stock exchange. Puri Ltd., the holding company, prepares and files consolidated financial statements (CFS) with the Registrar in compliance with applicable Accounting Standards.**

**Considering the above, analyze and examine the following situations:**

**1. Is Madan Pvt. Ltd. required to prepare its own consolidated financial statements? What are the requisite conditions for the same?**

**2. How does it matters, if Madan Pvt. Ltd. had securities listed on a recognized stock exchange?**

**(RTP May 2025)**

**Answer: 60**

As per section 129 of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall (in addition to financial statements prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries, associate companies and joint ventures in the same form and manner as that of its own and in accordance with applicable accounting standards. Such CFS shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

**Exemptions from preparation of CFS**

According to section 129(3), the preparation of consolidated financial statements by a company is not required if it meets the following conditions:

- a. It is a wholly owned subsidiary, or is a partially owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- b. It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in or outside India; and

c. Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

In line with stated legal requirements, following are the answers:

1. Madan Pvt. Ltd. may qualify for an exemption from preparing consolidated financial statements because:

- It is a partially owned subsidiary (90% ownership by Puri Ltd.).
- It does not have any listed securities and is not in the process of listing on any stock exchange i.e., have no publicly trading of securities.
- Its holding company, Puri Ltd., prepares and files consolidated financial statements with the Registrar in compliance with applicable Accounting Standards.

Since Madan Pvt. Ltd. is a partially owned subsidiary, it must ensure that all its members, including remaining shareholders (10% in this case), are informed in writing about the decision not to present CFS, and it must maintain proof of delivery of such communication. No member should object to this exemption.

2. If Madan Pvt. Ltd. had its securities listed on a recognized stock exchange or was in the process of being listed, it would not qualify for the exemption and would be required to prepare and present its own consolidated financial statements as per the applicable provisions.

## **Topic 10 Dormant Company**

### **MCQ**

#### **Question 61**

**The financial statement in relation to a dormant company may not include:**

- (a) balance sheet
- (b) cash flow statement
- (c) Applicable explanatory note
- (d) Profit and loss account

**(MTP Sep'22)**

**Ans: (b)**

**Reason:**

As per the provisions of the Companies Act, 2013 and Accounting Standards, a dormant company is defined as one that has not conducted any significant accounting transaction during the financial year. This may include companies that have not been active in business or whose operations are limited to maintenance work, like keeping the company active or preserving its corporate existence.

When preparing financial statements for a dormant company, the following applies:

**Balance Sheet** – A balance sheet is still required to show the assets and liabilities of the dormant company, even if no significant activity has taken place.

**Profit and Loss Account** – Although there may be no profit or loss due to the company's inactivity, a dormant company is still required to prepare a Profit and Loss account. The account will typically show no activity or just minor administrative costs (such as legal or compliance expenses).

**Applicable Explanatory Note** – A dormant company is required to include explanatory notes to explain the nature of its dormant status, as required by the Companies Act, 2013.

However, Cash Flow Statement is not mandatory for a dormant company, as there are no significant transactions or cash flows to report. The cash flow statement is intended to show the inflows and outflows of cash during the financial year, which is unnecessary in the case of a dormant company.

Therefore, the cash flow statement is not required for dormant companies under the Companies Act, 2013.

Correct answer: (b) Cash flow statement

## Topic 11 One Person Company

### MCQ

#### Question 62

**One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:**

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

(MTP Oct 21, Oct'22, Nov'20 & Oct '23)

**Ans: (d)**

#### Reason:

Under the provisions of the Companies Act, 2013, a One Person Company (OPC) must file the financial statements with the Registrar of Companies (ROC) within 180 days from the closure of the financial year. This is in line with the deadlines specified for filing annual financial statements for OPCs. Therefore, the correct answer is (d).



This requirement is designed to ensure that the company submits its annual accounts in a timely manner, providing an adequate period after the financial year-end for preparation and filing of the financial documents.

### Question 63

#### ICAI Illustration

**ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?**

**(Study Material)**

#### **Answer:**

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.

### **Topic 12 Periodic Financial Results**

#### **Descriptive Question**

### Question 64

**Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.**

**Answer 64**

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 Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. **Section 129A** clearly specifies that even unlisted company has to prepare Periodical Financial Results.

**Topic 13 Directors' Authentication of Financial Statements**

**Descriptive Question**

**Question 65**

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 full time Secretary. The Profit and Loss Account and Balance Sheet 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?**

**(Study Material)**

**Answer 65**

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

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 of the two signing directors. Since, the company has also employed a full-time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

**Question 66**

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. 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 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 May 20, RTP May '18)**

**Answer 66**

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.

**Question 67**

Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Prateek has approached you advise him regarding his responsibility for signing the financial statement.

Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more informations:

1. The Board as a policy does not authorise the chairperson of the company to sign the financial statements
2. The company has appointed Ms. Sunanina as its Company Secretary

(RTP Nov'19)

**Answer 67**

According to **section 134(1)** of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

**Topic 14 Financial Year Alignment for Subsidiaries outside India**

## MCQ

### Question 68

Feel Rich Co. Ltd. Having its registered office at New Delhi, is a subsidiary of a German company named Richman Company limited. The financial year of the parent/holding company ends on 31st December every year. The subsidiary company intends to follow a different financial year for consolidation of its accounts with its parent company, situated outside India. For doing so it is required to take prior permission of the competent authority. For the purpose from the following who will be this competent authority-

- (a) Registrar of Companies at New Delhi
- (b) Tribunal
- (c) Ministry of Corporate Affairs
- (d) SEBI

(MTP April'19)

**Ans:** (b)

**Reason:**

As per the provisions of the Companies Act, 2013, if a subsidiary company intends to follow a different financial year from its holding company (especially when the parent company is situated outside India), it is required to seek prior approval from the Tribunal. The Tribunal is the competent authority that has the power to grant such approval for the subsidiary company to follow a financial year different from that of the parent company, primarily for the purpose of consolidation of accounts.

The Tribunal can be approached under Section 2(41) of the Companies Act, 2013, to grant this permission for a different financial year.



## **Descriptive Question**

### **Question 69**

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

**(Study Material)**

### **Answer 69**

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. Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause. SKP Limited is advised to follow the above procedure accordingly.

### **Question 70**

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

**(PYP Nov '19, Old & New SM)**

### **Answer 70**

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.

Any application pending before the Tribunal as on the date of commencement of the Companies

(Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause. SKP Limited is advised to follow the above procedure accordingly.

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

### **Topic 15 National Financial Reporting Authority (NFRA)**

### **Descriptive Question**

#### **Question 71**

**Explain the following in brief with reference to Companies Act 2013:**

**(i) National Financial Reporting Authority (NFRA)**

**(ii) Corporate Social Responsibility (CSR) Committee**

**Answer 71**

(i) National Financial Reporting Authority (NFRA)

According to section 132 of the Companies Act, 2013, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) Perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(ii) Corporate Social Responsibility (CSR) Committee:

According to section 135(1) of the Companies Act, 2013, every company having (1) net worth of rupees 500 crore or more, or

(2) Turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under

subsection (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

**Duties of CSR Committee [Section 135(3)]:** The CSR Committee shall-

(a) Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) Monitor the CSR Policy of the company from time to time.

## **Topic 16 Annual General Meeting and Financial Statements**

### **Descriptive Question**

#### **Question 72**

The Government of Rajasthan and Haryana are jointly holding 58% of the paid-up Equity Share Capital of Moon Ltd. The Audited financial statements of Moon Ltd. for the financial year 2021-22 were placed at its Annual General Meeting held on 31st August, 2022. 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. Therefore, the company did not file its financial statements to the Registrar, Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 5th October, 2022 whereat the accounts were adopted. Thereafter, Moon Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 25th October, 2022.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Moon Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar.

(PYP Nov '22)

**Answer 72**

According to first provision to **Section 137(1)** of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, 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 provision 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 Moon Ltd. were adopted at the adjourned AGM held on 5<sup>th</sup> October, 2022 and filing of financial statements with Registrar was done on 25<sup>th</sup> October, 2022 i.e. within 30 days of the date of adjourned AGM. However, Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31<sup>st</sup> August 2022.

Hence, Moon 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.

## Chapter 10 - Audit and Auditors

### Topic 1 Appointment of First Auditor

#### MCQ

##### Question 1

BSP Ltd appointed XPP & Co LLP as their statutory auditors for the year ended 31 March 2018 on 18 June 2018, as per Section 139(8) of the Companies Act 2013, to fill the casual vacancy caused by resignation of previous statutory auditors to hold office till the conclusion of next Annual General Meeting (AGM) of BSP Ltd. BSP Ltd is listed with Bombay Stock Exchange and National Stock Exchange. BSP Ltd is covered under auditor's rotation requirements and wants to re-appoint XPP & Co LLP at their next AGM. Please advise.

- (a) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.
- (b) XPP & Co LLP can be re-appointed for a term of four consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.
- (c) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM.
- (d) XPP & Co LLP cannot be re-appointed at the AGM.

(MTP Oct'19)

**Ans:** (a)

**Reason:**

As per Section 139(2) of the Companies Act, 2013 (Auditor Rotation):



For companies like listed companies (such as BSP Ltd), an audit firm can be appointed for one term of 5 consecutive years, and can be re-appointed for one more term of 5 years, but no further re-appointment is allowed for 5 years after that.

Since XPP & Co LLP was appointed in a casual vacancy (under Section 139(8)), that period does not count as a full term. Therefore, they are eligible for re-appointment for a fresh 5-year term at the next AGM.

Hence, option (a) is correct.

## **Descriptive Question**

### **Question 2**

**State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:**

- (i) Appointment of First Auditor, when the Board of directors did not appoint the first Auditor within one month from the date of registration of the company.**
- (ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.**

**(Study Material)**

### **Answer 2**

**(i)** 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 fails to appoint such auditor, it shall inform the members of the company, who shall within 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 not later than 90 days;
- c. Members shall at that extra ordinary meeting appoint the first auditors of the company;
- d. The first auditors so appointed shall hold office up to the conclusion of the first AGM of the company.

(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 with Rule 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 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.

### Question 3

**Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.**

**(MTP March 21)**

### Answer 3

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 4

**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:**

| <b>Name of the Party holding shares</b> | <b>Amount (in Rs.)</b> |
|-----------------------------------------|------------------------|
| <b>Central Government</b>               | <b>1.50</b>            |
| <b>Punjab Government</b>                | <b>1.23</b>            |
| <b>Others</b>                           | <b>2.27</b>            |

**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 it's only the members who can appoint the first auditor. Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct.**

**(MTP April 21)**

**Answer 4**

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 it's only the members who can appoint the first auditor of the Government Company is not correct.

#### **Question 5**

**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 March '22, MTP March '23, RTP Nov '21, PYP Nov '20)**

#### **Answer 5**

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 reappoint 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.

## Topic 2 Appointment of Statutory Auditor

### MCQ

#### Question 6

NTW Ltd is listed on National Stock Exchange and has a turnover of INR 4500 crores. NTW Ltd has 12 subsidiaries, 3 associate companies and 5 joint venture companies (collectively referred to as NTW Group). AKW & Co LLP is the statutory auditor of NTW Ltd. NTW Ltd wants to appoint AKW as the statutory auditors for the entire NTW Group. In respect of this, please advise the management of NTW Group.

(a) AKW & Co LLP can be appointed as statutory auditors for only 10 companies of NTW Group.

(b) AKW & Co LLP can be appointed as statutory auditors for only 20 companies of NTW Group.



(c) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group.

(d) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group provided they meet the limits requirements as per the Companies Act 2013.

**(MTP Oct'19)**

**Ans: (d)**

**Reason:**

As per Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014,

An audit firm (including LLP) cannot be appointed as auditor for more than 20 companies (excluding one person companies, dormant companies, small companies, and private companies with paid-up share capital < ₹100 crore).

- However, for listed companies and public companies, this cap of 20 applies only to companies falling within these specified thresholds.

Additionally, network firms are counted jointly under this cap.

- Therefore, AKW & Co LLP can be appointed for all companies in the NTW Group, provided that they comply with the ceiling limits under the Companies Act, 2013 and relevant Rules.

Hence, option (d) is correct.

### **Question 7**

**The word 'firm' for the purpose of Section 139 shall include-**

- (a) An individual auditor
- (b) LLP

(c) An individual auditor and LLP both

(d) A company

(MTP Nov 21)

**Ans: (b)**

**Reason:**

As per Explanation to Section 139(1) of the Companies Act, 2013,

The word “firm” includes a Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008.

- It does not include an individual auditor or a company. The term is specifically extended to LLPs, as many audit firms now operate in LLP form.

Hence, option (b) is correct.

#### **Question 8**

**Every 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:**

(a) Second annual general meeting

(b) Fourth annual general meeting

(c) Sixth annual general meeting

(d) Eight annual general meeting

(Study Material)

**Ans: (c)**

**Reason:**

As per Section 139(1) of the Companies Act, 2013,

Every company shall, at its first Annual General Meeting (AGM), appoint an individual or a firm as auditor, who shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM, i.e., for a term of 5 consecutive years.

- The appointment is subject to ratification (if required) and compliance with auditor rotation provisions (if applicable).

Hence, option (c) is correct.

**Question 9**

**For appointing an auditor other than the retiring auditor,**

- (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.

**(Study Material)**

**Ans: (a)**

**Reason:**

As per Section 140(4) read with Section 115 of the Companies Act, 2013,

If a company proposes to appoint an auditor other than the retiring auditor, or not to reappoint the retiring auditor, it must give a special notice of at least 14 days before the meeting.

- This ensures the retiring auditor is informed and has a chance to make a representation.

Hence, option (a) is correct.

#### Question 10

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice

(Study Material)

#### Answer 10

Disqualification of auditor: According to **section 141(3) (d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs.1 lakh, which is within the specified limit.

Further **Section 141(4)** provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in **sub-section 3 of section 141**, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of EF Limited.

### Question 11

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?"

(MTP May'20, March'19, Old & New SM, RTP May '19)

### Answer 11

(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

**Conclusion:** In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. Abhi. is holding security of Rs. 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

## Question 12

**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 Rs 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 March '22)**

## Answer 12

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 13

**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, Apr'21)**

### Answer 13

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.

### **Topic 3 Casual Vacancy in Office of Auditor**

## **Descriptive Question**

### **Question 14**

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 directors<sup>1</sup> as per the provisions of the Companies Act, 2013.

**Answer 14**

**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

**Topic 4 Rotation of Auditors**

**MCQ**

**Question 15**

**Advise whether the auditor appointed by a private limited company with paid up capital of Rs.30.00 Crore, in the following cases are valid for the financial year 2017-18:-**

- (a) Amanpreet (an Individual auditor) who has been the auditor since the Financial Year 2011-12
- (b) Firm MGA & associates was appointed as auditor in the Financial Year 2011-12.

(c) Firm MGA & associates, who completed 10 years continuously as auditor in company. Now company wants to appoint VGA & associates wherein Mr. V is a partner who is also partner in MGA & Associates.

(d) The provisions of rotation of auditor are not applicable on private companies.

**(MTP March'19)**

**Ans: (b)**

**Reason:**

The appointment of MGA & Associates is valid for FY 2017-18 because the rotation of auditors under Section 139(2) applies only to private companies with paid-up share capital of ₹50 crore or more. Since the company has ₹30 crore capital, rotation provisions are not applicable in this case.

#### **Question 16**

**Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:**

- (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

**(MTP March '22 & March '23) (Study Material)**

**Ans: (d)**

**Reason:**

As per Section 139(2) of the Companies Act, 2013, the following applies to listed companies:

A listed company shall not appoint or re-appoint an individual as an auditor for more than one term of five consecutive years, and an audit firm for more than two terms of five consecutive years.

## Topic 5 Qualifications & Disqualifications

### MCQ

#### Question 17

Which of the following is a prohibited services to be rendered by the auditor of the Company

- (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 of fraud against the company by officers or employees to the Central Government.

(MTP Oct'21, April'19, & March '23)

Ans: (a)

#### Reason:

As per Section 144 of the Companies Act, 2013, an auditor of a company is prohibited from directly or indirectly rendering certain non-audit services to the company or its holding or subsidiary company. One of the key prohibited services includes:

“Design and implementation of any financial information system.”

This prohibition exists because allowing the auditor to design or implement the financial information system — which generates the data the auditor is later required to audit — creates a self-review threat and compromises the auditor's independence and objectivity.

### Question 18

Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September 2018, in which he accepted the assignment. Subsequently, in January 2019 he joined B, as a partner in the consultancy firm of Mr. B. Mr. B is also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

(Study Material)

### Answer 18

(i) **Provisions and Explanation:** Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

**Conclusion:** In the present case, Ayush, an auditor of X Ltd., joined as partner with consultancy firm where B is also a partner and B is also the Finance executive of X Ltd. Hence, Ayush has attracted clause (3) (c) of **Section 141** and, therefore, he shall be deemed to have vacated office of the auditor of X 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. Abhi is holding security of Rs.1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

#### **Question 19**

**“Mr. Ashish”, a practicing Chartered Accountant, is holding securities of “XYZ Ltd.” Having face value of Rs 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of “XYZ Ltd.”?**

**(Study Material)**

#### **Answer 19**

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner is holding any security 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. Ashish is holding security of Rs 900 in XYZ Ltd, therefore he is not eligible for appointment as an Auditor of “XYZ Ltd”.

#### **Question 20**

**“Mr. P” is a practicing Chartered Accountant and “Mr. Q”, the relative of “Mr. P”, is holding securities of “ABC Ltd.” having face value of Rs 90,000/-. Whether “Mr. P” is qualified for being appointed as an auditor of “ABC Ltd.”?**

**(Study Material)**

#### **Answer 20**

As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per provision to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs 90,000 face value in ABC Ltd., which is as per requirement of provision to **section 141(3)(d)(i)**. Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

#### Question 21

“ABC & Co.” is an audit firm having partners “Mr. B” and “Mr. C” and “Mr. A”, relative of “Mr. C”, is holding securities of “MWF Ltd.” having face value of Rs 1,10,000. Whether “BC & Co.” is qualified for appointment as auditor of “MWF Ltd.”?

(Study Material)

#### Answer 21

As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per provision to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in provision to **section 141(3)(d)(i)**.

#### Question 22

The Auditor of the company (other than Government Company) has resigned on 31<sup>st</sup> 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 Oct 21, Oct'19)

**Answer 22**

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 23**

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of Rs 70,000/- (market value Rs 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:

(SM May 22)

**Answer 23**

(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 provision to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of Rs 70,000 (market value Rs 1,10,000), which is within the limit as per requirement of under the provision to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

#### **Question 24**

**M/s Sharma & Associates is an audit firm with two partners, Mr. Sharma and Mr. Raj. Mr. Raj is also a partner in another audit firm, M/s Mehta & Associates. M/s Sharma & Associates was appointed as the statutory auditor for Bright Future Ltd. (listed company, on which provisions related to rotation of auditor apply) for two consecutive terms of 5 years each, from 2017 to 2027.**

**If Bright Future Ltd. now wants to appoint M/s Mehta & Associates as its audit firm, can it do so? If not, when will the restriction be lifted?**

**(RTP May 2025)**

#### **Answer: 24**

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.

Bright Future Ltd. cannot appoint M/s Mehta & Associates as its auditor immediately after the completion of M/s Sharma & Associates' tenure.

Since Mr. Raj is a common partner in both firms, regulatory provisions impose a cooling-off period of 5 years before either of these firms can be reappointed.

Therefore, Bright Future Ltd. can appoint M/s Mehta & Associates or M/s Sharma & Associates only after the cooling-off period ends in the year 2032.

## **Topic 6 Prohibited Services**

### **Question 25**

**Under the Companies Act, 2013, an auditor appointed by a company is allowed to provide only those services that are approved by the Board of Directors or the Audit Committee. However, there are certain services that an auditor is expressly prohibited from rendering, whether directly or indirectly, to the company, its holding company, or its subsidiary company.**

**List any seven such restricted services that an auditor cannot provide.**

**(MTP May 2025)**

### **Answer: 25**

An auditor appointed under the Companies Act, 2013, 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 any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:

1. Accounting and book keeping services;
2. Internal audit;
3. Design and implementation of any financial information system;
4. Actuarial services;
5. Investment advisory services;
6. Investment banking services;
7. Rendering of outsourced financial services;
8. Management services; and
9. Any other kind of services as may be prescribed

## **Topic 7 Remuneration / Fixation of Fees**

### **Descriptive Question**

#### **Question 26**

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 Sep 2025)

**Answer: 26**

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 of the 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 the remuneration of the auditor on their own is not valid.

### **Topic 8 Powers and Rights of Auditor**

#### **Question 27**

**Regarding the general meeting for which notice is served on auditor;**

- i. Whether auditor is mandatorily required to be attend the said general meeting?**
- ii. If yes, whether he is required to attend the meeting personally?**

**(Study Material)**

#### **Answer 27**

Answer to first part is yes, while no in case of second, because as per section 146 of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend



either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.

#### **Question 28**

**Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022- 2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013.**

**(RTP Nov '23)**

#### **Answer 28**

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.

### **Topic 9 Audit Report & Reporting Requirements**

## **Descriptive Question**

### **Question 29**

**Whether entire audit report need to read before the company in general meeting?**

**(Study Material)**

### **Answer 29**

No, as per section 145 of the Companies Act 2013, qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

### **Question 30**

New Sales Pvt. Limited, a company engaged in the business of trading heavy-duty paper tapes used in industrial packaging, has seen consistent growth over the past five years. The company's turnover for the financial year 2024–25 crossed Rs 130 crore, with a net profit of Rs 9.2 crore.

During the same financial year, the company's long-serving Chief Financial Officer (CFO), Mr. Ram, retired in December 2024 due to prolonged health issues. Following his retirement, Mr. Shyam, a qualified Chartered Accountant with two decades of experience in financial reporting, was appointed as the new CFO in March 2025.

Upon assuming his duties and reviewing the company's past financial records and statutory filings, Mr. Shyam noted certain material classification errors and omissions in the audited financial statements for the year 2021–22.

Concerned about the potential implications of these discrepancies, Mr. Shyam advised the Board of Directors of New Sales Pvt. Limited to revise the financial statements for FY 2021

**22, even though the financial statements had already been adopted by the shareholders and filed with the Registrar of Companies (RoC).**

**With reference to the relevant provisions of the Companies Act, 2013, examine and advise whether New Sales Pvt. Limited is permitted to revise its financial statements for the financial year 2021–22.**

**(RTP Sep 2025)**

**Answer: 30**

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. Shyam has advised the Board of New Sales Pvt. 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.

**Topic 10 Liabilities / Penalties**

## Descriptive Question

### Question 31

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 Rs1 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 Rs 1,50,000.
- (iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for Rs10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

(PYP Nov '22)

### Answer 31

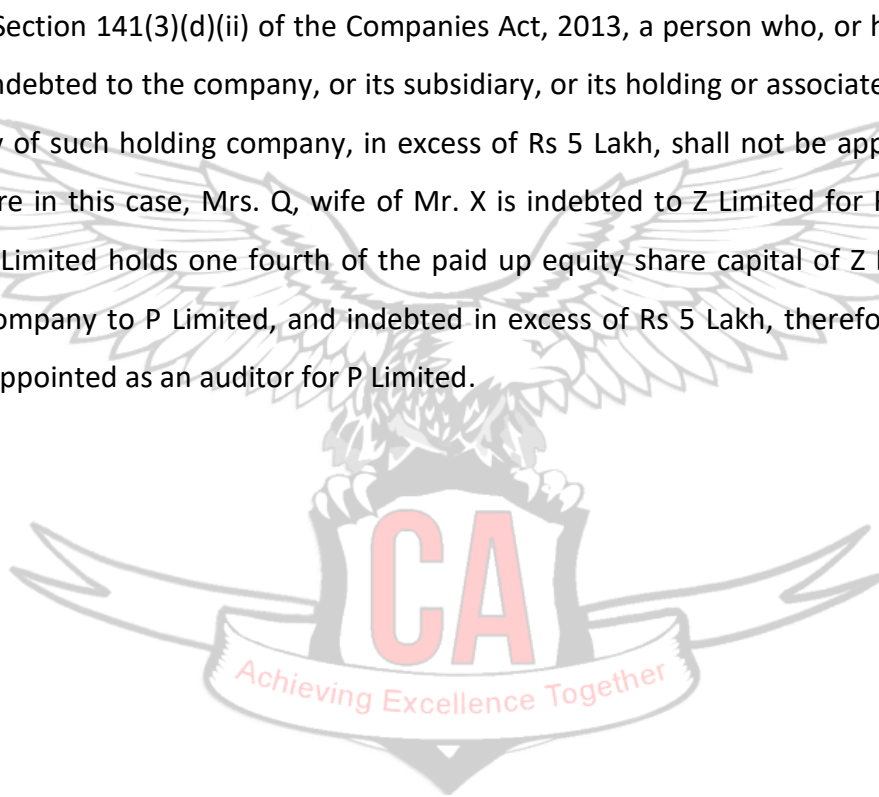
(i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the 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 Rs 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 Rs 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 Rs 1 Lakh i.e. of an amount worth Rs 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 Rs 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 Rs 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 Rs 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.



## Chapter 11 - Companies Incorporated Outside India

### Topic 1 Definition of Foreign Company

#### MCQ

##### Question 1

Surya Ltd., incorporated and registered in New Delhi with a foreign shareholding more than 50% due to liberalization in Foreign Direct Investment (FDI) policy. State the correct statement as to the status of the Surya Ltd.

- (a) Surya limited shall not considered as foreign source because of its registration in India.
- (b) Surya Ltd would be 'foreign source' have foreign shareholding more than 50% of foreign company.
- (c) Surya Ltd would be 'foreign source' have foreign contribution through various international agencies.
- (d) Surya Ltd. is not a foreign source as long as it operates in sectors permitted under the FDI policy.

(Practice question)

Ans: (b)

Reason:

**Foreign Source:** According to the definition under the Foreign Exchange Management Act (FEMA) and other related regulations, a company is considered a foreign source if more than 50% of its shareholding is held by foreign entities.

In this case, Surya Ltd. has more than 50% foreign shareholding, which makes it a foreign-controlled company, thus qualifying as a foreign source.

**The other options are incorrect because:**

(a) is incorrect because the registration in India does not change the fact that the company is foreign-controlled if more than 50% of the shares are held by foreign entities.

(c) is incorrect because foreign contribution through international agencies does not determine the foreign status of the company; it's based on foreign shareholding.

(d) is incorrect because even if Surya Ltd. operates in sectors permitted under the FDI policy, it can still be considered a foreign source due to its foreign shareholding.

Thus, (b) is the correct answer.

## **Descriptive Question**

### **Question 2**

Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

- (i) A company incorporated outside India having a share registration office at Mumbai.
- (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

**(Study Material)**

### **Answer 2**

Section 2(42) of the Companies Act, 2013 defines a “foreign company” as 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), expression “Place of business” includes a share transfer or registration office.

**Further, to qualify as a ‘foreign company’ a company must have the following features:**

(a) it must be incorporated outside India; and

(b) it should have a place of business in India.

(c) That place of business may be either in its own name or through an agent or may even be through the electronic mode; and

(d) It must conduct a business activity of any nature in India.

(i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

(ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India.

### **Question 3**

**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.**

**(Study Material)**

**Answer 3**

(i) According to **section 2(42)** of the Companies Act, 2013, “Foreign company” means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to business to business and business to consumer transactions, data interchange and other digital supply transactions; offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India; financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management; online services such as telemarketing, telecommuting, telemedicine, education and information research; and all related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

In the 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.

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 4**

**Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.**

**(Study Material)**

#### **Answer 4**

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

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

#### **Question 5**

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 Sep '22)

#### Answer 5

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.

#### **Question 6**

**(i) LMP Paper Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Explain whether it will be treated as a Foreign Company under the Companies Act, 2013?**

**(RTP May 18, MTP Apr'21)**

**(ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalties prescribed under the said Act, which can be levied.**

**(RTP May '18)**

#### **Answer 6**

(i) As per Section 2(42) read with the Companies (Registration of Foreign Companies) Rules, 2014 of the Companies Act, 2013, any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner is a foreign company.

Further the above said rules states the meaning of “electronic mode”. It 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, data base 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. Looking to the above description, it can be said that being involved in business activity through telemarketing, LMP Paper Ltd., will be treated as foreign company.

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



## Topic 2 Documents Required for Registration

### Descriptive Question

#### Question 7

Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.

(Study Material)

#### Answer 7

Preparation and filing of financial statements by a foreign company:

According to section 381 of the Companies Act, 2013:

- (i) Every foreign company shall, in every calendar year, —
  - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
  - (b) Deliver a copy of those documents to the Registrar.

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

- (1) Documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts 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.

According to the Companies (Registration of Foreign Companies) Rules, 2014, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

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

(a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

(1) Statement of related party transaction

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

#### **Question 8**

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

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

**(PYP July 21)**

#### **Answer 8**

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

- (i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language. If the financial statements are in German language and not in the English language, a certified translation thereof in the English language shall be annexed and submitted to Registrar [Section 381 (2)]

**(ii) Format of Financial statement as per IFRS:**

Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:

Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

(iii) Authentication of translated financial statements [Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014]:

(1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of—

(a) The official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.

(3) Where such translation is made within India, it shall be authenticated by— (a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

(iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi. Hence, the documents of MNO Ltd. cannot be submitted at the Registrar's office at Mumbai.

**Following assumptions drawn within the provided information:**

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.]

### **Topic 3 Filing of Documents with Registrar**

#### **Descriptive Question**

##### **Question 9**

i) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.

ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.

(Study Material)

#### Answer 9

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

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

#### Question 10

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

(i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India .

(ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the Company.

(iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

(PYP Nov '19, Old & New SM)

#### Answer 10

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.

(i) In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

(ii) In the given situation, M/s Blue Star is registered in Thailand. It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.

(iii) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.

#### **Question 11**

**(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 Dec '21)

### Answer 11

(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 ng documents; namely:- Statement of related party transaction Atriation of profits transfer of funds (including dividends, if any).

The above statement shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

### **Question 12**

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

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

**(PYP Nov 22)**

### **Answer 12**

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

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

(ii) W.r.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.

#### **Topic 4 Translation of Documents**

#### **Descriptive Question**

##### **Question 13**

Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

**(Study Material)**

##### **Answer 13**

**Section 380 (3)** provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies)

Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

#### **Question 14**

**Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarin Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/ documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?**

**(PYP May '18)**

#### **Answer 14**

According to Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014,

(i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(ii) Where such translation is made within India, it shall be authenticated by-

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India and they shall be authenticated by the persons mentioned under the above Rules.

## **Topic 5 Prospectus Issued by Foreign Companies**

### **MCQ**

#### **Question 15**

**In which of the following cases the issue of prospectus by a company incorporated outside India will be invalid in law considering the provisions of Chapter XXII of Companies Act, 2013.**

- (a) The Consent to the issue of the prospectus required from any person, as an expert is attached to the copy for the registration of prospectus to be delivered to the Registrar.
- (b) In case where the prospectus is signed by the duly authorized agents of the directors and the copy of power of attorney is not attached with the copy of prospectus to be delivered for Registration.
- (c) A company incorporated outside India not having place of business in India.
- (d) A Company to be incorporated outside India.

**(MTP Oct-20)**

**Ans: (b)**

**Reason:**

Under Chapter XXII of the Companies Act, 2013, there are specific provisions regarding the registration and issue of a prospectus by a company, including companies incorporated

outside India. The relevant requirement is that the prospectus must be signed by the directors or their duly authorized agents, and if an agent signs on behalf of the directors, a copy of the power of attorney authorizing the agent to sign must be attached to the prospectus submitted for registration.

(a): This is valid because the consent of an expert must be obtained and attached to the prospectus for registration, as required by the Act.

(b): This is invalid because, under the law, when a prospectus is signed by an authorized agent of the directors, a copy of the power of attorney must be attached. If it is not attached, the issue of the prospectus will be invalid.

(c): This is valid because the requirement for registration of the prospectus does not depend on whether the company has a place of business in India or not, but on the other conditions being met.

(d): This is valid because a company can issue a prospectus even if it is to be incorporated outside India, as long as it meets the provisions of the Act.

Thus, the correct answer is (b), as the absence of the power of attorney makes the issue of the prospectus invalid.

## **Descriptive Question**

### **Question 16**

**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 16**

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.

## **Topic 6 Service of Notices / Process on Foreign Company**

### **Descriptive Question**

#### **Question 17**

(i) 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 Mar 19, Oct'19, May'20, MTP Apr'21, RTP May'18)

(ii) 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 Mar 19, Oct'19, Old & New SM)

#### **Answer 17**

(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.

(ii) 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.

## **Topic 7 Penalties for Non-Compliance**

### **Descriptive Question**

#### **Question 18**

DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the

company as a liaison officer for compliance of legal formalities on behalf of the company.

Examining the provisions of the Companies Act, 2013, answer the following:

(i) Whether branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

(Study Material)

#### Answer 18

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

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company’ office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

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

(a) A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) The full address of the registered or principal office of the company prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

- (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 or 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.

## Topic 8 Alteration in Registered Documents

### Descriptive Question

#### Question 19

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 19

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



Thus, the expert's statement shall be deemed to be included in a prospectus.

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

(a) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(b) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.

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

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

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

## Topic 9 Place of Business & Continuity

## Descriptive Question

### Question 20

Ms. Alka was director in Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Ms. Alka. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013.

(MTP May 2025)

### Answer 20

By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Ms. Alka, director in Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Ms. Alka is bound to comply by section 166 of the Companies Act, 2013.

## Chapter 12 - The Limited Liability Partnership Act, 2008

### Topic 1 Basic Concept of LLP

#### MCQ

##### Question 1

Which one of the following statements about limited liability partnerships (LLPs) is incorrect?

- (a) An LLP has a legal personality separate from that of its members.
- (b) The liability of each partner in an LLP is limited.
- (c) Members of an LLP are taxed as partners.
- (d) A listed company can convert to an LLP.

Ans: (b)

Reason:

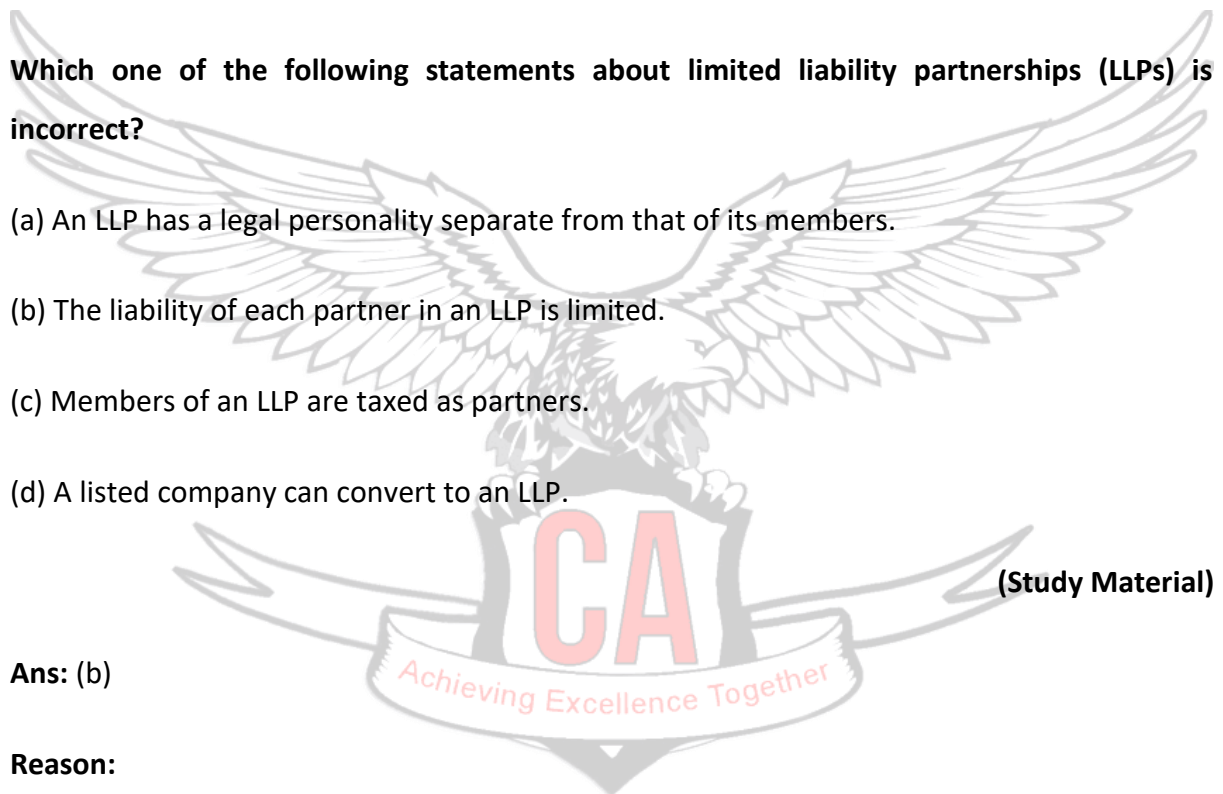
As per Section 56 of the LLP Act, 2008 and Rule 3 of the LLP Rules, 2009,

Only unlisted public companies and private companies are allowed to convert into an LLP.

A listed company cannot convert into an LLP.

**Other statements are correct:**

- LLP has separate legal personality.
- Partners have limited liability.



- Taxation is like that of a partnership firm.

Hence, option (d) is incorrect, making it the right answer.

## **Descriptive Question**

### **Question 2**

**“LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.**

**(Study Material)**

### **Answer 2**

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. **Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008).

The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

**Flexibility of a partnership:** The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

## **Topic 2 Incorporation / Conversion of LLP**

## MCQ

### Question 3

**Which of the following cannot be converted into LLP?**

- (a) Partnership firm
- (b) Private company
- (c) Listed company
- (d) Unlisted company

(Study Material)

**Ans:** (c)

**Reason:**

As per the LLP Act, 2008 and Rule 3 of the LLP Rules, 2009,

Only the following entities are eligible for conversion into an LLP:

- A Partnership Firm
- A Private Limited Company
- An Unlisted Public Company

Listed companies cannot be converted into an LLP due to public interest, regulatory compliance, and investor protection concerns.

Hence, option (c) is correct.

### **Topic 3 Name Approval and Ending of LLP**

## MCQ

### Question 4

**The approved name of LLP shall be valid for a period of from the date of approval:**

- (a) 1 Month
- (b) 2 Months
- (c) 3 months
- (d) 6 months

**(Study Material)**

**Ans:** (a)

**Reason:**

As per Rule 18(5) of the LLP Rules, 2009,

The name approved by the Registrar of Companies (ROC) for a proposed LLP shall be valid for 1 month (30 days) from the date of approval.

If the applicant fails to incorporate the LLP within this period, the name approval lapses and a fresh application is required.

Hence, option (a) is correct.

### Question 5

**Name of the Limited Liability Partnership shall be ended by:**

- (a) Limited
- (b) Limited Liability partnership or LLP

(c) Private Limited

(d) OPC

**(Study Material)**

**Ans: (b)**

**Reason:**

As per Section 15(1) of the LLP Act, 2008,

The name of every Limited Liability Partnership must end with the words "Limited Liability Partnership" or its abbreviation "LLP".

This requirement ensures the legal structure of the entity is clearly disclosed to the public and stakeholders.

Hence, option (b) is correct.

#### **Question 6**

Ravi and Neha, two entrepreneurs, plan to start a new Limited Liability Partnership (LLP) focused on AI-based software development. They decide to name their LLP as "NextGen AI Innovations LLP." Before proceeding with the incorporation, they want to ensure that their chosen name is available and reserved. They apply to the Registrar through the prescribed web-based platform and pay the required fee for name reservation.

Describe the legal requirements as to the reservation of a name as per relevant provisions under the Limited Liability Partnership Act, 2008.

**(RTP Sep 2025)**

**Answer: 6**



Under section 16 of the Limited Liability Partnership (LLP) Act, 2008, a person may apply to the Registrar for the reservation of a name in either of the following circumstances:

- (a) As the name of a proposed LLP, or
- (b) As the name to which an existing LLP proposes to change its name.

The application must be made in the prescribed form and manner along with the prescribed fee.

Upon receiving such an application, the Registrar may, if satisfied that the name is not one liable to be rejected under section 15(2) of the LLP Act, reserve the name for a period of three months from the date of intimation by the Registrar.

As per section 15(2), no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999.

#### **Topic 4 Resident in India Definition**

### **MCQ**

#### **Question 7**

**For the purpose of LLP, Resident in India means:**

- (a) Person who has stayed in India for a period of not less than 182 days during the current year.

(b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.

(c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year

(d) Person who has stayed in India for a period of not less than 120 days during the financial year.

**(Study Material)**

**Ans: (d)**

**Reason:**

As per the Limited Liability Partnership (Amendment) Act, 2021,

The definition of “Resident in India” for the purpose of becoming a Designated Partner in an LLP was amended to mean a person who has stayed in India for not less than 120 days during the financial year.

This replaced the earlier threshold of 182 days, making compliance more flexible.

Hence, option (d) is correct.

## **Topic 5 Designated Partners – Appointment, Roles & Compliance**

### **MCQ**

#### **Question 8**

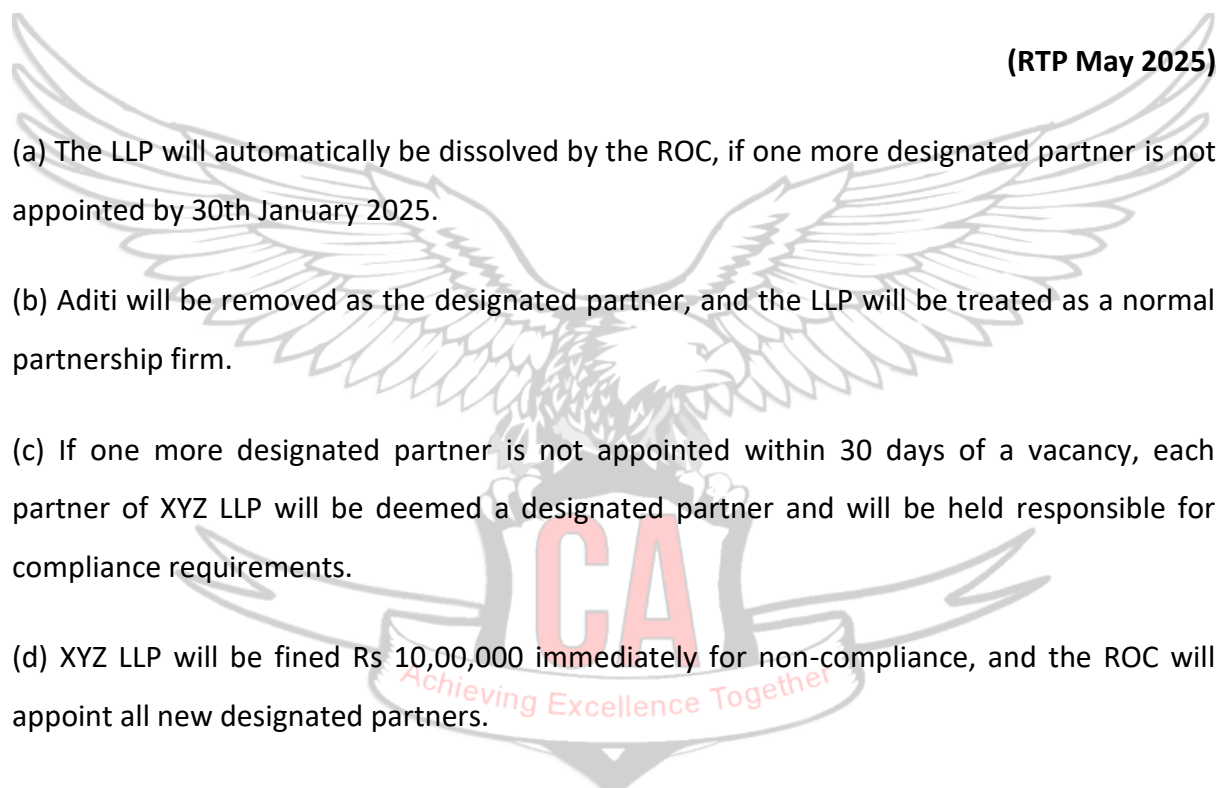
XYZ LLP, a well-established limited liability partnership, had two designated partners, Aditi and Rajiv. On 15th January, 2025, Rajiv resigned due to personal reasons, leaving Aditi as the only designated partner in the LLP. The remaining partners were aware of

their responsibility to appoint a new designated partner as per the requirement of the Limited Liability Partnership (LLP) Act, 2008. However, due to internal disagreements, they failed to appoint a new designated partner within the prescribed time frame.

On 20th February 20, 2025, the Registrar of Companies (ROC) issued a notice to XYZ LLP, seeking clarification on its compliance status regarding the appointment of the designated partner.

As per the LLP Act, 2008, choose the correct option if XYZ LLP fails to appoint a second designated partner within the prescribed time period.

(RTP May 2025)

- 
- (a) The LLP will automatically be dissolved by the ROC, if one more designated partner is not appointed by 30th January 2025.
  - (b) Aditi will be removed as the designated partner, and the LLP will be treated as a normal partnership firm.
  - (c) If one more designated partner is not appointed within 30 days of a vacancy, each partner of XYZ LLP will be deemed a designated partner and will be held responsible for compliance requirements.
  - (d) XYZ LLP will be fined Rs 10,00,000 immediately for non-compliance, and the ROC will appoint all new designated partners.

**Ans:** (c)

## **Descriptive Question**

### **Question 9**

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as

**Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?**

**(Study Material)**

**Answer 9**

According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term “resident in India” means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

**Question 10**

**Analyzing the role and liabilities of Designated Partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008, answer the following questions:**

- (i) In a LLP where all partners are corporate entities, can a corporate body be appointed as a designated partner?**
- (ii) If an LLP agreement does not specify the designated partners, whether LLP can be validly formed without designated partners under the LLP Act, 2008?**
- (iii) A designated partner of an LLP in India is planning to relocate permanently to another country.**
- (iv) XYZ LLP was penalized for non-compliance, but one of the designated partners claims he was unaware of the regulatory requirements. Can he avoid liability?**

**(MTP May 2025)**

**Answer: 10**

The LLP Act, 2008, under Sections 7 and 8, outlines the eligibility, responsibilities, and liabilities of Designated Partners (DPs). Following are the answers:

(i) Every LLP must have at least two designated partners, and at least one must be a resident of India. Where if, all partners are bodies corporate, at least two individuals must be appointed as designated partners. Therefore, as per the stated law a corporate body cannot be appointed as a designated partner. Only individuals are eligible to be appointed as DPs.

(ii) The incorporation document must specify the designated partners, or they must be appointed per the LLP agreement.

Accordingly, if an LLP agreement does not specify the designated partners, then the partners specified in the incorporation document containing designated partners can validly form the LLP in compliance with the LLP Act, 2008.

(iii) As per the LLP Act, 2008, at least one designated partner of the LLP must be a resident of India. A resident of India is defined as a person who has stayed in India for at least 120 days in the financial year. If the designated partner is permanently relocating, he may no longer require to fulfill the residency criteria of staying in India for at least 120 days in the financial year.

(iv) Designated partners are responsible for ensuring that the LLP complies with the LLP Act, 2008.

a. If the LLP fails to comply with statutory requirements, designated partners are held personally liable for penalties.

b. They may face fines or legal consequences for any violations of the LLP Act.

Where if, the designated partners, claims he was unaware of the regulatory requirements. He cannot take plea of the ignorance and cannot avoid the liability.

## **Topic 6 Liability of Partners**

## MCQ

### Question 11

ABC LLP was incorporated with two partners, Mr. Raj and Ms. Rani. Due to certain differences, Ms. Rani resigned from the LLP on 1st January, 2024, leaving Mr. Raj as the sole partner. Mr. Raj continued running the business without admitting a new partner and was aware that he was the only remaining partner. On 1st August of the same year, ABC LLP incurred a debt of Rs 5 lakh from a vendor. Given the provision in the Limited Liability Partnership Act, 2008, which of the following statements correctly describes Mr. Raj's liability in this situation?

- (a) Mr. Raj will not be personally liable for the Rs 5 lakh debt as the debt was incurred by the LLP.
- (b) Mr. Raj will be personally liable for the Rs 5 lakh debt since he was the sole partner of the LLP for more than six months.
- (c) Mr. Raj and Ms. Rani will both be liable for the Rs 5 lakh debt as they were originally partners.
- (d) The LLP will be automatically dissolved after six months, and no personal liability will arise for Mr. Raj.

(RTP Sep 2025)

**Ans: (b)**

**Reason:**

As per Section 6(2) of the LLP Act, 2008,

If an LLP carries on business with only one partner for more than 6 months, and the sole partner is aware of this, then that partner becomes personally liable for the obligations incurred during that period.

In this case, Mr. Raj continued the business alone for more than 6 months after Ms. Rani's resignation and knew he was the sole partner. Therefore, he is personally liable for the Rs 5 lakh debt incurred on 1st August.

Hence, option (b) is correct.

## **Descriptive Question**

### **Question 12**

**Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of Rs10,00,000 against the LLP but the worth of the assets of LLP are only Rs7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of Rs3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?**

**(Study Material)**

### **Answer 12**

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of Rs 3,00,000 from the partners of Devi Ram Food Circle LLP.

### **Question 13**



Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

(Study Material)

### Answer 13

According to **section 24(3)**, where a person has ceased to be a partner of a LLP (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

- (a) The person has notice that the former partner has ceased to be a partner of the LLP; or
- (b) Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

### Topic 7 Authority of Partner / Third Party Contracts

### MCQ

#### Question 14

XYZ LLP is a consulting firm where four partners—A, B, C, and D—are responsible for various functions. Partner B, without consulting the other partners, enters into a contract with a third party, Mr. P, for a high-value procurement deal on behalf of XYZ LLP. It is later found that Partner B did not have authority to engage in such deals, and XYZ LLP has no history of involvement in procurement. Mr. P, who is an experienced business- person, was aware that Partner B was not authorized to enter into procurement deals for XYZ LLP.

**In this scenario, which of the following is correct based on the Limited Liability Partnership Act, 2008?**

- (a) XYZ LLP is bound by the contract because partner B is a partner in the LLP.
- (b) XYZ LLP is bound by the contract as Mr. P believed partner B was authorized to act on behalf of the LLP.
- (c) XYZ LLP is bound by the contract because Mr. P is a third party and was not aware of the internal matters of XYZ LLP.
- (d) XYZ LLP is not bound by the contract as partner B lacked authority, and Mr. P knew of this lack of authority.

**(RTP Sep 2025)**

**Ans: (d)**

**Reason:**

As per Section 27(2) of the LLP Act, 2008,

An LLP is not liable for a partner's act if:

The partner has no authority to act for the LLP in that matter, and

The third party knows that the partner has no authority.

In this case, Partner B had no authority, and Mr. P was aware of that. So, XYZ LLP is not bound by the contract.

Hence, option (d) is correct.

## **Topic 8 Transfer of Rights / Dissolution**

## Question 15

### Case Scenario

DEF LLP is a well-established limited liability partnership engaged in providing consulting services. It has four partners: A, B, C, and D, each contributing equally to the capital and holding an equal share of the profits and losses, as detailed in the LLP agreement. The partnership operates smoothly until Partner A encounters significant financial difficulties due to personal business losses and decides to transfer his entire share of profits and losses in the LLP to Mr. X, an external investor, in exchange for financial assistance. The decision, although legal as per the LLP agreement, creates a ripple of concerns among the other partners.

After the transfer:

- Partner B argues that the LLP must be dissolved because Partner A's transfer of rights effectively amounts to exiting the partnership, thus impacting the continuity of the LLP.
- Mr. X, being the transferee, demands active participation in DEF LLP's decision-making processes and insists on accessing financial records to monitor his investment, citing the substantial stake he now holds in the LLP.
- Partner C voices concerns about the potential disruption in the LLP's management structure and operations, questioning whether Mr. X's involvement aligns with the LLP's existing framework and the provisions of the Limited Liability Partnership Act, 2008.
- Partner D, on the other hand, adopts a neutral stance but raises the issue of whether the LLP agreement sufficiently addresses such transfers to avoid future disputes.

The situation creates a complex dynamic within DEF LLP, raising questions about the rights of the transferee, the implications for the partnership's operations, and the legal provisions governing such transfers under the Limited Liability Partnership (LLP) Act, 2008.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following

**Multiple Choice Questions (MCQs)**

**1. Can Partner A legally transfer their share of profits and losses to Mr. X?**

- (a) No, Partner A cannot transfer their share without the consent of all other partners.
- (b) Yes, Partner A can transfer their share entirely in accordance with the LLP agreement.
- (c) No, such transfers are not allowed under the LLP Act.
- (d) Yes, but only if Mr. X becomes a partner in the LLP.

**Ans:** (b)

**Reason:**

As per Section 42 of the LLP Act, 2008,

A partner in an LLP can transfer their right to share in the profits and losses and to receive distributions (either wholly or in part), subject to the LLP agreement.

However, such a transfer does not entitle the transferee (Mr. X) to participate in the management or access LLP books of account, unless he is admitted as a partner.

Therefore, Partner A's transfer to Mr. X is valid, if allowed by the LLP agreement, but Mr. X cannot interfere in management or decision-making.

Hence, option (b) is correct.

**2. Does the transfer of Partner A's share to Mr. X result in the dissolution of DEF LLP?**

- (a) Yes, because transferring all rights indicates Partner A's disassociation.
- (b) No, because the LLP Act, 2008 does not consider such transfers as grounds for dissolution.

(c) Yes, because all partners must agree to such transfers to avoid dissolution.

(d) No, unless it is explicitly stated in the LLP agreement.

**Ans: (b)**

**Reason:**

As per Section 42(3) of the LLP Act, 2008,

A partner can transfer their share of profits and losses without causing dissolution of the LLP.

Such a transfer does not amount to disassociation or withdrawal unless the partner retires or resigns in accordance with the LLP agreement.

Since Partner A only transferred economic rights (i.e., share in profits/losses), and there is no mention of retirement or resignation, the continuity of the LLP remains unaffected, and no dissolution occurs.

Hence, option (b) is correct.

**3. Does Mr. X gain any right to participate in DEF LLP's management or access its financial records?**

(a) Yes, as he now holds Partner A's share in the LLP.

(b) No, unless expressly allowed by the LLP agreement.

(c) Yes, because it is essential to safeguard his investment.

(d) Yes, as external transferees are automatically included in LLP management.

**Ans: (b)**

**Reason:**

As per Section 42(2) of the LLP Act, 2008,

A transferee of a partner's share in an LLP has no right to participate in the management or access the LLP's books solely by virtue of such transfer.

The transferee (Mr. X) only receives the economic interest (i.e., share in profits/losses), but does not become a partner unless admitted with the consent of existing partners or as per the LLP agreement.

Hence, Mr. X cannot demand access to management or financial records, unless the LLP agreement provides such rights.

Therefore, option (b) is correct.

## **Topic 9 LLP Name Change / Trademark Violation**

### **Question 16**

#### **Case scenario**

Studies LLP was incorporated on 15th April, 2024, with Prem, Pramod, Naveen, and Vimal as partners. Among them, Prem and Pramod were designated partners. The LLP was established for the manufacturing and trading of toys, and its business operations were progressing smoothly.

However, on 30th April, 2024, an individual named Samudra filed an application with the Registrar of LLPs, claiming that he owned a registered trademark under the name "Studies Masters", which had been registered before 15th April, 2024. He requested that Studies LLP change its name, as it closely resembled his registered trademark.

After conducting an initial investigation, the Registrar found merit in Samudra's claim and issued a directive to Studies LLP to change its name. The official notice, dated 5th May, 2024, was sent via post. However, due to a postal delay, the LLP received the notice only

on 10th May, 2024. Despite the directive, Studies LLP ignored the notice and continued operating under the same name.

On 16th August, 2023, the Registrar, acting suo-moto, assigned the LLP a new name, "Sahitya Masterminds LLP", and updated the register of LLPs accordingly. A fresh Certificate of Incorporation reflecting the new name was issued. However, the partners were not comfortable with the new name and initiated steps to change it again.

Additionally, on 20th June, 2024, Vimal submitted a written notice to the LLP stating that he would cease to be a partner effective 22nd July, 2024. However, neither Vimal nor the LLP informed the Registrar about his cessation.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions

(MTP May 2025)

#### Multiple Choice Questions (MCQs)

1. On what basis did the Registrar direct Studies LLP to change its name?

- (a) The name of designated partners of both the LLPs were identical.
- (b) The LLP's name closely resembled a registered trademark owned by another party.
- (c) The LLP failed to register its name properly.
- (d) The LLP was engaged in fraudulent activities.

**Ans:** (b)

**Reason:**

As per Section 17(1)(b) of the LLP Act, 2008,



If the name of an LLP is identical with or too nearly resembles the name of a registered trademark under the Trade Marks Act, 1999, the Central Government (Registrar) may direct the LLP to change its name to avoid confusion or infringement.

In this case, "Studies LLP" was found to closely resemble "Studies Masters", a registered trademark owned by Samudra prior to incorporation, which formed the valid basis for the Registrar's directive.

Hence, option (b) is correct.

**2. If an LLP fails to comply with the Registrar's directive to change its name, what action can the Registrar take?**

- (a) Impose a penalty but allow the LLP to continue using the same name.
- (b) Suo-moto allot a new name and issue a fresh Certificate of Incorporation.
- (c) Cancel the LLP's registration.
- (d) Allow the LLP to continue operating under the disputed name until the matter is resolved in court.

**Ans: (b)**

**Reason:**

As per Section 17(3) of the LLP Act, 2008,

If an LLP fails to comply with the Registrar's direction to change its name within 3 months, the Registrar may himself allot a new name to the LLP and issue a fresh Certificate of Incorporation, updating the register accordingly.

Since Studies LLP did not act on the directive, the Registrar was legally empowered to assign the name "Sahitya Masterminds LLP" suo-moto.

Hence, option (b) is correct.

## Descriptive Question

### Question 17

M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

(Study Material)

### Answer 17

Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable; or

(b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'. Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to—

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999 then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

## **Topic 10 Eligibility of Partners (Body Corporate, HUF etc.)**

### **Descriptive Question**

#### **Question 18**

JEET LLP is a small scale consulting firm. For the financial year 2024-25, the firm reported a total contribution of Rs 20 lakh and an annual turnover of Rs 35 lakh as per its Statement of Accounts and Solvency. The LLP intends to avail benefits granted to small LLPs under the Limited Liability Partnership Act, 2008.

(a) Based on the given financial details, determine whether JEET LLP qualifies as a "Small LLP" under the LLP Act, 2008.

(b) If JEET LLP plans to expand its business and projects and resulting turnover exceeding Rs 50 crore in the next financial year, determine the legal position as to the nature of the LLP as a "Small LLP".

(RTP May 2025)

#### **Answer: 18**

(a) According to section 2(1)(ta) of the LLP Act, 2008, a LLP is classified as a "Small LLP" if:

(i) Its contribution does not exceed Rs 25 lakh (or a higher prescribed amount, up to Rs 5 crore). Here, contribution of JEET LLP is Rs 20 lakh, which is within the limit.

(ii) Its turnover does not exceed Rs 40 lakh (or a higher prescribed amount, up to Rs 50 crore). Here turnover of JEET LLP is Rs 35 lakh, which is within the limit.)

Since JEET LLP meets both conditions, it qualifies as a "Small LLP" under the Act.

(b) If JEET LLP's turnover exceeds Rs50 crore in the next financial year, it will no longer meet the requirements as a Small LLP and will be subject to full compliance requirements applicable to regular LLPs.

## **Topic 11 Company Classification – Small Companies, Subsidiaries, and Exemptions**

### **Question 19**

Shubham Limited is the holding company of Vaibhav Pvt. Limited. As per the financial statements of Vaibhav Pvt. Limited for the financial year ending 31st March 2025, its turnover was Rs1.80 crore and its paid-up share capital was Rs80 lakh. The Board of Directors of Vaibhav Pvt. Limited intends to avail the status of a small company under the Companies Act, 2013.

However, the Company Secretary advised the Board that Vaibhav Pvt. Limited cannot be classified as a small company.

In light of the above facts, examine the correctness of the advice given by the Company Secretary with reference to the relevant provisions of the Companies Act, 2013.

**(RTP Sep 2025)**

### **Answer: 19**

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, 2025 of Vaibhav Pvt. Limited, its turnover was to the extent of ` 1.80 crore, and paid-up share capital was ` 80 lakh. Though Vaibhav Pvt. Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Shubham Limited).

Hence, the advice of the Company Secretary is correct.

## Chapter 13 - The General Clauses Act, 1897

### Topic 1 Introduction to General Clauses Act / Basic Concepts

#### MCQ

##### Question 1

As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which can be analysed in terms of General Clause Act, as:

- (a) Attending weekend classes is optional but appearing in weekly test is compulsory
- (b) Attending weekend classes is compulsory but appearing in weekly test is optional
- (c) Attending weekend classes and appearing in weekly test, both are compulsory for students
- (d) Attending weekend classes and appearing in weekly test both are optional for students.

(MTP Oct '19)

**Ans:** (a)

**Reason:**

As per Section 3(32) of the General Clauses Act, 1897:

- The word "may" is interpreted as permissive/optional, unless the context shows otherwise.
- The word "shall" is interpreted as mandatory/compulsory.

In the given rule:

- “may come on weekends” ⇒ Optional
- “shall appear on a weekly test” ⇒ Mandatory

Hence, option (a) is correct.

## **Descriptive Question**

### **Question 2**

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2019. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

- (i) The dates during which Komal Ltd. is required to pay the dividend?
- (ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

**(Study Material)**

### **Answer 2**

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days, 27/09/2019 will be excluded and last 30th day, i.e. 27/10/2019 will be



included. Accordingly, Komal Ltd. Will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).

(ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2019 to 3rd November, 2019 (both days inclusive).

### Question 3

**When an enactment does is said to have come into operation if the Act has not specified any particular date of its enforcement. Explain with the help of an example as per the provisions of the General Clauses Act, 1897.**

(MTP March'18, Old & New SM)

### Answer 3

According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April. The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Thus, we can see financial year starts from first day of April but Calendar Year starts from first day of January. Hence, financial year and Calendar year are not same.

### Question 4

Shree was supposed to submit an appeal to the High Court of Delhi on 8th September, 2023, which was the last day on which such appeal could be submitted. However, on that day the High Court was closed due to total Lockdown in Delhi for 30 days due to visit of foreign delegates from 40 countries for G40 Summit. Examine the remedy available to Shree under the provisions of the General Clauses Act, 1897.

(MTP Oct '23)

#### Answer 4

The given answer is based on section 10 which deals with “Computation of time” under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Shree was supposed to submit an appeal to High Court on 8th September 2023, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over Delhi.

In line with said provision, Shree can submit an appeal on the day on which the High Court is open.

### Topic 2 Interpretation of Words / Definitions (Sec 3)

#### MCQ

##### Question 5

What among the following could be considered in the term ‘Immovable Property’ as defined under section 3(26) of the General Clauses Act, 1897?

**(i) The soil for making bricks**

**(ii) Right to catch fish**

**(iii) Right to drain water**

**(iv) Doors and Windows of the house**

(a) Only (i) and (iv)

(b) Only (i), (ii) and (iv)

(c) Only (i) and (ii)

(d) Only (ii), (iii) and (iv)

**(MTP Oct 20, Nov'21, Oct'22)**

**Ans: (b)**

**Reason:**

As per Section 3(26) of the General Clauses Act, 1897, "Immovable property" includes:

- Land (thus includes soil for making bricks)
- Benefits arising out of land (e.g., right to catch fish, which is a profit à prendre)
- Things attached to the earth (e.g., doors and windows when fixed in the house)

However,

- Right to drain water is a personal right or easement, and not necessarily a benefit arising out of land unless directly appurtenant.

Hence, (i), (ii), and (iv) qualify under the definition of immovable property.

Therefore, option (b) is correct.

**Descriptive Question**

**CATESTSERIES.ORG**

### Question 6

**Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which**

- (a) It receives the assent of the President
- (b) It receives the assent of the Governor General
- (c) It is notified in the official gazette
- (d) It receives assent of both the houses of Parliament

**(MTP March 21, Oct'21, and Mar'22)**

**Ans: (a)**

**Reason:**

As per Section 5 of the General Clauses Act, 1897:

When a Central Act does not specify a particular commencement date, it comes into force on the date it receives the President's assent.

Therefore, unless a different date is mentioned, the Act becomes operational from the date of Presidential assent.

Hence, option (a) is correct.

### Question 7

**Calendar year starts from:**

- (a) January
- (b) April
- (c) June

(d) September

(MTP April '23)

**Ans:** (a)

**Reason:**

As per Section 3(13) of the General Clauses Act, 1897,

"Calendar year" means the period starting from 1st January and ending on 31st December.

It is based on the Gregorian calendar, not the financial year or academic year.

Hence, option (a) is correct.

#### Question 8

**Where, by any Central Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power:**

- (a) To appoint the members of that family
- (b) To grant increment to any family members
- (c) To suspend or dismiss any person appointed
- (d) No other power is conferred except for appointment

(MTP Sep '23)

**Ans:** (c)

**Reason:**

As per Section 16 of the General Clauses Act, 1897,

When a Central Act gives the power to make an appointment, it also includes the power to suspend or dismiss the person so appointed — unless a contrary intention appears.

This ensures administrative control is implied with the power of appointment.

Hence, option (c) is correct.

### Question 9

**Which of the following is not an Immovable Property?**

- (a) Land
- (b) Building
- (c) Timber
- (d) Machinery permanently attached to the land

**Ans:** (c)

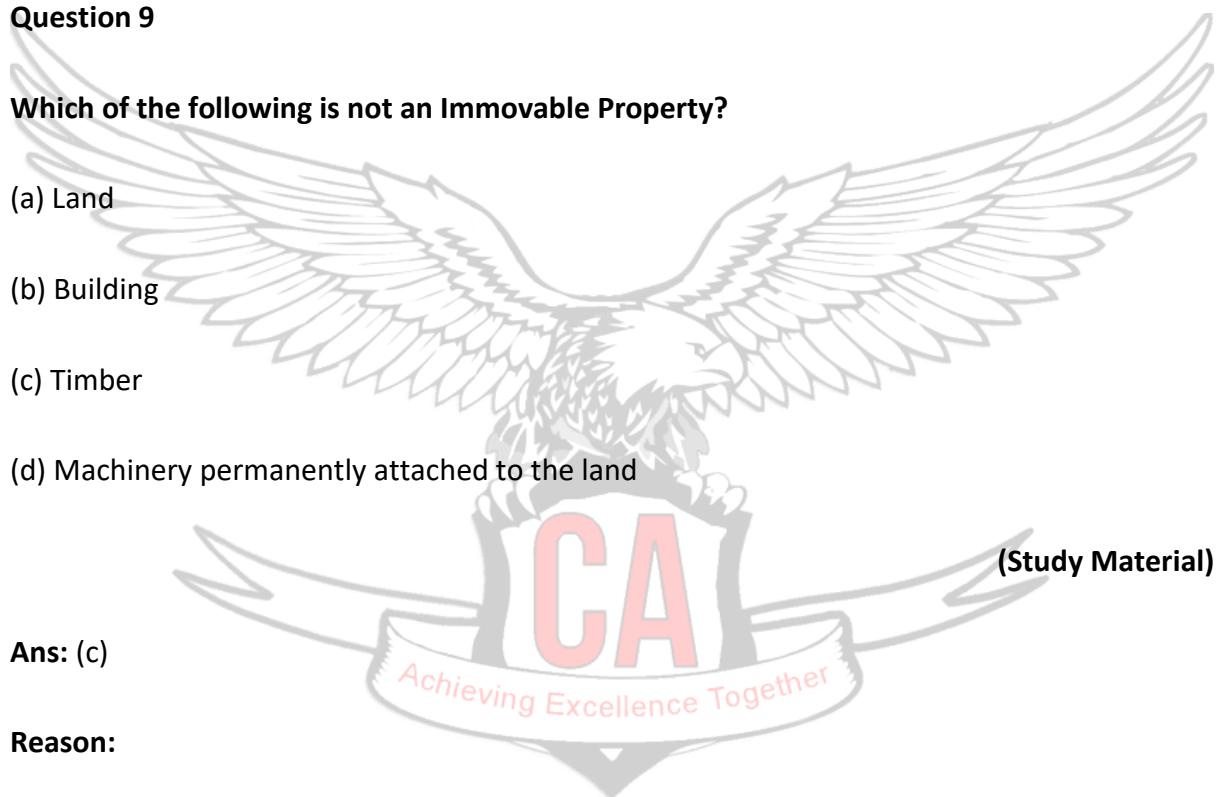
**Reason:**

As per Section 3(26) of the General Clauses Act, 1897, "Immovable Property" includes:

- Land
- Benefits arising out of land
- Things attached to the earth (like buildings, permanently fixed machinery)

However, timber is considered a movable property, even if it is temporarily rooted, as it is intended to be severed and used.

Thus, timber is not immovable property, making option (c) the correct answer.



### Question 10

**What is the meaning of service by post as per provisions of the General Clauses Act, 1897?**

**(Study Material)**

### Answer 10

“Meaning of Service by post” [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

### Question 11

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2019, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

### Answer 11



Section 9 of the General Clauses Act, 1897 provides that, for computation of time, 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”.

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2019 will be excluded and 6th November 2019 shall be included, i.e. 31st October, 2019 to 6th November, 2019 (both days inclusive).

### **Question 12**

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

(1) An Act of Parliament which has not specifically mentioned a particular date.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

(Study Material)

### **Answer 12**

(1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

### Question 13

Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise.

(MTP, Aug '18)

### Answer 13

As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Thus, where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

Hence, in the given situation, a notice was rightfully served to Mr. Wise.

#### Question 14

A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation.

(MTP March '19, RTP May 20)

#### Answer 14

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. Hence, where the notice could not be served on account of the fact that the house of Mr P was found locked, it will be deemed that the notice was properly served as per the provisions of Section 27 of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non- service.

#### Question 15

What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897.

(MTP Jan 2025)(MTP March 19 & Aug 18)

### **Answer 15**

“Good Faith” [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

### **Question 16**

**SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015** was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations?

(MTP Oct’21 Oct’18 RTP Nov 20, Old & New SM, PYP May ’19)

### **Answer 16**

According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Hence, in the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

### **Question 17**

**As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?**

**(MTP Oct 20, MTP Aug 18, Old & New SM)**

### **Answer 17**

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company. It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

### **Question 18**

**What is the meaning of the following as per provisions of the General Clauses Act, 1897?**

**(i) Movable Property**

**(ii) Person**

**(MTP April 22)**

### **Answer 18**

(i) Movable Property: According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

(ii) Person: According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

### Question 19

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

(MTP Oct'22, PYP Dec'21, RTP May 21)

### Answer 19

Financial Year: According to **Section 3(21)** of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

### Question 20

A notice when required under the Statutory rules to be sent by “registered post acknowledgment due” is instead sent by “registered post” only. Whether the protection of presumption regarding serving of notice by “registered post” under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

(RTP May'19, RTP May'18, Old & New SM)

### Answer 20

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing,
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by ‘registered post acknowledgement due’, then, if notice was sent by ‘registered post’ only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Further more, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181:

A notice when required under the statutory rules to be sent by ‘registered post acknowledgement due’ is instead sent by ‘registered post’ only, the protection of



presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

#### **Question 21**

**Mr. Sohan has issued a promissory note of Rs1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021?**

**(RTP Nov '21)**

#### **Answer 21**

Section 10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of Rs1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20 th August 2021 due to Moharram. In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021.

#### **Question 22**

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of “Corporate and Other Law”, they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides “A company may be formed for any lawful purpose by” Both Ayush and Vipul are in difficulty about the meaning of word “may”. Whether it should be taken as mandatory or directory?

(RTP May '22)

#### **Answer 22**

The word ‘shall’ is used to raise a presumption of something which is mandatory or imperative while the word ‘may’ is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word ‘may’ has a mandatory force if directory force will defeat the object of the Act. However, sometimes the words “may and shall” can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word “may” used in section should be considered as mandatory or directory. In the given case, it can be said that the word “may” should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.

Here the word used “may” shall be read as “shall”. Usage of word ‘may’ here makes it mandatory for a company for the compliance of section 3 for its formation.

#### **Question 23**

**Define the following terms with reference to the General Clauses Act, 1897:**

**(i) Affidavit**

**(ii) Good Faith**

(PYP Nov 20)

### **Answer 23**

(i) "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

(ii) "Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not mala fide, whether it is done negligently or not is presumed to have been done in good faith.

### **Question 24**

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, Answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be questioned?

(iii) Is MCA entitled to make suitable changes in the draft?

(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

(PYP May'22)

#### **Answer 24**

The Answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the Answers in the light of the given information and the relevant legal provisions:

(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.

(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.

(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

#### **Question 25**

**Mr. N is caught stealing a bicycle, an offense punishable under the Indian Penal Code. According to Section 379 of the IPC, the punishment for theft was charged against him. Elaborate how the term "imprisonment" levied under the General Clauses Act, 1897, can be applied in line with the relevant law specified in the IPC?**

**(RTP May 2025)**

#### **Answer 25**

According to section 3(27) of the General Clauses Act, 1897 states that 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code. By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, rigorous, that is with hard labor and

simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.

**In this case:**

If the court considers Mr. N's offense as a minor theft and believes it does not warrant harsh punishment, it might sentence him to simple imprisonment.

However, if the theft involved force, was committed in a violent manner, or if Mr. N has a history of criminal behavior, the court may decide to impose rigorous imprisonment.

**Question 26**

**CCTV recording of an incident can be considered as a document. Explain what do you understand by the word document and how will you justify your answer in accordance with the provision of the General Clauses Act, 1897?**

**(MTP 2 May 2025)**

**Answer 26**

As per Section 3 of the Indian Evidence Act, 1872, a document refers to any matter that is expressed or described upon a substance using letters, figures, or marks with the intention of recording information. Similarly, Section 3(18) of the General Clauses Act, 1897, states that a document includes any material on which information is written, expressed, or described through various means.

A document generally consists of four key elements:

1. Matter – The content or subject recorded in the document.
2. Record – The process of fixing or storing the matter on a particular medium.
3. Substance – The physical medium on which the information is recorded (paper, digital file, stone engraving, etc.).

4. Means – The method used to record the information, such as letters, numbers, symbols, or figures.

So a contract agreement between two businesses is a document because it contains matter (terms and conditions of the agreement). It is recorded in writing on a substance (paper or electronic document). It is written using letters and symbols to communicate between the parties.

A CCTV recording of an incident is a document. Even though it is not written on paper, it is still a document because it records matter (the incident), is stored on a medium (hard drive or tape) and can be used as proof in a legal proceeding.

#### **Question 27**

**"No vehicles are allowed in the park." Comment on the statement, explaining the concept of 'Construction' in legal interpretation. Mention its significance in determining the legal interpretation.**

**(MTP May 2025)**

#### **Answer 27**

In legal interpretation, 'construction' refers to the process of determining the true meaning and intent behind a statute or legal document. It extends beyond the literal words of the text and considers the broader legislative purpose, historical context, and other relevant factors. This method helps courts and legal professionals resolve ambiguities and apply laws in a just and reasonable manner.

As per the stated statement "No vehicles are allowed in the park" can have a strict literal interpretation which would mean that all types of vehicles, including bicycles, baby strollers, and even wheelchairs, are prohibited in the park. However, through legal construction, courts may consider the legislative intent behind the law. If the primary goal is to prevent pollution and ensure pedestrian safety, the restriction may only apply to motorized vehicles, while bicycles and strollers may still be allowed.



### Significance of Construction in Legal Interpretation:

1. **Clarifies Legislative Intent:** Construction ensures that laws are interpreted in alignment with the intention of the lawmakers rather than relying solely on the literal meaning of the words.
2. **Resolves Ambiguities:** Many legal texts contain vague or unclear language. Construction helps eliminate confusion and ensures a consistent application of the law.
3. **Ensures Justice:** By considering context and broader objectives, legal construction prevents unfair or unintended consequences that could arise from rigid literal interpretations.
4. **Adapts Laws to Changing Contexts:** Societal norms and circumstances evolve over time. Construction allows laws to be interpreted in a way that remains relevant and applicable to modern situations.

### Question 28

The Parliament recently passed the Environment Protection Amendment Act, 2024, to strengthen regulations on industrial waste disposal. The Act specified the commencement date as 1st September, 2024. The President gave assent to the Act on 15th July, 2024.

Green Earth Limited, an industrial company, is uncertain about when the provisions of the Environment Protection Amendment Act, 2024, will start to apply. The company's legal team has raised question on whether they need to immediately comply with the new regulations or if they have a grace period until the commencement date. Give your answer in reference to the provisions of the General Clauses Act, 1897.

(RTP Sep 2025)

### Answer 28

According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the



day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

In the given question, the Environment Protection Amendment Act, 2024, received assent of President of India on 15th July, 2024. The commencement date is prescribed as 1st September 2024. Accordingly, the Environment Protection Amendment Act, 2024, shall come into enforcement 1st September, 2024.

### **Topic 3 Service by Post (Section 27)**

#### **Descriptive Question**

##### **Question 29**

X owned a land with fifty tamarind trees. He sold his land to (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

(MTP Mar'21, April '19, Oct '19, PYP, May '18, RTP Nov 19, RTP May'23, Old & New SM)

##### **Answer 29**

"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

- I. Land,
- II. Benefits to arise out of land, and
- III. Things attached to the earth, or

IV. Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

**Question 30**

**What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment? Explain as per the provisions of the General Clauses Act, 1897.**

**(MTP Oct'18)**

**Answer 30**

“Making of rules or bye-laws and issuing of orders between passing and commencement of enactment” [Section 22]: Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

### Question 31

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for Rs 20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

(PYP Nov '22)

### Answer 31

According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

### Case Laws

(i) In Smt. Vandana Gulati vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice. In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

#### **Topic 4 Computation of Time (Sections 9 & 10)**

#### **Descriptive Question**

##### **Question 32**

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

- (1) An Act of Parliament which has not specifically mentioned a particular date.
- (2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

**(Study Material)**

##### **Answer 32**

- (1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

## **Topic 5 Repeal and Saving Clauses (Section 6)**

### **Descriptive Question**

#### **Question 33**

**What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.**

**[PYP Nov'19]**

#### **Answer 33**

As per Section 3(22) of the General Clauses Act, 1897, the term "good faith" means a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

#### Question 34

**"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897.**

(PYP, May '23)

#### Answer 34

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence. Even Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offence are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

### Topic 6 Construction and Interpretation of Laws

#### Descriptive Question

### Question 35

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

- (i) 'Things attached to the earth' have been held to be immovable property.
- (ii) The word "bullocks" could be interpreted to include "cows".

(MTP March '22)

### Answer 35

(i) 'Things attached to the earth' have been held to be immovable property: This statement is valid. As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

- (1) Land,
- (2) Benefits to arise out of land, and
- (3) Things attached to the earth, or
- (4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clause Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

### Question 36



Examine the validity of the following statements with reference to the General Clauses Act, 1897: Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

(MTP April 22)

#### Answer 36

As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

#### Question 37

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18) (AA) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

(RTP Nov'22)

### Answer 37

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so reenacted. Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in **section 2(18) (aa)** of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

### Question 38

**Give the definition of the following as per the General Clauses Act, 1897:**

**(i) "Rule"**

**(ii) "Oath"**

**(iii) "Person"**

**(PYP Dec '21)**

**Answer 38**

(i) Rule: As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath: As per section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Person: As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

(1) any company, or

(2) association, or

(3) body of individuals, whether incorporated or not.

**Question 39**

**"No person shall be prosecuted and punished for the same offence more than once."**

**Explain in the light of provisions of the General Clauses Act, 1897.**

**(RTP Sep 2025)**

**Answer: 39**

Provision as to offence punishable under two or more enactments

As per section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Article 20(2) of the Constitution of India states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of the General Clauses Act, 1897 read with Article 20(2) of the Constitution of India apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

## **Topic 7 Powers of Authority (Appointment, Suspension, Rules)**

### **Descriptive Question**

#### **Question 40**

**State what do you understand by the term 'Document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as document?**

**(i) Power-of-attorney.**

**(ii) Cheque**

**(MTP March '18)**

#### Answer 40

According to **section 3(18)** of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter. Thus,

(i) Yes, power-of-attorney is a document.

(ii) Yes, cheque upon a banker is a document

#### Question 41

**"Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897.**

**(PYP May '23)**

#### Answer 41

"Effect of Repeal" [Section 6 of the General Clauses Act, 1897]: Where any Central legislation or any regulation made after the commencement of this Act, repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

1. Revive anything not enforced or prevailed during the period at which repeal is effected or;
2. Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
3. Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
4. Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

5. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In *State of Uttar Pradesh v. Hirendra Pal Singh*, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

## Topic 8 Pro Rata Basis / Calculation of Duty

### Descriptive Question

#### Question 42

Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example.

(MTP Oct 21)

#### Answer 42

"Duty to be taken pro rata in enactments": According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity. Pro rata is a Latin term used to describe a proportionate allocation.

**Example:** Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

## Topic 9 Gender Inclusion

### Descriptive Question

#### Question 43

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) The word "bullocks" could be interpreted to include "cows".

(MTP March '22)

#### Answer 43

(i) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clause Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

#### Question 44

A confusion regarding the meaning of 'financial year' arose between the Financial Executive and Accountant of a company. Both were having different arguments regarding the meaning of 'financial year' & 'calendar year'. What is the correct meaning of the financial year under the provisions of the General Clauses Act, 1897? How it is different from calendar year?

(MTP Oct '23)

#### Answer 44



Financial Year: According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April, but Calendar Year starts from first day of January.



## Chapter 14 - Interpretation of Statutes

### Topic 1 Introduction to Interpretation of Statutes

#### MCQ

##### Question 1

As per the best way to interpret a statute or document is to read it as it would have been read when it was enacted or made.

- (a) Optima legume interpret est consuetude
- (b) Expressio unius Est Exclusio Alterius
- (c) Ut res magis valeat quam pereat
- (d) Contemporanea Expositio Est Optima Et Fortissima in Lege

(MTP Oct '19)

Ans: (d)

#### Reason:

The maxim "Contemporanea Expositio EST Optima ET Fortissima in Lege" means:

"The best and strongest interpretation of a law is the one that was given at the time it was enacted."

It emphasizes interpreting statutes in the context of the time they were made, considering how the words and provisions were understood historically.

Hence, option (d) is correct.

## Question 2

If the used in a statute make it clear that a sense is intended, the rule of Ejusdem Generis shall not apply.

- (a) Specific words, narrow
- (b) Specific words, wider
- (c) General words, narrow
- (d) General words, wider

(MTP Oct '19)

**Ans:** (b)

**Reason:**

Under the rule of Ejusdem Generis, general words following specific words are interpreted to include only things of the same kind as the specific ones.

However, if the specific words used indicate a wider intention, then this rule does not apply, and the general words retain their broad meaning.

So, when specific words show a wider sense is intended, Ejusdem Generis is excluded, making option (b) correct.

## Question 3

The act by which the operation of a previous Act comes to an end, is called as

- (a) The Repealing Act
- (b) The Consolidating Act

(c) The Amending Act

(d) Analogous Act

(MTP Oct '19)

**Ans: (a)**

**Reason:**

A Repealing Act is a legislation enacted to revoke or annul the operation of an earlier Act, either fully or partially.

Its primary purpose is to terminate the legal effect of an existing law.

Hence, the correct answer is (a) The Repealing Act.

#### Question 4

An internal aid that may be added to include something within the section or to exclude something from it, is—

(a) Provisonn

(b) Explanation

(c) Schedule

(d) Illustrations

(MTP, April'19, Apr'22 & Sep '23) (New SM) (Study Material)

**Ans: (b)**

**Reason:**

An Explanation is an internal aid to interpretation used in statutes to clarify, include, or exclude something within a section.

It does not enlarge the scope but makes the meaning clear or removes ambiguity from the main provision.

Hence, the correct answer is (b) Explanation.

### Question 5

**Rule of Beneficial construction is also known as—**

- (a) Purposive construction
- (b) Mischieve Rule
- (c) Heydons's Rule
- (d) All of the Above

(MTP May 20)

**Ans:** (d)

**Reason:**

The Rule of Beneficial Construction is aimed at giving effect to the purpose and intent of the legislation, especially in remedial or welfare statutes.

It is also known as:

- Purposive construction – because it focuses on the purpose behind the law,
- Mischief Rule – as it seeks to suppress the mischief the law intends to remedy, as laid down in Heydon's Case,
- Heydon's Rule – named after the landmark case establishing the principle.

Hence, all options are correct, making (d) All of the Above the right answer.

### Question 6

What among the following could be considered in the term 'Immovable Property' as per the General Clauses Act, 1897?

- (i) The soil for making bricks
- (ii) Right to catch fish
- (iii) Right to drain water
- (iv) Doors and Windows of the house

- (a) Only (i) and (iv)
- (b) Only (i), (ii) and (iv)
- (c) Only (i) and (ii)
- (d) Only (ii), (iii) and (iv).

(RTP Sep 2025)

**Ans: (b)**

**Reason:**

Under Section 3(26) of the General Clauses Act, 1897, Immovable Property includes land, benefits arising from land, and things attached to the earth.

- Soil for making bricks (i) is part of land.
- Right to catch fish (ii) is a benefit from land or water.
- Doors and windows (iv) are attached to a building and are immovable.
- Right to drain water (iii) is an easement, not immovable property.

### Question 7

**What is meant by beneficial construction in statutory interpretation? Under what circumstances the rule of beneficial construction is generally applied?**

**(RTP Sep 2025)**

**Answer 7**

Beneficial construction is not a strict rule of interpretation but rather a method used to interpret a statute liberally in order to give effect to the declared intention of the legislature, particularly when the statute is enacted to benefit a specific class of people.

Beneficial construction will be applied to a statute, which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past. In such cases it is permissible to give an extended meaning to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal. Thus, if the language of the statute is clear and unambiguous, the courts must follow the plain meaning and cannot stretch the language beyond its natural meaning.

**Topic 2 Rules of Interpretation – Literal Rule, Mischief Rule, Golden Rule, Harmonious Construction**

**MCQ**

**Question 8**

**When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable:**

- (a) Welfare construction
- (b) Strict construction



(c) Harmonious construction

(d) Mischief Rule

**(Study Material)**

**Ans: (c)**

**Reason:**

When there is a conflict between two or more statutes or parts of a statute, the Harmonious Construction rule is applied. This rule seeks to interpret the provisions in a way that they are read together, giving effect to all provisions without contradicting each other. The aim is to harmonize conflicting provisions.

### **Descriptive Question**

#### **Question 9**

**Explain 'Mischief Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.**

**(MTP Oct'20, Oct'19, PYP Nov'18]**

#### **Answer 9**

**Mischief Rule:** Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischief rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning. It enables consideration of four matters in construing an Act:

(1) What was the law before the making of the Act;

(2) What was the mischief or defect for which the law did not provide;

(3) what is the remedy that the Act has provided; and

(4) What is the reason for the remedy.

#### **Question 10**

**Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes?**

**(MTP Aug '18)**

#### **Answer 10**

**Meaning of rule Harmonious Construction:** When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.

**Application of the Rule:** The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

### **Topic 3 Role of Provison, Explanation, Illustration, and Schedule**

#### **Descriptive Question**

##### **Question 11**

**Write short note on:**

**(i) Provisonn**

**(ii) Explanation, with reference to interpretation of Statutes, Deeds and Documents.**

**(MTP March '22, PYP Nov'18)**

##### **Answer 11**

**(i) Provisonns**

**(ii) Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

### **Topic 4 Doctrines in Interpretation – Contemporanea Expositio, Ejusdem Generis, Noscitur a Sociis, etc.**

#### **Descriptive Question**

### Question 12

**Explain the Doctrine of Contemporanea Expositio.**

**(PYP, May '23)**

### Answer 12

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissima in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

## Topic 5 Interpretation of Deeds and Documents

### Descriptive Question

### Question 13

**Radha Limited has entered into a contract with Gopal Limited. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?**

**(MTP April 22, Old & New SM)**

### Answer 13

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document. It is inexpedient to construe the terms of one deed by reference to the terms of another.

Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

## **Topic 6 Contextual Interpretation – Meaning subject to Context**

### **Question 14**

#### **Case Scenario**

Sunrise Technologies Private Limited ("STPL") was in process of establishing its new software development center in Pune. On 28th February, 2024, the Board of Directors passed a resolution to purchase a property consisting of:

- A three-story building
- 25 acres of agricultural land adjacent to the building
- 100 motor cars
- An orchard with 100 fruit-bearing trees

The company received a government notification dated 15th March, 2024, requiring all new technology centers to obtain special clearance within 45 days of establishment. The notification mentioned that existing orders under the previous Technology Parks Act (which was repealed and replaced by new legislation) would continue to remain valid. The notification was to be served to all concerned parties through registered post.

The Managing Director has approached you to understand various legal aspects under the General Clauses Act, 1897.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897, choose the correct answer (one out of four) of the following.

(MTP jan 2025)

#### Multiple Choice Questions (MCQs)

1. With respect to the property being purchased by STPL, which of the following would not qualify as "immovable property" under the General Clauses Act, 1897?

- (a) The orchard with fruit-bearing trees
- (b) Motor Cars
- (c) The three-story building
- (d) The agricultural land

**Ans: (b)**

**Reason:**

Under Section 3(26) of the General Clauses Act, 1897, "Immovable property" includes land, benefits arising from land, and things attached to the earth.

- The orchard with fruit-bearing trees (a), the three-story building (c), and the agricultural land (d) are all considered immovable property because they are either attached to the earth or benefit arising out of land.
- Motor cars (b), however, are movable property because they are not attached to the earth and can be moved. Therefore, they do not qualify as immovable property.

**2. The government notification requires clearance "within 45 days". If the notification was received on 20th March, 2024, and the 45th day falls on Sunday, May 4, 2024, what would be the last date for obtaining clearance?**

(a) 3rd May, 2024

(b) 4th May, 2024

(c) 5th May, 2024

(d) 6th May, 2024

**Ans: (c)**

**Reason:**

As per Section 10 of the General Clauses Act, 1897, when a time period is prescribed for an act to be done and the last day of the period falls on a Sunday or a public holiday, the act can be done on the next working day.

In this case, the 45th day (May 4, 2024) falls on a Sunday. Therefore, the last date for obtaining clearance would be the next working day, which is 5th May, 2024 (a Monday).



**3. Concerning the previous orders under the repealed Technology Parks Act, which statement is correct?**

- (a) All previous orders automatically become void
- (b) Previous orders continue to be valid unless explicitly cancelled
- (c) Previous orders require fresh validation under new law
- (d) Previous orders are valid for only 6 months after repeal

**Ans:** (b)

**Reason:**

Under Section 6 of the General Clauses Act, 1897, when a statute is repealed, any orders, rules, or regulations made under the repealed law continue in force until they are rescinded, revoked, or altered by the new law or the appropriate authority.

In this case, the previous orders under the repealed Technology Parks Act continue to remain valid as per the new legislation, unless explicitly cancelled or modified by the new law or the authorities. Therefore, the correct answer is that the previous orders remain valid unless explicitly cancelled.

#### **Question 15**

**Write short notes on the following in understanding definitions while interpreting statutes:**

- (i) Ambiguous definitions**
- (ii) Definitions subject to a contrary context**

**(MTP April 22 & March '23)**

### Answer 15

(i) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realizing that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

### Topic 7 Use of Dictionaries and Technical Terms

#### Descriptive Question

#### Question 16

Explain the meaning of term 'Provison'. Give the distinction between provison, exception and Saving Clause.

(RTP May'18, PYP Nov 20)

### Answer 16

Provision: The normal function of a provison is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the provison were not there. The effect of the provison is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a provison is added to

an enactment to qualify or create an exception to what is in the enactment. Ordinarily a provision is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a provision to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a provision and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

### **Distinction between Provision, exception and saving Clause**

There is said to exist difference between provisions worded as 'Provision', 'Exception', or 'Saving Clause'.

| <b>Provision</b>                                                           | <b>Exception</b>                                                                                  | <b>Saving Clause</b>                                                                                         |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Exception' is intended to restrain the enacting clause to particular cases | 'Provision' is used to remove special cases from general enactment and provide for them specially | 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing |

### **Question 17**

**'Repeal' of provision is different from 'deletion' of provision. Explain.**

**(PYP Nov'18)**

### **Answer 17**

In Navrangpura Gam Dharmada Milkat Trust vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature

affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

#### **Question 18**

**What is a Document as per the Indian Evidence Act, 1872?**

**(PYP May'18]**

#### **Answer 18**

As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form a As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. For Example: A writing is a document, any words printed, photographed are documents.

#### **Question 19**

**How will you interpret the term "Instrument" used in a statutes?**

**[PYP Nov'19]**

#### **Answer 19**

'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes

every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

#### **Question 20**

**What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?**

**(PYP Jan 21)(MTP Sep '23)**

#### **Answer 20**

External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.

Dictionary Definitions: Dictionary Definitions is one of the External Aids to interpretation. First we have to refer to the Act in question to find out if any particular word or expression is defined in it.

Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

#### **Question 21**

**If it is defined as:**

(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".

(ii) "Person" includes, under the Consumer Protection Act, 1986.

How would you interpret/construct the nature and scope of the above definitions?

(PYP May '19)

#### Answer 21

Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same. When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section. Thus,

(i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall be deemed to be company.

(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

### Topic 8 Judicial Precedents and Interpretation

#### Descriptive Question

### Question 22

**Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.**

**(PYP Nov '22)**

### Answer 22

The Rule of Ejusdem Generis will not apply in the following situations:

- 1 If the preceding term is general, as well as that which follows this rule cannot be applied.
- 2 Where the particular words exhaust the whole genus.
- 3 Where the specific objects enumerated are essentially diverse in character.
- 4 Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

### Question 23

**Explain the 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your an example.**

**(RTP Nov '23)**

### Answer 23

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.



**Example:** Section 4(3) of the Companies Act, 2013, “Without prejudice to the provisions of subsection (2), a company shall not be registered with a name which contains.....” This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

#### **Question 24**

**What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes.**

**(MTP Jan 2025)**

#### **Answer 24**

Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.

The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

### **Topic 9 Exceptions and Conflicts in Interpretation**

#### **Descriptive Question**

### Question 25

What is the meaning and legal significance of the principle "generalia specialibus non derogant"? Explain with an example.

(RTP May 2025)

### Answer 25

The principle "generalia specialibus non derogant" means that when a general law and a specific law address the same subject matter, the specific law prevails. This ensures that specialized laws designed for particular situations are not overridden by broader, more general provisions.

Example:

1. **General Law:** "All contracts must be in writing to be legally enforceable."
2. **Specific Law:** "An oral contract for the sale of goods under Rs 5000 is legally valid."

Here, the general rule states that all contracts must be in writing. However, the specific rule creates an exception for oral contracts involving goods under Rs5000. According to the principle of "generalia specialibus non derogant", the specific rule will prevail in cases involving small-value goods, making oral agreements enforceable despite the broader general rule.

This principle helps maintain legal clarity by ensuring that specialized provisions are applied without being overridden by more general laws.

### Question 26

Ms. Mona employed in X-One Corporation, adopted a three-month-old baby applied for maternity leave under her company's policy, which provided 26 weeks of paid maternity leave. However, her employer rejected the request, stating that maternity leave applies only to biological mothers as per the law. Mona approached the court against the

**company decision. In related to the above case, explain how the Rule of Beneficial Construction can be applied and interpreted as a welfare legislation?**

**(MTP May 2025)**

**Answer: 26**

The Rule of Beneficial Construction is a judicial approach used to interpret statutes in a way that best serves their intended purpose, particularly when dealing with welfare legislation. This principle is applied when a legal provision can be understood in more than one way, allowing courts to choose the interpretation that ensures maximum benefit to the intended class of people.

In welfare laws, such as labour laws, social security laws, and laws protecting marginalized communities, this rule helps remove ambiguities and ensures that the law is applied in a just and equitable manner. One area where this rule has been significantly applied is in maternity leave benefits for adoptive mothers.

Maternity leave is an essential right granted to women to allow them time to recover from child birth and care for their new-borns. Laws in many countries, including India, grant paid maternity leave to working women.

However, a strict interpretation of such laws often restricts these benefits only to biological mothers, creating an unfair disadvantage for adoptive mothers who also need time to bond with their adopted child.

**The court will apply the Rule of Beneficial Construction, stating that:**

1. Purpose Over Literal Meaning: The law's primary objective is child welfare and mother-child bonding, not just post-delivery recovery. Therefore, maternity leave should not be denied based on a narrow interpretation.
2. No Discrimination Between Biological and Adoptive Mothers: Excluding adoptive mothers would create unjust discrimination against working women who adopt, violating the spirit of gender equality.

Hence the court can ruled in favour of the adoptive mother, directing the employer to grant her full maternity leave benefits.

#### Question 27

**At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'?**

(RTP Sep 2025)

**Answer: 27**

**Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) 'Optima Legum interpres est consuetudo' (the custom is the best interpreter of the law); and
- (ii) 'Contemporanea Expositio est optima et fortissima in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

## Chapter 15 - The Foreign Exchange Management Act, 1999

### Topic 1 Introduction to FEMA and its Objectives

#### MCQ

##### Question 1

Mr. Raj, a resident of India went to Australia for a business deal in January 2019. He realized foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India in 28th of February, 2019. Mr. Raj was left with certain unused foreign exchange. He retained the foreign exchange with him for future use. Mr. Raj have to return the unused foreign exchange-

- (a) Latest by 27th August 2019
- (b) Latest by 28th August 2019
- (c) Latest by 29th August 2019
- (d) Latest by 31st August 2019

(MTP Mar-19)

**Ans: (a)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, a resident Indian who retains unused foreign exchange after going abroad for business or personal purposes must return it to an authorized dealer or a bank within 6 months from the date of his return to India.

Mr. Raj returned to India on 28th February 2019, so the 6-month period for returning the unused foreign exchange would end on 28th August 2019. However, since the last day is a Sunday, the transaction must be completed by the previous working day, which is 27th August 2019.

## Question 2

A highly reputed construction company of Mumbai, decided to launch an ultra modern residential project in Goa especially for non-resident HNI Indians. For the purpose it appointed 4 agents worldwide to look for prospective buyers for 12 exclusive flats. The terms of their appointment clearly mentioned that they themselves will be responsible for inward remittance on the flats booked by them. As the project was one of its kind, so it got overwhelming response and all the flats got booked. However only 2/3 of the price of each flat could be remitted into India through proper channel during the financial year ended on 31st March 2019. Price of per flat was USD 1500000 inclusive of all. From the following how much maximum commission can be given to each agent, without any intervention of any authority. Each agent booked 3 flats.

- (a) 75000USD
- (b) 150000USD
- (c) 225000USD
- (d) 300000USD

(MTP Oct-19)

**Ans: (b)**

**Reason:**

Under FEMA (Foreign Exchange Management Act), 1999, commission payments made to foreign agents must comply with the guidelines set by the Reserve Bank of India (RBI).

The commission payable to foreign agents is restricted to 5% of the invoice value of the goods or services, unless the RBI has granted approval for a higher amount.

- Price per flat = USD 1,500,000
- Total price for 3 flats = USD 4,500,000 per agent (as each agent booked 3 flats)
- Maximum permissible commission = 5% of USD 4,500,000 = USD 225,000

However, due to the constraint of inward remittance (only 2/3 of the total amount remitted), the commission must be calculated on the amount that was successfully received, which is 2/3 of the total price:

- Amount remitted for 3 flats = 2/3 of USD 4,500,000 = USD 3,000,000
- Maximum commission = 5% of USD 3,000,000 = USD 150,000

Therefore, the maximum commission each agent can receive is USD 150,000.

### Question 3

Mr. Z was appointed as representative of ABC Company for a 10 days corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a treatment done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.

- (a) USD 1,25,000
- (b) USD 2,25,000
- (c) USD 2,50,000
- (d) As estimated by a medical institute offering treatment

(MTP May-20)

Ans: (d)



**Reason:**

Under FEMA (Foreign Exchange Management Act), 1999, a resident Indian can draw foreign exchange for medical treatment abroad. The amount that can be remitted is based on the estimated cost of treatment as provided by a recognized medical institution or hospital offering the treatment.

In this case, the maximum amount that can be drawn by Mr. Z is based on the actual estimate of the medical institute offering the treatment. There is no fixed limit under FEMA; it is determined by the costs involved as per the medical institution's estimate.

**Question 4**

**Mr. Raman, a non-resident, has a Special Investment Plan (SIP) with a mutual fund in India. Mr. Raman, due to some financial problems, requested his brother Mr. Raghav who is an Indian resident, to make the payment of few subsequent instalments of SIP on his behalf. You are required to advise Mr. Raghav whether such transaction is permitted considering the provisions of Foreign Exchange Management Act (FEMA), 1999.**

- (a) Such transaction is not permitted as it amounts to payment for the credit of non-resident.
- (b) Such transaction is permitted as Mr. Raghav can enter into such transaction on behalf of his non – resident brother.
- (c) Such transaction is not permitted as Mr. Raghav cannot enter into such transactions on behalf of his non- resident brother.
- (d) Such transaction is permitted if Mr. Raghav obtains prior permission of the Reserve Bank of India.

**(MTP Oct-20)**

**Ans: (a)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, transactions involving the payment for a non-resident's investment (such as an SIP in this case) are not permitted unless they are specifically authorized. Mr. Raghav, being a resident, cannot make payments on behalf of his non-resident brother, as it would constitute a payment for the credit of a non-resident.

FEMA regulations generally restrict such payments, and unless a specific permission is granted by the Reserve Bank of India (RBI), such transactions are prohibited. Therefore, option (a) is the correct choice.

**Question 5**

Mr. A is an authorized dealer holding a valid Authorization issued by the Reserve Bank of India under section 10 of the FEMA, 1999. During the course of his business, he violated one of the conditions subject to which the Authorization was granted to him. The Adjudicating Authority imposed a penalty of Rs. 1,50,000 under section 13 (being 3 times the amount involved in the violation, i.e. Rs. 50,000). Mr. A accepted the default. State the time limit before which Mr. A should pay the penalty, assuming he does not prefer an appeal to the Appellate Authority:

- (a) Within 30 days from the date of the Order imposing the penalty.
- (b) Within 45 days from the date of the Order imposing the penalty.
- (c) Within 60 days from the date of the Order imposing the penalty.
- (d) Within 90 days from the date of the Order imposing the penalty.

**(MTP March21)**

**Ans: (d)**

**Reason:**

As per Section 19 of the Foreign Exchange Management Act (FEMA), 1999, when a penalty is imposed by the Adjudicating Authority, the person liable to pay the penalty must do so within 90 days from the date of the order, unless they appeal to the Appellate Authority.

Since Mr. A accepted the default and does not prefer an appeal, the time limit for payment of the penalty is 90 days from the date of the penalty order.

## **Topic 2 Definition of Key Terms – Resident, Person, Foreign Exchange, etc.**

### **MCQ**

#### **Question 6**

A Limited, an Indian company holds a commercial plot in Chennai, India. It intends to sell the same. M/s Super Seller is a real estate broker with Head Office in the USA. M/s Super Seller is appointed to find buyers for the land. A company Glory Inc., based out of USA is identified as a buyer. Glory Inc., is controlled from India and is hence a Person Resident in India under FEMA provisions. Glory Inc., agrees to buy the land for USD 6,00,000 (assume 1 USD = Rs.70). M/s Super Seller is to be paid commission at the rate of 7% of the sale proceeds. The commission is to be paid to the H.O of M/s Super Seller in USA. Decide, in light of the relevant provisions of FEMA, 1999, which of the following is correct (Ignoring TDS implications arising under the Income Tax Act, 1961):

- (a) Prior permission is not required for remittance of commission upto USD 25,000. For balance commission of USD 17,000, permission of RBI is to be sought by A Limited.
- (b) Prior permission is not required for remittance of commission upto USD 30,000. For balance commission of USD 12,000, permission of RBI is to be sought by A Limited.
- (c) Prior permission is not a tall required for remittance of the entire commission.

(d) Prior permission is required to be taken from The Reserve Bank of India for the entire amount of commission.

**(MTP March-21)**

**Ans: (b)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, the remittance of commission to foreign agents (like M/s Super Seller) is subject to certain limits. As per the RBI guidelines, no prior permission is required for commission payments up to USD 25,000. However, since the total commission is 7% of USD 600,000 (which amounts to USD 42,000), for payments exceeding USD 25,000, prior approval from the RBI is required.

Commission up to USD 25,000 can be remitted without RBI's permission.

The balance commission of USD 17,000 requires RBI's approval, as per FEMA provisions.

Therefore, prior permission is not required for up to USD 30,000 in total remittance, but for the remaining USD 12,000, RBI approval is needed. Hence, option (b) is correct.

#### **Question 7**

**Minimum Average Maturity Period prescribed for ECB raised for working capital purposes or general corporate purposes under the ECB framework is:**

- (a) 1 year
- (b) 5 year
- (c) 7 year
- (d) 10 year

**(MTP April 21)**

**Ans: (d)**

**Reason:**

Under the External Commercial Borrowing (ECB) framework, the minimum average maturity period (MAMP) for ECBs raised for working capital or general corporate purposes is prescribed to be 10 years. This ensures that such borrowings are used for long-term productive purposes and not for short-term financing needs, aligning with the RBI's objective of promoting sustainable economic growth.

### **Question 8**

Peter a citizen and resident of India, in the year 2011, got a job in a MNC in Germany. He planned to shift. Due to travelling and shifting, studies of his daughter Lisa was effected a lot, so he decided to admit her into Mayo College at Ajmer for her further studies. On 23<sup>rd</sup> March 2017, Peter, along with his wife and daughter reached India from Germany. On 22<sup>nd</sup> April 2017, Lisa got admission in the college and since then she is living in India only. Peter and his wife returned Germany on 1 st May 2017. Peter did not visited India during the financial year 2017-18, however his wife was in India from 2nd December 2017 to 2<sup>nd</sup> January 2018. During the financial year 2018-19, Peter was in India for 185 days due to his deployment and Lisa's ill health. From the following who will be treated as person resident in India for the financial year ended on 2018-19 ---

- (a) Lisa
- (b) Peter
- (c) Peter's wife
- (d) Lisa and Peter's wife

**(MTP April '19)**

**Ans: (a)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, a "Person Resident in India" is defined based on the number of days they stay in India during a given financial year. A person is considered a resident in India if they stay for 182 days or more during the preceding financial year.

- Lisa stayed in India continuously after her admission to Mayo College on 22nd April 2017 and has been living in India ever since. Since she has been residing in India for more than 182 days during the financial year 2017-18 and continues to do so in 2018-19, she qualifies as a Person Resident in India.
- Peter and his wife do not meet the criteria for residency in India during the financial year 2018-19 based on their physical presence.

Thus, Lisa is the only person who qualifies as a Person Resident in India for the financial year 2018-19.

**Question 9**

Rahul, Son of Mr. Manish was going to USA under cultural exchange programme of his college. For meeting Rahul's expenses in USA, Mr. Manish purchased 5000 USD from an authorized person on 15th February 2018. Rahul came back to India on 15th March 2018. At the time of his return to India he was having 1850 unspent USD with him. From the following which option is the best suited for the above situation –

- (a) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of his return to India.
- (b) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of purchase of foreign exchange.
- (c) Unspent foreign exchange shall be surrendered to the authorized person within 90 days from the date of his return to India.

(d) Unspent foreign exchange not exceeding 2000 USD may be retained by a person resident in India.

**(MTP April '19)**

**Ans: (d)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, a resident Indian returning from abroad can retain up to USD 2,000 in foreign exchange without needing to surrender it to an authorized dealer or bank. Since Rahul has USD 1,850 remaining, which is below the limit of USD 2,000, he is permitted to retain it.

Therefore, option (d) is correct, as the unspent amount does not exceed the allowable limit for retention.

#### **Question 10**

**Dhruv, is a pilot in Bangkok airways. He flies for 15 days in a month and thereafter takes a break for 15 days. During the break, he is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, he was based at Delhi. During the financial year, he was accommodated at Delhi for 182 days. Determine the legal position as regards the residential status of Dhruv under the given situation:**

(a) Dhruv cannot be considered to be a Person Resident in India.

(b) Dhruv can be considered to be a Person Resident in India due to her stay for 182 days in India

(c) Dhruv cannot be considered to be a Person Resident in India due to her stay for less than 183 days in India.



(d) Dhruv can be considered to be a Person Resident in India due to her stay in Delhi for security consideration.

(MTP Oct 21)

**Ans:** (a)

**Reason:**

Under Section 2(v) of FEMA, a Person Resident in India is defined as someone who stays in India for 182 days or more during the preceding financial year, except for a person who has come to India for a temporary purpose and does not intend to stay for an extended period.

In this case, Dhruv was in India for 182 days, but his stay was temporary as he was only in India due to security considerations while on a break from his regular flying duties. The key factor here is that he was not in India for a permanent or extended purpose.

As per FEMA, since Dhruv's stay was temporary and he didn't come to India with the intent of residing permanently, he cannot be considered a Person Resident in India. Therefore, option (a) is correct.

### **Topic 3 Regulation of Current Account Transactions**

Achieving Excellence Together

#### **MCQ**

##### **Question 11**

**The dealers in precious metals/ precious stones, can be considered as persons carrying on designated businesses or professions, when-**

(a) They engage in any cash transactions with a customer of Rupees ten lakhs, carried out in a single operation

(b) They engage in any cash transactions with a customer of Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked.

(c) They engage in any cash transactions with a customer of equal to or above Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked

(d) They engage in sale or purchase of precious metal/precious stones and having annual turnover of Rupees twenty lakhs or above

**(MTP Oct 21)**

**Ans: (c)**

**Reason:**

As per the Prevention of Money Laundering (PMLA) Act, 2002, dealers in precious metals and precious stones are considered to be carrying on designated businesses or professions when they engage in cash transactions of Rs. 10 lakh or more in a single operation or in multiple linked operations. This is in line with the regulations set to prevent money laundering and to ensure that large cash transactions are properly monitored and reported to authorities.

Thus, option (c) is correct because it includes both single transactions and linked transactions that meet the cash threshold of Rs. 10 lakh or more.

## **Question 12**

**Mr. V, brother of Mr. R, is a resident of Singapore and he owns an immovable property in Chennai which he inherited from his father, who was a resident of India, Can Mr. V continue to hold the property?**

(a) No, he cannot hold transfer or invest In India, since he is resident outside India.

(b) Yes, he can continue to hold in India, since he is person of India Origin and the property is located In India

(c) Yes, he can continue to hold the property, since this was inherited from a person who was resident in India.

(d) Yes, he can continue to hold the property, since his brother (Mr. R) uses the property whenever he travels to Chennai.

**(MTP Nov 21, RTP May'20)**

**Ans: (c)**

**Reason:**

As per the Foreign Exchange Management Act (FEMA), a non-resident Indian (NRI) or a person of Indian origin (PIO) can inherit property in India from a resident Indian. Since Mr. V inherited the immovable property from his father, who was a resident of India, he is legally allowed to continue holding the property.

### **Question 13**

In September 2016, Mr. P, went to USA, London and Germany on a month long business trip. For this trip he got foreign exchange of US \$ 50,000 from an authorized dealer. In December 2016 he remitted US\$ 50,000 to his son in Canada, who was studying there. In January 2017 he sent his mother and wife to America for his mother's treatment and for the purpose he remitted US\$ 75,000 to his younger brother, who was living there. In March 2017 his daughter got engaged and she opted for a destination marriage to be held in May 2017, in Switzerland. While on trip to Dubai in the March end, 2017, he spent US \$ 35,000 for his daughter's shopping in Dubai. Later, the event manager gave an estimate of US \$ 250,000 for the wedding. As per the provisions of FEMA, for how much remittance does he need to take prior approval of the Reserve bank of India.

(a) He does not need any prior approval at all

(b) For US \$ 210000

(c) For US \$ 250000

(d) For US \$ 15000

(MTP Nov 21)

**Ans:** (a)

**Reason:**

As per the Foreign Exchange Management Act (FEMA), an individual can remit up to a certain limit without requiring prior approval from the Reserve Bank of India (RBI). The current limit for remittances under the Liberalized Remittance Scheme (LRS) is US\$ 250,000 per financial year. In this case, Mr. P's total remittances (US\$ 50,000 for the business trip, US\$ 50,000 for his son, US\$ 75,000 for his mother's treatment, US\$ 35,000 for shopping, and US\$ 250,000 for the wedding) total US\$ 460,000. However, since he is within the US\$ 250,000 limit for remittance under the LRS, no prior approval from the RBI is needed for these remittances.

#### **Question 14**

**Priti, on 1st September, 2021 went to UK for doing one year MBA course. Her MBA course completed on 31st August, 2022 and she returned India on the next day. What shall be her residential status for the FY 2022-23 and 2023-24:**

- (a) Resident in India for FY 2022-23 and FY 2023-24
- (b) Resident in India for FY 2022-23 and Resident outside India for FY 2023-24
- (c) Resident outside India for FY 2022-23 and FY 2023-24
- (d) Resident outside India for FY 2022-23 and Resident in India for FY 2023-24

(MTP Oct 22)

**Ans:** (d)

**Reason:**

To determine Priti's residential status, we need to apply the conditions under the Income Tax Act:

**For FY 2022-23:** Priti was in the UK for the entire year (from 1st September 2021 to 31st August 2022), which exceeds the 182 days requirement for being considered a resident in India. Since she was outside India for most of the year and her total stay in India during the year was less than 182 days, she is considered a non-resident for FY 2022-23.

**For FY 2023-24:** Priti returned to India on 1st September 2022, and since she has been in India for more than 182 days during FY 2023-24, she qualifies as a resident in India for that financial year.

#### Question 15

**Overseas Investment as per the Foreign Exchange Management (Overseas Investment) Rules, 2022 means:**

- (a) Financial Commitment by a PRII
- (b) Overseas Portfolio Investment ('OPI') by a PROI
- (c) Financial Commitment or Overseas Portfolio Investment ('OPI') by a PROI
- (d) Financial Commitment and Overseas Portfolio Investment ('OPI') by a PRII

**(MTP March '23)**

**Ans: (d)**

**Reason:**

As per the Foreign Exchange Management (Overseas Investment) Rules, 2022, the term "Overseas Investment" refers to both financial commitment and overseas portfolio investment (OPI) made by a person resident in India (PRII). A PRII is allowed to make investments abroad either through a financial commitment (such as a loan or equity

investment) or by making an overseas portfolio investment. Hence, both components — financial commitment and OPI — are included in the definition of overseas investment by a PRII.

#### **Question 16**

**Ms. Smriti, an Indian national, recently won Rs 41 lakh in an international online lottery. She now wishes to remit an equivalent of US \$50,000 abroad to a foreign account using her lottery winnings. She approached her authorized dealer bank to request foreign exchange for this purpose.**

**As per the provisions of the Foreign Exchange Management Act, 1999 and the relevant Rules, what is the correct position regarding Ms. Smriti's request to remit foreign exchange out of her lottery winnings?**

- (a) The remittance is allowed under the Liberalised Remittance Scheme (LRS) without any approval.
- (b) The remittance is allowed only with prior approval of the Reserve Bank of India.
- (c) The remittance is allowed only with prior approval of the Central Government.
- (d) The remittance is prohibited, as it falls under the First Schedule to the FEM (Current Account Transactions) Rules, 2000.

**(RTP Sep 2025)**

**Ans: (d)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, the First Schedule to the FEM (Current Account Transactions) Rules, 2000 prohibits remittances out of income or winnings from gambling or lottery. Since Ms. Smriti's lottery winnings are considered income from gambling, which is specifically prohibited for remittance under FEMA, she cannot remit the

amount abroad under the Liberalized Remittance Scheme (LRS) or any other provisions without prior approval from the authorities. Therefore, the remittance is prohibited.

## Topic 4 Regulation of Capital Account Transactions

### MCQ

#### Question 17

The bench mark rate for calculating the all in cost for foreign currency ECBs is amended, due to Libor transition made vide circular dated 8.12.2021, by-

- (a) 30 bps
- (b) 40 bps
- (c) 50 bps
- (d) 60 bps

(MTP March '23)

**Ans: (c)**

#### Reason:

The Reserve Bank of India (RBI) issued a circular on 8th December 2021 regarding the transition from LIBOR (London Interbank Offered Rate) to other benchmark rates for foreign currency External Commercial Borrowings (ECBs). As part of this transition, the RBI amended the benchmark rate for calculating the all-in-cost of ECBs, adding an additional 50 basis points (bps) to reflect the new benchmark rate. This change was made to align with global financial market practices following the phase-out of LIBOR.



### Question 18

Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15<sup>th</sup> July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.

(1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019

(2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019

(3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019-2020

(a) Both the statement (1) & (3) are correct

(b) Both the statement (2) & (3) are correct

(c) Only statement (1) is correct

(d) Only statement (2) is correct

(RTP Nov 19)

**Ans: (b)**

**Reason:**

According to the Foreign Exchange Management Act (FEMA), a Person Resident in India (PRII) is defined based on the number of days they spend in India during the preceding financial year (April to March).

**For FY 2018-2019:** Mr. Ram was in India from 1<sup>st</sup> May 2018 to 15<sup>th</sup> July 2019, which is less than 183 days in total for FY 2018-2019 (as the period starts from May 1, 2018). Hence, he cannot be considered a Person Resident in India for FY 2018-2019 (Statement 2 is correct).

**For FY 2019-2020:** Since Mr. Ram stayed in India from May 1, 2018, to July 15, 2019, he would be in India for more than 182 days in FY 2019-2020, qualifying as a Person Resident in India for this period (Statement 3 is correct).

Thus, statements (2) and (3) are correct

#### Question 19

Mr. X, a resident of India planned a tour of 15 days to visit Paris and to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit:

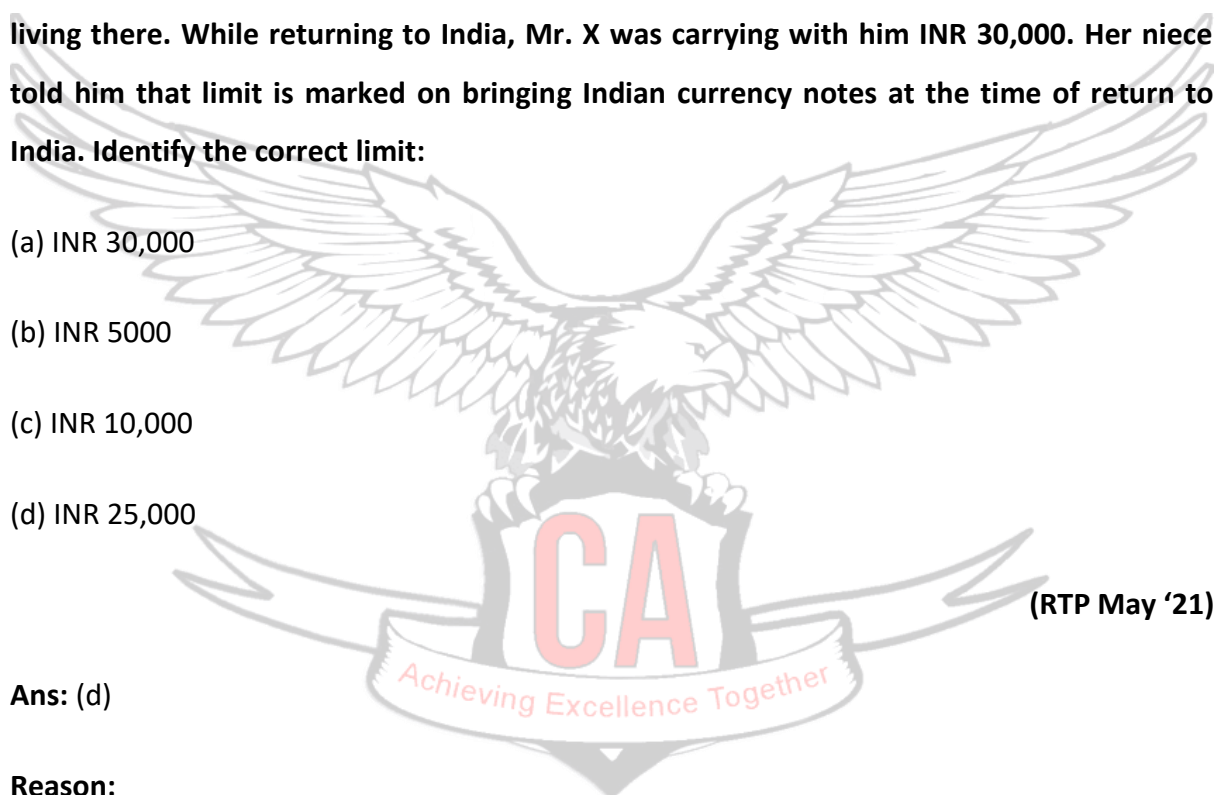
- (a) INR 30,000
- (b) INR 5000
- (c) INR 10,000
- (d) INR 25,000

**Ans:** (d)

**Reason:**

As per the Foreign Exchange Management Act (FEMA), 1999, the limit for carrying Indian currency (INR) while re-entering India is INR 25,000. Any amount exceeding this limit must be declared to the customs authorities. Since Mr. X is carrying INR 30,000, it exceeds the allowed limit of INR 25,000, and he would need to declare it at the time of re-entry into India.

#### Question 20



After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2019, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of Rs 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brassware, jewelry, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA.

You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2020 -21 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

- (a) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
- (b) For the financial year 2020-21, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
- (c) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
- (d) For the financial year 2020-21, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

(RTP May 22)

**Ans:** (c)

**Reason:**

As per the Foreign Exchange Management Act (FEMA), 1999, a Person Resident in India (PRII) is defined based on the number of days spent in India during the relevant financial year.

**Mr. Umesh:** Since he came to India on October 25, 2019, and stayed for more than 182 days in the financial year 2020-21, he is considered a resident in India for that period.

**Branch at Minnesota, USA:** The branch is established outside India, so it will be considered a Person Resident outside India (PROI). The residency status of a branch is determined by its location, not by the owner's residential status.

Thus, Mr. Umesh is a resident in India, while the branch is a resident outside India.

#### **Question 21**

In September, 2020, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US\$ 50,000 from his banker, State Bank of India, New Delhi branch. In December, 2020 he further, withdrew US\$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2021, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US\$,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2021, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2021 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2021, he again withdrew US\$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US\$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker, State Bank of India.

(a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2020-21, Mr. Purshottam Saha is not required to obtain any prior approval.

(b) In respect of withdrawal of US\$ 35,000 in the last week of March, 2021, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US\$ 1,75,000.

(c) After withdrawing US\$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

(d) After withdrawing US\$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

(RTP May 23)

**Ans: (a)**

**Reason:**

Under the Liberalized Remittance Scheme (LRS) of the Reserve Bank of India (RBI), an individual resident in India is allowed to remit up to US\$ 250,000 per financial year for permissible current account transactions and capital account transactions. In this case, Mr. Purshottam Saha withdrew US\$ 50,000 in September 2020, US\$ 50,000 in December 2020, and US\$ 35,000 in March 2021, totaling US\$ 135,000.

Since the total withdrawal remains well within the US\$ 250,000 limit allowed under the LRS, no prior approval from the RBI is required for these remittances. Therefore, Mr. Saha can continue to withdraw and remit foreign exchange without seeking prior approval.

## **Topic 5 Permissible Remittances under FEMA**

### **Descriptive Question**

## Question 22

**Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:**

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.**
- (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A. Advise him whether he can get Foreign Exchange and if so, under what conditions?**

**(Study Material)**

## Answer 22

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No. (i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item

(ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised



Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

### **Question 23**

(i) Mr. Amrish has been admitted to a postgraduate program at a foreign university and intends to join soon. The annual course fee is approximately Rs 3,50,000. Kindly advise his parents on how they can make the remittance for the fees under the provisions of the Foreign Exchange Management Act (FEMA), 1999.

(ii) After completing his studies, Mr. Amrish is employed by a joint venture of a foreign company in India. The company intends to send him on deputation to handle business operations abroad. His family resides in India, and he would like to know if he can remit his salary to support their maintenance in India. Advise Mr. Amrish as per the provisions of the Foreign Exchange Management Act, 1999.

(RTP May 2025)

### **Answer 23**

(i) Under the Foreign Exchange Management Act (FEMA), 1999 read with the Schedule III of the FEM (Current Account Transactions) Rules, 2000, the overall limit prescribed is generally USD 250,000. Any additional remittance in excess of such limit shall require prior approval of the RBI. In the given case, the remittance of fees of Amrish for pursuing education abroad, may avail exchange facility for an amount in excess of the limit prescribed under the LRS in a Financial Year. In such a case, the applicable limit for such an individual would be reduced from USD 250,000 by the amount so remitted.

(ii) Under the Foreign Exchange Management Act (FEMA), 1999, Mr. Amrish can remit his salary earned abroad to his family in India, subject to the following regulations:

A person (who is resident but not permanently resident in India) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in



India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

As per the stated law, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

## **Topic 6 Acquisition and Holding of Immovable Property Outside India**

### **MCQ**

#### **Question 24**

Nandeesh, a resident Indian, remitted USD 1,00,000 on 7th June, 2021, to his son Ishaan who is settled in California, USA, since he urgently required funds. On 9th July, 2021, Nandeesh again remitted USD 71,000 to meet expenses to be incurred in respect of his ailing wife, Medhavi who had recently gone to USA to meet his son Ishaan. Medhavi developed serious coronary disease. For specialised treatment of Medhavi at a specialised hospital, a sum of USD 79,000 was remitted for the second time on 30th July, 2021 by Nandeesh. Within next 10 days, Medhavi recovered and was allowed to return to her son's residence from the hospital. Choose the correct option from those stated below as to when Nandeesh can send further foreign exchange to his son Ishaan for the purpose of purchasing a house without obtaining the prior approval of Reserve Bank of India:

- (a) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of April, 2022 or thereafter.
- (b) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of January, 2022 or thereafter.

(c) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of July, 2022 or thereafter.

(d) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of November, 2021 or thereafter.

**(RTP May '22)**

**Ans: (a)**

**Reason:**

Under the Liberalized Remittance Scheme (LRS), an individual resident in India can remit up to USD 250,000 per financial year (April to March) for permissible transactions.

**For the financial year 2021-22, Nandeesh has already remitted:**

- USD 100,000 on 7th June 2021
- USD 71,000 on 9th July 2021
- USD 79,000 on 30th July 2021

Total = USD 250,000, which is the maximum limit under LRS for a financial year.

Since Nandeesh has reached the LRS limit for the financial year 2021-22, he cannot send further foreign exchange until the new financial year starts in April 2022. Any further remittance before that would require prior approval from the Reserve Bank of India. Therefore, he can send further remittances only in April 2022 or thereafter.

#### **Question 25**

**Mr. X, a person comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he stays till 31st March 2020. Thereafter he continues to stay in India. He decided to live in India for next 6 months by the time his parents recovers. In the light of the given case, determine the correct residential status of Mr. X from the given statements.**

(a) Mr. X is PRII as he did reside in India in the FY 2019-2020.

(b) Mr. X is PRII as he reside in India for more than 182 days in the FY 2019 -20.

(c) Mr. X is PROI in the FY 2019-20, but will be treated as PRII from 1st April, 2020, as he resides in India for more than 182 days in the previous FY.

(d) His stay in India is neither for employment, nor for business, nor for circumstances which show that his stay in India for an uncertain period. In FY 2019-20, he is a PROI as he did not reside in India for more than 182 in FY 2018-19.

(RTP, Nov'22)

**Ans:** (d)

**Reason:**

- For the financial year 2019-20, Mr. X arrived in India on 1st June 2019 and stayed until 31st March 2020, which totals about 300 days in India during this period.
- For determining his residential status for FY 2019-20, FEMA considers the number of days spent in India during the preceding 12 months. Since Mr. X did not reside in India in the FY 2018-19 for more than 182 days, he is classified as a Person Resident Outside India (PROI) in the FY 2019-20.
- The other statements (a), (b), and (c) are incorrect because they either misinterpret his status for the financial year 2019-20 or his residential status based on his stay after March 2020. Therefore, he remains a PROI for FY 2019-20.

#### **Question 26**

**In September, 2021, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US\$ 50,000 from his banker State Bank of India, New Delhi branch.**

**In December, 2021 he further, withdrew US\$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January,**

2022, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US\$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2022, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2022 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2022, he again withdrew US\$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US\$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India.

(a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.

(b) In respect of withdrawal of US\$ 35,000 in the last week of March, 2022, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US\$ 1,75,000.

(c) After withdrawing US\$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021- 22, otherwise SBI would not have permitted further withdrawals.

(d) After withdrawing US\$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021- 22, otherwise SBI would not have permitted further withdrawals.

**(Study Material)**

**Ans: (a)**

**Reason:**

Under the Liberalized Remittance Scheme (LRS) of the Reserve Bank of India (RBI), an individual is allowed to remit up to USD 250,000 per financial year for permissible transactions (such as personal expenses, gifts, etc.).

In the case of Mr. Purshottam Saha, his total foreign exchange withdrawals for the financial year 2021-22 are:

- USD 50,000 for a business trip (September 2021)
- USD 50,000 remitted to his son (December 2021)
- USD 75,000 for his mother's treatment (January 2022)
- USD 35,000 for a trip to Dubai (March 2022)

Total = USD 210,000.

Since the total amount of USD 210,000 is within the USD 250,000 limit allowed under LRS for the financial year, Mr. Saha does not require any prior approval from the RBI for these transactions. Therefore, no prior approval is needed for the remittances and withdrawals he made.

#### **Question 27**

**M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and othersimilar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the fourgiven below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the**

**prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:**

(a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).

(b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.

(c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.

(d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

**(Study Material)**

**Ans: (c)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, payments for normal business activities such as sports events, prize money, and other business-related transactions are generally covered under the Liberalized Remittance Scheme (LRS), which does not require prior approval from any authority for routine business remittances, as long as the purpose is legitimate.

In this case, M/s Kedhar Sports Academy is simply remitting prize money for a sports event in England, which falls under a normal commercial transaction. Since the remittance is for a legitimate purpose and within the scope of normal business activities, no prior permission is needed from the Ministry of Human Resource Development, Reserve Bank of India, or the Ministry of Finance. Therefore, M/s Kedhar Sports Academy can proceed to make the remittance without obtaining prior approval.



### Question 28

Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalized and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = Rs 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which Statement out of the four given below is correct (ignoring TDS implications arising under the Income Tax Act, 1961):

- (a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
- (b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
- (c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.



(d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

**(Study Material)**

**Ans: (d)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, the remittance of commission to a foreign entity for services rendered in India is subject to certain conditions. For a commercial transaction like the sale of property, if the total commission exceeds USD 25,000, the Reserve Bank of India (RBI) requires prior approval for remittance.

In this case, the total commission is USD 42,000 (7% of USD 600,000), which exceeds the threshold limit of USD 25,000. Therefore, prior approval from the RBI is mandatory for the remittance of the entire commission amount of USD 42,000. This is because the commission is paid to a foreign entity (M/s. Super Seller in the USA) for facilitating a transaction involving Indian property.

**Question 29**

**Ms. Pearl was an Indian citizen who got a job in a software company in USA. She went to USA and stayed there for 15 years. During her stay, she purchased a house in USA for her residence. Then due to some personal issues she moved back to India and joined a software company in India. As she had moved back to India, she let out her house in USA and deposited the obtained rent in her account in USA.**

**Advise whether Ms. Pearl can purchase another house in USA from her account in USA? Give you answer referring to the provisions of the Foreign Exchange Management Act, 1999.**

**(RTP Sep 2025)**

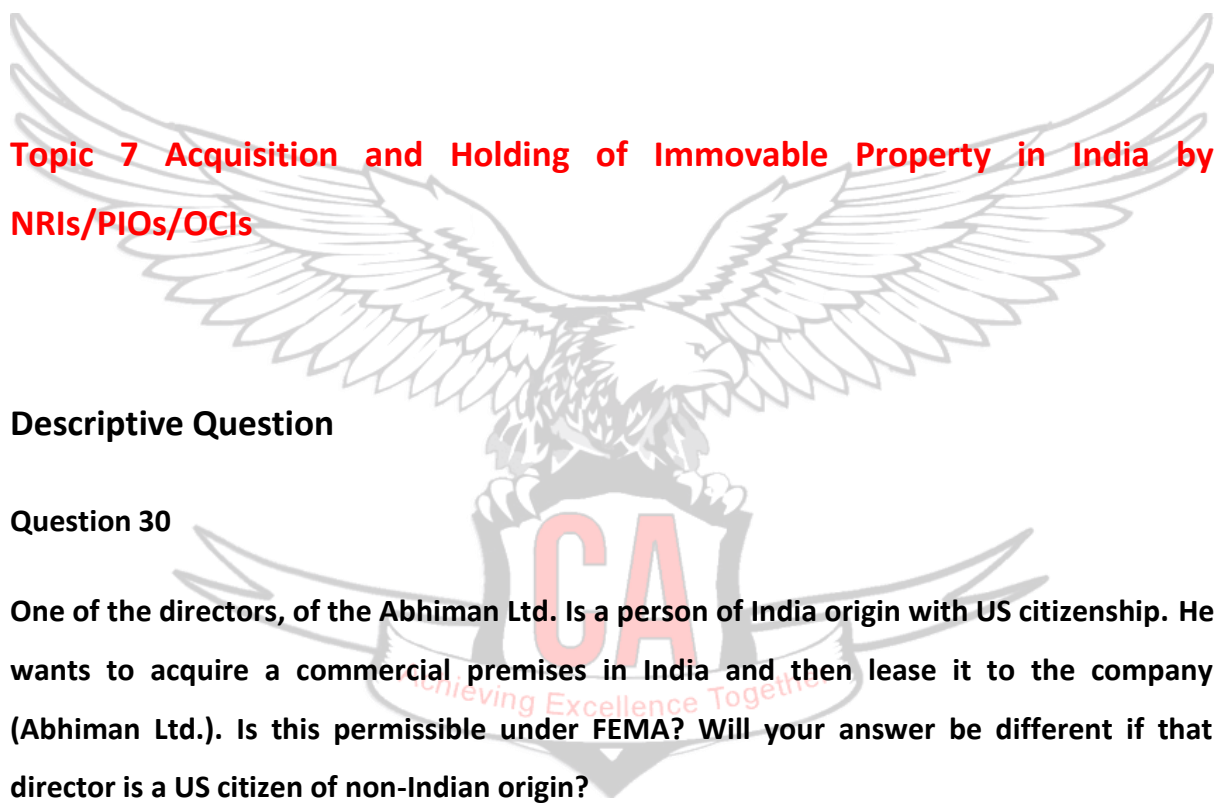
**Answer:**

**CATESTSERIES.ORG**

According to section 6(4) of the Foreign Exchange Management Act, 1999, (the Act) a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

As per the fact, Ms. Pearl during her stayed in USA purchased a house in USA.

As per the above provision and facts of the case, Ms. Pearl can purchase the new house in USA from her USA account.



## **Topic 7 Acquisition and Holding of Immovable Property in India by NRIs/PIOs/OCIs**

### **Descriptive Question**

#### **Question 30**

One of the directors, of the Abhiman Ltd. Is a person of India origin with US citizenship. He wants to acquire a commercial premises in India and then lease it to the company (Abhiman Ltd.). Is this permissible under FEMA? Will your answer be different if that director is a US citizen of non-Indian origin?

**(MTP Aug'18)**

#### **Answer 30**

According to the FEM (Acquisition and transfer of property in India) Regulations, 2018, a nonresident Indian, who is a person of Indian origin and resident outside India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

- Provided that in case of acquisition of immovable property, consideration for transfer, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules and the regulations framed thereunder.
- Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.
- Thus, in the given situation, the said director who is a person of Indian origin with US citizenship can acquire the commercial premises in India and can transfer to person resident in India i.e., to the Company, Abhiman Ltd.
- If the director would have been a US citizen of non Indian origin then he will not be allowed to acquire the property in India.

## **Topic 8 Borrowing and Lending in Foreign Exchange**

### **MCQ**

#### **Question 31**

Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of

**foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:**

(a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 50,000,000.

(b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 10,000,000.

(c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 5,000,000.

(d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 1,000,000.

**(Study Material)**

**Ans: (d)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, the Liberalized Remittance Scheme (LRS) allows Indian companies to remit payments for certain purposes, including consultancy services, without requiring prior approval from the Reserve Bank of India (RBI), up to a specified limit.

For payments related to import of services, the maximum amount that can be remitted without RBI approval is US\$ 1,000,000 per financial year for current account transactions.

Therefore, Mohita Periodicals and Mags Publications Limited can remit up to US\$ 1,000,000 for obtaining consultancy services from an entity in France without prior approval from the RBI. Any amount beyond this limit would require RBI's prior approval.

### Question 32

After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2021, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of Rs 10,00,000 as his capital.

Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2022-23 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

- (a) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
- (b) For the financial year 2022-23, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
- (c) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
- (d) For the financial year 2022-23, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

**(Study Material)**

**Ans: (c)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, the residential status of an individual is determined based on their stay in India in the preceding financial year. For Mr. Umesh, who arrived in India on October 25, 2021, he will be considered a resident in India

for the financial year 2022-23, as his stay in India would exceed 182 days within that financial year (from October 2021 to March 2023).

However, the branch of his business in Minnesota, USA is located outside India, so it will be considered a Person Resident outside India (PROI), as the residency status of a branch is determined by its location.

Thus, Mr. Umesh is a resident in India but the branch in the USA is a PROI.

### Question 33

**Sneha, a resident of India, wants to invest her savings. She considers buying shares of a US-based company to benefit from the growing tech market. She is unsure if such an investment is allowed under the Foreign Exchange Management Act, 1999.**

**Advise whether Sneha can invest in shares of the US-based company?**

- (a) Yes, such investments are allowed.
- (b) No, such investments are not allowed.
- (c) Yes, but only if the investment is for US\$ 5000.
- (d) No, unless she is a non-resident Indian (NRI).

**(MTP Jan 2025)**

**Ans: (a)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, Indian residents are permitted to invest in foreign shares and securities under the Liberalized Remittance Scheme (LRS). The LRS allows Indian residents to remit up to US\$ 250,000 per financial year for various purposes, including investments in foreign stocks, mutual funds, and other securities.



Therefore, Sneha, being a resident of India, can invest in shares of a US-based company, provided her total remittance for the financial year does not exceed the US\$ 250,000 limit under the LRS.

#### **Question 34**

**Pranab, an Indian citizen and a software engineer, was working for a multinational IT firm based in Singapore for over eight years. During his tenure, he accumulated substantial savings in his Singapore bank account and invested in a few properties there. With a plan to permanently return to India, he decided to sell one of his properties and transfer the proceeds to his newly opened bank account in India. Simultaneously, Pranab's employer deputed him to India for a critical software development project for three years, effective from January 2023. His salary was credited to his Indian bank account.**

**Now, Pranab wishes to transfer the proceeds from selling his property in Singapore to his bank account in India. As per the provisions of the Foreign Exchange Management Act, 1999, which of the following statements is most accurate regarding his ability to do so?**

- (a) He can freely transfer the full amount without any restrictions as he is now an Indian resident.
- (b) He cannot transfer the amount at all since the property was acquired outside India.
- (c) He can freely transfer the funds if the property was purchased while he was a resident outside India.
- (d) He needs prior RBI approval irrespective of how the property was acquired.

**(RTP May 2025)**

**Ans: (c)**

**Reason:**



As per the Foreign Exchange Management Act (FEMA), 1999, an Indian resident (Pranab, in this case) can repatriate funds from the sale of property acquired while being a non-resident outside India, without requiring prior approval from the Reserve Bank of India (RBI).

Since Pranab accumulated savings and purchased property while he was a resident outside India (in Singapore), he is allowed to freely transfer the proceeds from the sale of that property to his Indian bank account without any restrictions. This is because such funds are considered as part of his foreign assets and are eligible for repatriation as long as he complies with the provisions under FEMA.

### **Question 35**

**Ms. Kanika Tripathi, an accomplished classical dancer, has been invited by Oxford University to perform at a cultural event. She seeks to withdraw USD 75,000 for tour expenses. What is the most likely restriction on this transaction under the Foreign Exchange Management Act, 1999 (FEMA) and its guidelines?**

- (a) She must obtain prior approval from the Reserve Bank of India (RBI) before withdrawing foreign exchange for cultural tours.
- (b) She can withdraw foreign exchange freely within the limits prescribed under the Liberalized Remittance Scheme (LRS) or relevant FEMA guidelines.
- (c) Foreign exchange withdrawal for cultural performances is prohibited under FEMA.
- (d) She must first obtain a visa before withdrawing foreign exchange.

**(RTP May 2025)**

**Ans: (b)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, an individual can withdraw foreign exchange for legitimate purposes such as cultural tours, performances, and other personal expenses, subject to the limits set under the Liberalized Remittance Scheme (LRS).

As per the LRS, an Indian resident can remit up to USD 250,000 per financial year for permissible purposes, which includes cultural performances abroad. Since Ms. Kanika Tripathi is seeking USD 75,000 for her cultural performance at Oxford University, this amount is well within the limit of USD 250,000, and she does not need prior approval from the Reserve Bank of India (RBI) to withdraw the funds.

Thus, she can freely withdraw foreign exchange for the cultural tour, subject to the limits under LRS.

## **Topic 9 Export and Import of Goods and Services – Compliance Requirements**

### **MCQ**

#### **Question 36**

Mr. X had resided in India for less than 182 days during the financial year 2022-2023. He arrived in India on April 1, 2023, to conduct business and intends to leave the business on April 30, 2024, with plans to depart from India on June 30, 2024. What is Mr. X's residential status for the financial year 2023-2024 under the FEMA, 1999? How many days did Mr. X stay in India during the financial year 2023-2024?

- (a) Non-Resident, 182 days
- (b) Resident, 365 days
- (c) Resident but Not Ordinarily Resident (RNOR), 240 days
- (d) Resident, 91 days

**Ans: (b)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, an individual's residential status is determined by their stay in India during the relevant financial year (April to March). To qualify as a Resident in India, a person must be in India for 182 days or more in the financial year.

**For Mr. X:**

He arrived in India on April 1, 2023, and intends to stay until June 30, 2024.

This means he will stay in India for 365 days in the financial year 2023-2024 (from April 1, 2023, to March 31, 2024).

Since Mr. X stays for more than 182 days in India during the financial year 2023-2024, he qualifies as a Resident under FEMA. Thus, his residential status is Resident, and he stayed 365 days in India during this period.

**Question 37**

After five years of stay in USA, Mr. Amar came to India at his paternal place in New Delhi on October 25, 2022, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of Rs 10,00,000 as his capital. Simultaneously, Mr. Amar also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Amar established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Amar and his branch for the financial year 2023-24 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

(a) For the financial year 2023-24, Mr. Amar and his branch established at Minnesota, USA, are both persons resident outside India.

(b) For the financial year 2023-24, Mr. Amar is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.

(c) For the financial year 2023-24, Mr. Amar and his branch established at Minnesota, USA, are both persons resident in India.

(d) For the financial year 2023-24, Mr. Amar is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

(MTP May 2025)

**Ans: (c)**

**Reason:**

- Under FEMA (Foreign Exchange Management Act, 1999), an individual's residential status is based on the number of days spent in India during the financial year (April to March). A person is considered a resident in India if they stay in India for 182 days or more during the financial year. Since Mr. Amar arrived in India on October 25, 2022, and his stay in India is expected to exceed 182 days by the end of the financial year 2023-24, he will be considered a resident in India for the financial year 2023-24.
- However, the branch of Mr. Amar's business, which is located in Minnesota, USA, will be considered a person resident outside India (PROI), as the residency of the branch is determined by its location (in the USA).

Therefore, Mr. Amar is a resident in India, but the branch in Minnesota is a PROI.

### **Case scenario 38**

**Mr. Arun Kumar, a software engineer from Bangalore, had worked with a US-based technology company in Silicon Valley for the past 4 years. In April 2023, he returned to India to establish a technology startup, Global Ventures Private Limited. He maintained**

his foreign currency accounts in USA, containing earnings from his previous employment. His wife continues to work in USA.

During August 2023, Mr. Kumar undertook several transactions:

- He received USD 200,000 from his US savings account to invest in his Indian startup
- He gifted USD 75,000 to his brother in India for purchasing property
- He imported specialized software equipment worth USD 150,000 from a Singapore-based supplier on 3 months' credit
- He helped his wife (US-based) remit USD 40,000 for their daughter's higher education from a recognised university

Global Ventures also set up a branch office in Singapore in October 2023, fully controlled and managed from its Bangalore headquarters. The company plans to raise foreign currency loans and explore various overseas investment opportunities.

On the basis of above facts and by applying applicable provisions of the Foreign Exchange Management Act (FEMA), 1999, choose the correct answer (one out of four) of the following

(MTP May 2025)

Multiple Choice Questions (MCQs)

1. Under FEMA, 1999, what would be Mr. Arun Kumar's residential status for FY 2023-24?

- (a) Person Resident in India from April 2023
- (b) Person Resident outside India throughout the year
- (c) Person Resident in India only after completing 175 days
- (d) Person Resident outside India till August 2023

Ans: (a)

**Reason:**

Under FEMA, 1999, the residential status of an individual is determined by their stay in India during the financial year (April to March). A person is considered a Person Resident in India (PRII) if they stay in India for 182 days or more during the financial year.

**In this case:**

Mr. Arun Kumar returned to India in April 2023 to establish a business.

He is expected to stay in India for the entire financial year 2023-24 and has already returned to India, which means he will fulfill the residency requirement by staying in India for more than 182 days during the year.

Since he will be living in India for the full financial year, his residential status for FY 2023-24 is Person Resident in India starting from April 2023.

**2. Which of the following transactions by Mr. Kumar requires prior the Reserve Bank of India's approval?**

- (a) Receiving USD 200,000 from his own foreign account
- (b) Gift of USD 75,000 to his brother
- (c) Import of equipment on credit terms
- (d) Setting up a branch office in Singapore

**Ans: (b)**

**Reason:**

Under FEMA, 1999, the transaction that requires prior approval from the Reserve Bank of India (RBI) is the gift transaction. Specifically, sending a gift to a resident in India from an individual residing outside India (like Mr. Kumar gifting USD 75,000 to his brother in India)

requires prior RBI approval as it falls under the restrictions related to outward remittances by a resident.

**The other transactions are permissible under FEMA:**

(a) Receiving USD 200,000 from his own foreign account is allowed, as it's a transfer of funds between his personal accounts.

(c) Importing equipment on credit terms is a commercial transaction, and payments for imports are generally allowed under the prescribed guidelines.

(d) Setting up a branch office in Singapore is permitted under FEMA provisions for Indian companies wishing to establish branches abroad, as long as it complies with relevant RBI and FEMA rules.

**3. Whether, Mr. Kumar's remittance of USD 40,000 for his daughter's higher education from a recognised university, permissible:**

(a) Yes

(b) No, as it requires Reserve Bank of India's approval

(c) It is a prohibited transaction under FEMA, 1999

(d) Yes, after seeking approval from the Central Government

**Ans: (a)**

**Reason:**

Under FEMA, 1999, remittances for education-related expenses for a recognized university are permissible under the Liberalized Remittance Scheme (LRS). The scheme allows Indian residents to remit funds abroad for various purposes, including education, without needing prior approval from the Reserve Bank of India (RBI), as long as the remittance is within the prescribed limit (USD 250,000 per financial year).



In this case, Mr. Kumar's remittance of USD 40,000 for his daughter's higher education at a recognized university is a permissible transaction under FEMA, and it does not require prior RBI approval.

## **Descriptive Question**

### **Question 39**

#### **ICAI Illustration**

**Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?**

**(Study Material)**

#### **Answer:**

As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

### **Question 40**

### ICAI Illustration

**Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021- 2022?**

**(Study Material)**

#### **Answer:**

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

### **Topic 10 Role of Authorized Persons (Banks) in Foreign Exchange Transactions**

#### **Descriptive Question**

##### **Question 41**

#### **ICAI Illustration**

**Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The**

**Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?**

**(Study Material)**

**Answer:**

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses

(i) To (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'. Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside

India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'. The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

#### **Question 42**

##### **ICAI Illustration**

**Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?**

**(Study Material)**

**Answer:**

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

**Question 43**

**Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?**

**(Study Material)**

**Answer 43**

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'. Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

#### **Question 44**

**State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:**

**(i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.**

**(ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?**

**(Study Material)**

#### **Answer 44**

Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

### **Topic 11 Penalties for Violation of FEMA Provisions**

## **Descriptive Question**

### **Question 45**

Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V, an exporter is bound to make declaration of a gift of Jewellery valued at Rs 20,000 exported from India to United Kingdom.

**(Study Material)**

### **Answer 45**

In accordance with provisions of the FEMA, 1999 as contained in section 7 read with section 8, an exporter shall make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign exchange due to India in respect of such exports to India in the manner within the time as may be prescribed. Under section 8, the exporter is under an obligation to realise and repatriate to India such foreign. However, if there is a delay in the receipt of export, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps, depending upon the individual case.

There are certain categories of export for which declaration need not be made. These are given under the Regulation 4 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. According to the regulation, export of goods by way of gift shall be accompanied by a declaration by the exporter that they are not more than five lakh rupees in value. Taking into consideration the above, since the value of gift of jewellery to V's friend in the United Kingdom is less than Rs 5 lac in value, the gift does not need any declaration to be furnished by exporter to the specified authority.

### **Question 46**



**Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:**

**(i) M requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.**

**(ii) P requires U.S. \$ 2,000 for payment related to call back services of telephones.**

**(Study Material)**

**Answer 46**

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

i. It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

ii. Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US \$ 2,000 for the said purpose

**Question 47**

**Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?**

**Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, ifso, under what conditions?**

**(Study Material)**



#### Answer 47

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year **[Section 2(v) (i)]**. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period' RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies. Mr. Suresh will not be resident during the Financial Year 2015-2016 as he did not stay in India during the relevant previous financial year i.e. 2014-15.

However during the FY 2015-16 Mr. Suresh will not be considered as resident as he left India on 15th July, 2014. He is determined to be person Resident outside from 16th July 2014 for the FY 2015-16. Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May , 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further provision to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

#### Question 48

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

**(Study Material)**

**Answer 48**

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999):

According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed. As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and Transactions which require RBI's prior approval for drawl of foreign exchange

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange

exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

#### **Question 49**

**Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:**

**(A) US \$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.**

**(B) Gift Remittance amounting US \$10,000.**

**Advise him whether he can get Foreign Exchange and if so, under what condition(s)?**

**(MTP Oct'18, Old & New SM)**

#### **Answer 49**

(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US\$ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further provision to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US \$ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US \$ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US\$ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

## **Topic 12 Adjudication and Appeal Process under FEMA**

### **Descriptive Question**

#### **Question 50**

**Explain the meaning of the term “Current Account Transaction” and the right of a citizen to obtain Foreign Exchange Management Act, 1999.**

**(MTP Oct-18)**

#### **Answer 50**

The term “current account transaction” is defined in section 2(j) of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:

- (i) Payments due in connection with foreign trade, other current business, services, and short– term banking and credit facilities in the ordinary course of business.
- (ii) Payments due as interest on loans and as net income from investments.
- (iii) Remittances for living expenses of parents, spouse and children residing abroad and
- (iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.

- According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.
- Further, any person May sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the provisions of section 6(2).

#### **Question 51**

**Mr. Manthan, is deputed to India by his company to develop a software programme for a period of 3 years from 1st January, 2016. He is paid salary to his Indian bank account. On 1<sup>st</sup> May, 2018 he wants to remit his entire salaries ended till 30th April, 2018 to his home country USA. State in the light of relevant provision, the way the remittance of the salary may be done as per the Foreign Exchange of Management Act, 1999.**

**(MTP Aug'18)**

#### **Answer 51**

As per Schedule III of the FEM (Current Account Transactions) Rules, 2000, a person who is resident but not permanently resident in India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary, after deduction of taxes, contribution to provident fund and other deductions.

Accordingly, Mr. Manthan can remit the salary after payment of taxes and contributions related to social security schemes.

#### **Question 52**

**Mr. Rich, a resident of India, purchased a flat for Rs. 1 crore jointly with his daughter's children, who is presently residing in USA. Discuss the nature of the transaction in the light of the Foreign Exchange Management Act, 1999.**

**(MTP Mar '19)**

**Answer 52**

According to a person resident in India may acquire immovable property outside India,-

(a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4 (acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.)

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

- Explanation—for the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

- Thus, Mr. Rich, can purchase the property jointly with the above specified relatives. Here Daughter's Children i.e., grandchildren being lineal descendant fall within the purview of the mentioned definition of relatives. Hence, this transaction can be valid subject to that no outflow of funds from India.

**Question 53**

**Examine the given situations in the light of the respective laws:**



**Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. Determine the residential status of robotic unit in Mumbai and that of the Singapore branch in reference to FEMA, 1999?**

**(MTP Oct'19 & May '20)**

**Answer 53**

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2 (w)].

Section 2(u) defines 'person'. Under clause (vii) of section 2(u), thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

- Section 2(v) defines 'person resident in India'. Under clause (iii) 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'.

Hence, it would be 'person resident in India'.

- However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore branch is 'person reside

## **Topic 13 Investment in Securities Abroad by Residents**

**Question 54**



Milap Limited, ated in India, has obtained consultancy services from an entity based in France for setting ftware programme in their company. The consideration for such services is required to be paid in foreign currency. The compliance officer of Milap Limited requires your advice regarding threshold limit of remittance that can be made without prior approval of RBI. You as a qualified Chartered Accountant are required to advise the compliance officer considering the provisions of Foreign Exchange Management Act, 1999 and regulations there under:

(MTP Oct-20)

**Answer 54**

As per the Foreign Exchange Management Act, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000, thereunder, there are various facilities for persons other than individuals which requires the prior approval of RBI for drawl of foreign exchange. One of such facility is remittances exceeding USD 1,000,000 per project for other consultancy services procured from outside India. In the given case, the person (i.e., MilapPLiamgiteed3) 46 obtaining such service from outside India is a body corporate, other than individual and accordingly to above provisions , where the remittances is exceeding the prescribed threshold, there Milap Limited will require to seek prior approval of RBI for drawl of such foreign exchange.

**Question 55**

**What is an overseas direct investment? Differentiate between Automatic Route and Approval Route for direct investment?**

(MTP March-21)

**Answer 55**

Direct investment outside India/overseas direct investment means investments, either under the Automatic Route or the Approval Route, by way of:

- (i) Contribution to the capital or subscription to the Memorandum of a foreign entity or
- (ii) Purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).

### **Difference between Automatic Route and Approval Route for direct investment**

Automatic route for direct investment or financial commitment outside India: An Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank. With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

Approval route for direct investment or financial commitment outside India:

- (i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.
- (ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:
  - (a) Prima facie viability of the JV / WOS outside India;
  - (b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);
  - (c) Financial position and business track record of the Indian Party and the foreign entity; and
  - (d) Expertise and experience of the Indian Party in the same or related line of activity as of the Therefore, under the val route (proposals not covered by the conditions under the automatic route) prior approva of the Reserve Bank would be required. For which a specific

application in Form ODI with the documents provided to be made through the Authorized Dealer Category – I banks.

**Question 56**

**Mr. Xing Yang a citizen of Nepal, has an ancestral residential property in India. He transferred the said property to one of his known relative residing in India on lease for 10 Years. State in the given situation the legal position on the transfer of the said property by Mr. Xing Yang.**

**(MTP March '18)**

**Answer 56**

As per the regulation 7 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Since in the given case Mr. Xing Yang transferred his immovable property in India on lease for more than 5 years without seeking prior permission of the RBI, this transfer of property is not valid in the eyes of law.

**Question 57**

**Explain the meaning of “Capital Account Transactions” under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions.**

**(MTP March '18)**

### **Answer 57**

Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India, and includes transactions referred to in sub- section (3) of section 6 of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per these regulations, capital account transactions may be classified under the following heads.

- (1) Permissible capital account transaction of persons resident in India (schedule 1)
- (2) Permissible Capital transactions of person's resident outside India (schedule II).
- (3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with. In view of the above, an Investment by person resident in India in Foreign Securities is permissible capital account transaction.

### **Question 58**

**Mr. Sugam resided in India during the Financial Year 2016-17. He left India on 15th July, 2017 for Australia for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2017 -18?**

**Mr. Sugam requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Sugam to get the required Foreign Exchange and, if so, under what conditions?**

**Answer 58**

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Sugam who resided in India during the financial year 2016-17 left on 15.7.2017 for Australia for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2017-18, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2017).

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further provision to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

**Question 59**

The Adjudicating authority under FEMA Act, 1999 based on the complaints received in writing from the officer authorized by the Central Government, had issued show cause notice to following persons accused of committing contravention under the Act, to show cause as to why an inquiry should not be held against them as follows:-

| Notice issued to whom | Alleged contravention prescribed in the show-cause notice issued                                                                                                                                                                                 | Reply by the accused person to the show- cause notice                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Global Shipping Ltd.  | Made remittance for membership of P & I club without taking the requisite approval                                                                                                                                                               | The amount for the sam was remitted through th RFC Account and EEFC Account, respectively, fo which no approval wa required. |
| Siphonic Ltd.         | Made remittance of \$ 1,10,000 to BMT Inc., a US company, without taking requisite approval, as reimbursement of preincorporation expenses incurred for setting up the company by bringing investment of Rs 18 crore into India. (1 USD = Rs 75) | Such remittance does no exceed the limit a specified, so, no approval was required.                                          |

In the context of aforesaid case-scenario, examine in the lights of the provisions of the FEMA Act, 1999 and its rules & regulations, the validity of the contentions made by the aforesaid persons?

(MTP Oct 21)

**Answer 59**

**i. Validity of Contention made by Global Shipping Ltd.**

As per Rule 4 read with the Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for making remittance for membership of P & I Club, prior approval of Ministry of Finance (Insurance Division) is required to be taken. No approval is required where any remittance has to be made for the transactions listed in



Schedule II from an RFC account and EEFC account, respectively. However, if payment has to be made for remittance for membership of P & I, approval is required even if payment is from EEFC account.

Here, Global Shipping Ltd. was required to take approval of the Ministry of Finance (Insurance Division) for making the remittance through EEFC account and in case of RFC account only, no approval was required. Thus, its contention is partially invalid.

#### **ii. Validity of Contention made by Siphonic Ltd.**

As per Rule 5 read with the Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules 2000, for remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses, prior approval of the Reserve Bank of India shall be required.

Here, Siphonic Ltd. made remittance of \$ 1,10,000 equivalent to Rs 82.5 lakhs (1 USD = Rs 75) to BMT Inc., a US company, as reimbursement of pre-incorporation expenses for bringing investment of Rs 18 crore into India.

So, the amount remitted comes to approximately 4.58% (Rs 82.5 lakhs / Rs 1800 lakhs) of the investment made into India which is lesser than the prescribed limit of 5%. However, as it exceeds \$ 1,00,000 and so approval was required irrespective of whether the amount remitted exceeds 5% of the investment or not.

Thus, the contention of Siphonic Ltd. is invalid.

#### **Question 60**

Ice Slash (P) Ltd. had taken an INR denominated ECB of Rs 10 crore from HBSG Bank, a designated AD Category-I bank. It had last filed its Form ECB 2 Return on 5th April, 2019. The bank had send over 10 reminders vide emails during the past 9 quarters to the company to file Form ECB 2 for the month of April, 2019 and thereafter but there has been no response from either the entity or its directors till date. Also, the company had not



submitted Statutory Auditor's Certificate with respect to ECB transactions for F.Y. 2019-20 and F.Y. 2020-21, respectively. During the visit by the officials of the HBSG Bank at the registered office address of Ice Slash (P) Ltd., it was found inoperative. Accordingly, HBSG bank filed form

ECB 2 Return without certification from Ice Slash (P) Ltd. with 'UNTRACEABLE ENTITY' written in bold on top. The amount outstanding from the company at that time was Rs 2 crore.

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

- (i) Whether HBSG Bank can be considered to have validly treated Ice Slash (P) Ltd. as an 'untraceable entity'?
- (ii) How the outstanding amount of Rs 2 crore shall be treated and what other actions would be taken in respect of Ice Slash (P) Ltd.?

(MTP Nov 21)

**Answer 60**

(i) Under the ECB framework, any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

(a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more. Ice Slash (P) Ltd. or its directors have not responded to over 10 remainders made by HBSG Bank during the past 9 quarters for filing returns and had not submitted Statutory Auditor's Certificate for F.Y. 2019-20 and F.Y. 2020-21, respectively. Also, the company was found inoperative by the officials of the HBSG Bank.

Thus, HBSG Bank can be considered to have validly treated Ice Slash (P) Ltd. as an 'untraceable entity' as all the conditions with respect to the same had been satisfied in the case of it.

(ii) Under the ECB framework, in respect of 'untraceable entities', the outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means.

Thus, the outstanding amount of Rs 2 crore shall be written-off from the external debt liability of the country and it might be retained by the HBSG Bank for recovery. Other actions that would be taken in respect of Ice Slash (P) Ltd. are as follows:-

No fresh ECB application by Ice Slash (P) Ltd. should be examined/processed by the AD bank; Directorate of Enforcement should be informed about Ice Slash (P) Ltd. being designated as 'UNTRACEABLE ENTITY'; and No inward remittance or debt servicing will be permitted under auto route for Ice Slash (P) Ltd.

#### **Question 61**

Mr. Ashok, a citizen of India, has been working in a company in Chicago, USA, since last 8 years and had been settled there with his family. However, the said company opened its branch in India last year and Mr. Ashok has been deputed there for a duration of 26 months from 25th April, 2020. He remitted an amount of \$ 2,80,000 on 20th December, 2021 to his family in USA. The details of salary earned by him from 25th April, 2020 to 30th November, 2021 are as follows:-

| Particulars                     | \$*      |
|---------------------------------|----------|
| Gross Salary                    | 3,50,000 |
| Contribution to Provident Fund  | 40,000   |
| TDS as per Income Tax Act, 1961 | 40,000   |

**\* Amount is converted to USD from INR.**

**You being an expert in Foreign Exchange Matters, kindly advise on the below issues:-**

**(i) How much excess amount, if any, has been remitted by Mr. Ashok to his family in USA?**

**(i) Whether the company in USA in which Mr. Ashok was deputed, can be treated as MNC under FCRA, 2010?**

**(MTP March'22)**

**Answer 61**

i. According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year but does not include a person who has come to or stays in India, for or on taking up employment in India. As per Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000,

For a person who is resident but not permanently resident in India and-

(a) Is a citizen of a foreign State other than Pakistan; or

(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

**Explanation:** For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident. Fact of the case & Conclusion: Mr. Ashok is a citizen of India working in a company in USA and has been deputed to its branch in India for a duration of 26 months i.e. for not more than 3 years and Mr. Ashok's stay in F.Y. 2020-21 was more than 182 days in India, so, he would be considered as a resident but not permanently resident in India. Accordingly, he was allowed to remit an amount upto his net salary i.e. \$ 2,70,000 (\$ 3,50,000- \$ 40,000 - \$ 40,000) while he has remitted an amount of \$ 2,80,000 to

his family in USA. Thus, the excess amount remitted by him is \$ 10,000 (\$ 2,80,000 - \$ 2,70,000).

ii. As per Explanation to Section 2(1)(g) of the FCRA, 2010,— a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,—

(a) Has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) Carries on business, or otherwise operates, in two or more countries or territories;

Facts: Mr. Ashok has been working in a company in Chicago, USA since last 8 years and the said company opened its branch in India last year. So, it appears that the said company had been incorporated in USA and operating in USA since a long time and has also started its operations in India by opening a branch in India. Thus, the company in USA in which Mr. Ashok is deputed, can be treated as MNC under FCRA, 2010 as it is carrying on business or operating in two countries i.e. USA and India, respectively.

#### Question 62

Ms. Milap had resided in India for 182 days in the financial year 2019-20. She went to UK on 1st April, 2020 and returned to India on 1st July, 2021 on an employment contract in India for a year. She completed her contract and immediately left India. Under Section 2(v) of FEMA 1999, determine the residential status of Milap for the financial years:

(i) 2020-21

(ii) 2021-22

(MTP Sep '22)

Answer 62

As per Section 2(v) of the Foreign Exchange Management Act, 1999, “Person Resident in India” means: a person residing in India for more than 182 days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

In line with the above definition, Residential status of Milap for the financial years will be as follows

(i) For FY 2020-2021: As in the preceding year 2019-2020, Milap resided for 182 days which is not in compliance with the requirement of number of days of her stay (for more than 182 days).

Here, residential status of Milap is a Person resident outside India.

(ii) For FY 2021-2022: In the preceding year 2020-2021, Milap has not resided in India as she went to UK on 1st April 2020 and returned on 1st July 2021. In this case also, the residential status of Milap is a person resident outside India.

### Question 63

**Surbhi deals in exporting of handicrafts items to abroad. On 1st January, 2022 Surbhi exported handicrafts items to UK. However, the payment of the same has not been realized even after passing of more than 9 months.**

**Explain the relevant provisions under the FEMA relating to –**

**(i) Realisation period of exported goods.**

**(ii) The delay in receipt of payment.**

**(MTP Oct 22)**

**Answer 63**

(i) Period within which export value of goods/software/ services to be realised Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 deals with the matter relating to the period within which export value of good to be realised. Regulation 9(1) provides that-

The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export, provided that-

(a) where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of shipment of goods;

(b) Further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period.

**(ii) Delay in Receipt of Payment Regulation 14 provides that -**



Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing the payment therefor if the goods or software has been sold and

b. the sale of goods and payment thereof, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf;

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

## **Topic 14 Foreign Direct Investment (FDI) and Overseas Direct Investment (ODI) Regulations**

### **Descriptive Question**

#### **Question 64**

Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose.

After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK' bank account, so she planned to purchase a second flat in the UK. Based on the above facts, answer the following questions:



**(i) Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?**

**(ii) Whether Ruchika can purchase second flat in UK after returning to India?**

**(MTP Oct 22)**

**Answer 64**

(i) Purchase of First Flat in UK Section 6(4) of the FEMA, 1999 provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

(ii) Purchase of Second Flat After returning to India and becoming the resident in India, Ruchika cannot buy another property in UK as mentioned in Section 6(4) of the FEMA.

**Question 65**

**(i) Embryonic Club in Chennai, India was established in the year, 2019. The club was meant to impart training to the aspiring engineers for the manufacturing and repairing of the spare parts of the aircrafts. After three years of functioning, the club became non-operational. The**

**Government supported and bought the said club into revival during the year, 2023. To restart the training activity, the club exported two aircraft engines and spare parts for abroad and getting them back to India within 7 months for functioning of the club activities at an earliest. The club had with it one imported aircraft on lease basis which was also re-exported abroad permanently by cancelling the lease agreement and obtaining the requisite approvals / permissions of the government agencies. However, the**

club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export.

Referring to the provisions of the Foreign Exchange Management Act, 1999 analyse whether the club has contravened the provisions of the Act relating to export and re-export of the said goods.

(ii) What will be the legal position with respect to obtaining of bonus shares and the rights inherited with such bonus shares to be transferred to a person resident in India, where a person resident in India has acquired equity capital of a foreign entity.

(MTP March '23)

#### Answer 65

(i) Export of goods / software may be made without furnishing the declaration in the following cases, namely:

(a) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;

(b) Re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.

In the instant case, since the Embryonic Club has reimported aircraft engines and spare parts after the required period of 7 months, which is beyond the prescribed time period. Such a reexport requires to be furnished with the declaration in compliance with export and re-export of goods read with FEM (Export of Goods and Services) Regulations, 2015. Hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is the contravention of the legal requirement from Club.

(ii) Regulation 6 of the Overseas Investment Rules, 2022 deals with the rights attached to the holding of equity shares.

According to it, any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

(a) may invest in the equity capital issued by such entity as a rights issue; or

(b) may be granted bonus shares subject to the terms and conditions under these rules.

Further, the person resident in India acquiring the rights under sub-rule (1) may renounce such rights in favour of a person resident in India or a person resident outside India.

In line with the stated legal requirement, any person resident in India who have been granted bonus shares, as a right on holding of equity shares of any foreign entity, may be refused such right which is inherited as such, in favour of a person resident in India.

#### **Question 66**

**Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.**

**(i) State the provisions of FEMA governing such type of transaction?**

**(ii) On applying the relevant provisions, can Mr. Mittal join her daughter in acquiring such a flat in Australia?**

**(iii) Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. Explain the relevant provisions?**

**(RTP May '18)**

#### **Answer 66**

(i) The provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015.

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, in acquiring a Flat at Australia.

(iii) Advance payment against export:

The following are the provisions governing the advance payments against exports:

(1) Where an exporter receives advance payments (with or without interest) from a buyer/ third party named in the export declaration made by the Exporter, outside India, the exporter shall be under the obligation to ensure that:

(i) The shipment of goods is made within one year from the date of receipt of advance payment.

The rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and or other applicable benchmark as may be directed by the Reserve Bank as the case maybe – Amendment as per May 22

(ii) The documents covering the shipment are routed through the authorised dealer through whom advance payment is received. Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment or towards, no remittance towards refund of unutilised portions of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve bank of India.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

#### **Question 67**

**Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1 st June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for Rs60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for Rs 65 lacs. Mr. Henry Benjamin's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible.**

**(RTP Nov '18)**

#### **Answer 67**

(a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

(b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction. Guarantee will be considered as a capital account transaction in the following cases:

(1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.

(2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by person's resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.



### **Question 68**

**Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there.**

**(RTP May '19)**

### **Answer 68**

According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Bharat wants to remit money to meet his obligation of 50% in the immovable property in USA under joint ownership with his son Arjun. Hence, as per the regulations, Mr. Bharat cannot remit amount to buy immovable property in USA.

### **Question 69**

**Mr. Raghav, a resident of India went to Australia for a business deal. He realised foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India. Mr. Raghav was left with certain unused foreign exchange. He retained the foreign exchange with him for future use.**

**(RTP May '19)**

### **Answer 69**

Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015]: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date



of his return to India, as the case may be. Retention of unused foreign exchange by Mr. Raghav is against the Law.

#### **Question 70**

**Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:**

**(i) Payment to be made for securing health insurance from a company abroad.**

**(ii) Payment of commission on exports under Rupee State Credit Route.**

**Advise whether he can get foreign exchange and if so, under what condition?**

**(RTP Nov '19)**

#### **Answer 70**

Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.

(ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco).

Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

#### **Question 71**

**A foreign tourist comes to India and he purchases an antiques from a shop. He would like to pay US\$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?**

**(RTP May '21)**

#### **Answer 71**

As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person; Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper have taken a money changers license to accept foreign currency.

#### **Question 72**

Grand Father of Mr. Narendra Kamal was farmer in undivided India and own large chunk of land. Due to partition, his grand-father along other family members evacuated from west Punjab, hence got a piece of agricultural land in compensation under Displaced Persons (Compensation and Rehabilitation) Act, 1954 in that area of east Punjab which is present day Haryana touching NCT.

Such land was inherited by Mr. Saurabh Kamal and Mr. Varun Kamal (both resides in India) in equal portion as per the testament of their Narendra' Grandfather. Mr. Narendra is only child of Mr. Saurabh. At death of Mr. Saurabh in 2005, his will was executed and piece of land belong to him transferred to Mr. Narendra. Mr. Narendra in 2002, shifted to New Zealand, there he operate an accounting KPO firm. Mr. Narendra surrender Indian citizenship and hold kiwi passport. Now the children of Mr. Narendra is also grown-up. His son want to enter in film-making hence need funds, Mr. Narendra decided to sell the land inherited by him from his father (in -turn from his Grandfather). He approached Mr. Balraj, a property linker for identifying buy for said land. It was decided that part of proceed will be used by son of Mr. Narendra and rest will be planned to invest in New Zealand only.

You are required to advise Mr. Narendra can he sell/transfer the land he owned in India as per the relevant provisions of FEMA.

(RTP May '23)

## Answer 72

According to Section 6 (5) of The Foreign Exchange Management Act 1999, it is provided that a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or the property was acquired, held, or owned by such person when he was resident in India or inherited from a person who was resident in India (like in given case inherited by Mr. Narendra in 2005). Further, a person referred to in subsection

(5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any

immovable property referred to in that sub-section as per the second schedule of the FEM (Permissible Capital Account Transaction) Regulation, 2000. Hence Mr. Narendra allowed transfer (sale) the agriculture land and after seeking permission of RBI can repatriate the sale proceeds, outside India.

### **Question 73**

**Mr. Bandha, a software Engineer, Indian Origin took employment in USA. He is a resident of USA for a long time. He desires**

- (i) To acquire a farm house in Munar (Kerala).**
- (ii) To make investment in KLJ (Nidhi) Ltd., registered as Nidhi Company.**
- (iii) To make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township.**

**Mr. Unsatisfactory, brother of Mr. Bandha residing at Chennai is aggrieved by an order made by Appellate Tribunal established under Foreign Exchange Management Act, 1999, desires to file further appeal. With references to the provisions of Foreign Exchange Management Act, 1999, analyse whether there are any restrictions in respect of the transactions desired by Mr. Bandha. Also determine the appeal procedure to Mr. Unsatisfactory on the order of Appellate Tribunal under the said Act.**

**(PYP May'18)**

### **Answer 73**

#### **(i) Acquisition of a Farm House**

Mr. Bandha, cannot acquire a farm house in Munnar (Kerala) because a person resident outside India who is a citizen of India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

#### **(ii) Making Investments in KLJ Nidhi Limited**

Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd., as a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage as Nidhi Company.

### **(iii) Making Investments in Rose Real Estate Limited**

The person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or an entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses. However, development of townships shall not be included in the real estate business. Thus, Mr. Bandha can make investment in Rose Real Estate Ltd.

Appeal to High Court (Section 35)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such Order.

However, the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Mr. Unsatisfactory can file an appeal to the High Court, as per the above procedure.

### **Question 74**

**Bharat Computer Hardware Ltd. received an advance -payment for export of high-tech hardware to a business concern in Singapore by entering into an export agreement to supply the hardware within six months from the date of receipt of advance payment. The shipment of hardware was made after 9 months and the documents covering the shipment were routed through an authorized dealer through whom the advance payment was received.**

**Examine whether Bharat Computer Hardware Ltd. has discharged its obligation in accordance with the provisions of the Foreign Exchange Management Act, 1999?**

**Is it possible to receive advance payment where the export agreement provides for shipment of goods within 15 months from the date of receipt of advance payment? Also identify the maximum rate of interest payable on the advance payment under the said Act.**

**(PYP Nov '18)**

**Answer 74**

According to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, Advance payment against exports:

(1) Where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that –

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and or other applicable benchmark as may be directed by the Reserve Bank as the case maybe – Amendment as per May 22

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.



(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment. In the light of the provisions as enumerated above,

(i) Since Bharat Computer Hardware Ltd. has exported the hardware within 9 months of the date of receipt of advance payment, it has discharged its obligations within the provisions of the Foreign Exchange Management Act, 1999.

(ii) Yes, it is possible to receive advance payment where the export agreement provides for shipment of goods extending beyond the period of one year (here in question 15 months) from the date of receipt of advance payment.

(iii) The maximum rate of interest, if any, payable on the advance payment should not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points.

#### **Question 75**

**Under the auspices of the Foreign Exchange Management Act, 1999, (the Act) examine whether the given situations fall under "Current Account Transactions" or not as defined in the Act?**

**(i) Mr. S, a resident in India, imports machinery from a vendor in UK for installing in his factory.**

**(ii) An Indian resident, imports machinery from a vendor in US for installing in his factory on a credit period of 3 months.**

**(iii) An Indian resident, transfers US\$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York.**

**(PYP Nov '20, RTP May'20)**

#### **Answer 75**



(i) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

(ii) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. Under FEMA, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j) (i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is a Current Account Transaction.

(iii) An Indian resident transfers US\$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction.

#### **Question 76**

**GOGU Limited, a resident company in India, has achieved a turnover of Rs 20,000 crore during the financial year 2019-20. The paid-up share capital and Free Reserves of the company as on 31st March, 2020 as per the audited financial statements was Rs 1500 crore and Rs 500 crore respectively. The company is planning to make an investment of INR 7800 crore in an Overseas Joint Venture in Singapore. The company approached you whether it can make the desired investment under the terms of automatic route for direct investment during the financial year 2020- 21. The equivalent currency in US \$ comes to around USD 1.05 billion. Referring to the Foreign Exchange Management (Transfer of Issue of Any Foreign Security) (Amendment) Regulations, 2004 and notifications issued by the Reserve Bank of India, decide whether there is any restriction in the above investment.**

**(PYP Jan '21)**

#### **Answer 76**

Automatic route for direct investment or financial commitment outside India: As per Regulation 6 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, an Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures (JV) or Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

Here, 'Indian Party' includes a company incorporated in India. As per the facts of the question and provision of law, GOGU Limited (Indian party) will require prior approval of the Reserve Bank of India even though its total financial commitment is within the eligible limit under automatic route [i.e.  $\{400\% \text{ of } (1500+500) = \text{Rs } 8,000 \text{ crore}\}$ ], because financial commitment is more than USD 1 billion.

#### **Question 77**

Mr. Joe, a resident in India had obtained an External Commercial Borrowing of \$ 25,000 from a foreign lender on a collateral charge of his residential property in India. Mr. Joe, however, could not repay the loan and the lender prefers the property charged to be sold in India to any person (resident in India or not) and repatriate the same proceeds to him. You are required to provide the correct legal position to the above situation in the light of the provisions of the Foreign Exchange Management Act, 1999 and Rules made thereunder.

**(PYP July 21)**

#### **Answer 77**

As per the ECB Framework, AD Category I banks are permitted to allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower.

Following are the requisite conditions for creation of Charge on Immovable Assets/ property:

(i) Such security shall be subject to provisions contained in the Foreign Exchange Management

(Acquisition and Transfer of Immovable Property in India) Regulations, 2017.

(ii) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.

(iii) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

Accordingly, in the given case, Mr. Joe, a resident in India, obtained an ECB of \$ 25,000 from foreign lender on a collateral charge of his residential property in India. He failed to repay the loan. As of that, lender prefers the property charged to be sold in India to any person whether resident in India or not so as to repatriate the sale proceeds to him.

Therefore, in line with the clause (iii) of the above stated provision, in the event of enforcement of the charge, the immovable property (Residential property of the Joe) will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

#### **Question 78**

**Hill Limited, a Public Limited company in India, obtained an External Commercial Borrowing ('ECB') of USD 50,000 dated 30th June 2020, from a foreign lender. On 2nd July**

**2021, based on mutual consent of the parties, ECB is fully converted into equity. The shares were issued to foreign lender at the par value and not at fair value. You are required to provide the correct legal position regarding the valuation of shares and state the reporting requirements by Hill Limited at the time of conversion of ECB into equity in the light of the provisions of the Foreign Exchange Management Act, 1999 and the Rules made thereunder.**

**(PYP Dec '21, MTP Sep 22 & April '23)**

**Answer 78**

Legal position regarding valuation of shares For conversion of ECB into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only. In view of the above, Hill Limited cannot convert ECB into shares at par value. It has to issue shares to the borrower at fair value at the conversion date (i.e. based on applicable pricing guidelines prevailing on the date of conversion). Reporting requirements Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

In case of full conversion of ECB into equity, the reporting to the Reserve Bank will be of the entire portion, reported in Form FC-GPR. While reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted into equity". Subsequent filing of Form ECB 2 Return is not required.

**Question 79**

**Mr. Vivek, an Indian citizen, was working in Singapore for ten years. He is currently holding assets and bank balances in Singapore and planning to settle down in India. Mr. Vivek seeks your advice as to whether he can hold, own, transfer or invest in a foreign currency, foreign security or any immovable property situated outside India as per the Foreign Exchange Management Act, 1999.**

(3 Dec '21)(MTP April '23)

**Answer 79**

A per Section 6 of the FEMA, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Here, in the given case, Mr. Vivek, an Indian Citizen, who was working in Singapore for ten 10 years, currently planning to settle in India wanted to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India.

Hence in the given case, Mr. Vivek, earned income through employment or business or vocation when he was outside India. After his settlement in India, he may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank.

**NOTE:** The residential status of Mr. Vivek that he is a 'person resident in India' is not given in the question. The word 'Indian citizen' in the question may be read as 'Indian Resident'.

**Question 80**

**Mr. MGJ, a person resident outside India, is contemplating to invest his foreign currency funds through equity contribution in an Indian company engaged in a huge township development project consisting commercial and residential complex in Bangalore (India).**

**Examine, referring to the provisions of the Foreign Exchange Management Act, 1999, the feasibility of his proposal of investing funds in the said company.**

(PYP May '22)

**Answer 80**

As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses.

Here the term "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

**Conclusion:** Accordingly, the proposal of investing funds in an Indian Company by Mr. MGJ, is feasible as the investment is for development of township as per the above stated laws.

#### **Question 81**

XYZ Private Limited is a Start-up company recognized by the Central Government. The company is intending to raise External Commercial Borrowing under automatic route of USD 3 million for 3 years in the form of partially convertible preference shares for working capital from one of the shareholders. You are requested to advise the company on the Maturity, Forms and Amount of External Commercial Borrowing permitted as per the provisions of the Foreign Exchange Management Act, 1999.

(PYP May '22)

#### **Answer 81**

XYZ Limited, based on the guidelines contained in the Master Direction No 5/2018 - 19 issued by the Reserve Bank of India, is advised as under:

ECB facility for Start-ups: AD Category-I Banks are permitted to allow Start-ups to raise ECB under the automatic route as per the following framework:

Eligibility: An entity recognized as a Start-up by the Central Government as on date of raising ECB. Maturity: Minimum average maturity period will be 3 years.



**Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or part I convertible preference shares. Amount of ECB: The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

## Question 82

ADL Limited is eligible for External Commercial Borrowing (ECB). It raised ECB of INR 100 crore on 01.01.2021 from eligible foreign lender to establish a power plant in India. As the forest and other government clearances are getting delayed, the implementation of the project is likely to be deferred by one year. Hence, the company dropped down the ECB amount of INR 100 crore and parked the proceeds, as detailed below:

(i) INR 80 crore were parked in capital market, the break-up of which is that - INR 20 crore in equity shares, INR 40 crore in secured debentures and INR 20 crore in mutual funds.

(ii) INR 20 crore in term deposits with AD Category 1 bank in compliance with all conditions. Referring to the provisions of the Foreign Exchange Management Act, 1999. Examine the validity of the parking of ECB proceeds in the manner as detailed above.

(PYP Nov 22)

## Answer 82

ECB proceeds are permitted to be parked abroad as well as domestically.

Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position. By looking at the above provisions,

(i) Parking of Rs 80 crore in capital market is not valid.



(ii) Parking of Rs 20 crore in term deposit with AD category 1 bank in compliance with all condition is valid.

### **Question 83**

A Flying Club in Indore, India was established in the year 2016. The principal activity of the club is to impart classroom and field training to the aspiring pilots. After running smoothly for first five years the club became defunct. With the initiative and support of the Government it could be revived during the year 2021. To restart the training activity the club exported two aircraft engines and spare parts for repairs abroad and getting them back to India within six months for functioning of the club activities.

The club had with it one imported aircraft on lease basis which was also re-exported abroad permanently by cancelling the lease agreement and obtaining the requisite approvals permissions of the government agencies. However, the club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export. Referring to the provisions of the Foreign Exchange Management Act, 1999, analyse, whether the club has contravened the provisions of the Act relating to export and re-export of the said goods.

(PYP Nov '22)

### **Answer 83**

Export of goods software may be made without furnishing the declaration in the following cases, namely:

- (i) Aircrafts spare parts for overhauling and/or repairs abroad subject to their reimport lerhauling repairs, within a period of six months from the date of their export;
- (ii) re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such exports.

In the instant case, since Flying Club has fulfilled the requirement with respect to export and re-export of goods in compliance with FEM (Export of Goods and Services) Regulations, 2015, hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is not the contravention from Flying Club.

#### **Question 84**

**EDC Computer Hardware Limited received an advance payment for export of high-tech hardware to a business concern in Abu Dhabi (UAE) by entering into an export agreement to supply the hardware within 14 months from the date of receipt of advance payment. Examine under the provisions of the Foreign Exchange Management Act, 1999 and decide:**

- (i) Whether it is permissible to receive advance payment in the above scenario?**
- (ii) If so, what are the conditions to be complied with in the relation to the advance payment against export in the above scenario?**

**(RTP, Nov'22)**

#### **Answer 84**

Advance payment against exports under Regulation 15 of the FEM (Export of Goods & Services) Regulation 2015.

(1) Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-

- (i) the shipment of goods is made within one year from the date of receipt of advance payment;
- (ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter- Bank Offered Rate (LIBOR)+ 100 basis points, and

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) **Exemption:** An exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

In view of the above provisions EDC Computer Hardware Limited can receive the advance payment for export of high- tech hardware to business concern in Abu Dhabi, complying the above conditions.

#### Question 85

Explain the meaning of term 'Current Account transactions' as defined under the Foreign Exchange Management Act, 1999.

(MTP Jan 2025)

#### Answer 85

According to section 2(j) of the Foreign Exchange Management Act, 1999, 'Current Account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

(i) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.

(ii) Payments due as interest on loans and as net income from investments.

(iii) Remittances for living expenses of parents, spouse and children residing abroad, and

(iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

**Question 86**

**List any seven permissible classes of Capital account transactions that a person resident in India can undertake, under the Foreign Exchange Management Act (FEMA), 1999.**

**(MTP May 2025)**

**Answer 86**

The list of permissible classes of transactions made by persons resident in India is:

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.

(k) Undertake derivative contracts

#### **Question 87**

**Analyse the following situations and comment upon the legal validity of the transactions in the light of the FEMA, 1999.**

**(1) John, a foreign national (not of Indian origin), wants to buy agricultural land in India.**

**(2) An NRI wants to open a fixed deposit account in an Indian bank using foreign currency.**

**(MTP May 2025)**

#### **Answer 87**

(1) No, said transaction cannot take place being invalid in nature. As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, the person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in agricultural. Therefore, John cannot buy an agricultural land in India.

(2) Yes the given statement or act of a NRI is valid under Schedule II(e) of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to which deposits between a resident and a non-resident are permitted. So, NRI can open NRE (Non-Resident External) or FCNR (Foreign Currency Non-Resident) deposit accounts in India, which allow foreign currency deposits.

#### **Question 88**

**Mr. P resided in India during the Financial Year 2023-2024. He left India on 15th July 2024 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be**

**his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2024-2025 and 2025-2026?**

**Mr. P requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. P to get the required Foreign Exchange and, if so, under what conditions?**

**Give your answer as per the provisions of the Foreign Exchange Management Act, 1999.**

**(MTP May 2025)**

**Answer 88**

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. P who resided in India during the financial year 2023-2024 left on 15.7.2024 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. P will be treated as person resident in India for Financial Year 2024-2025 till 16th July 2024 and from 17th July 2024, he will be considered as person resident outside India.

However, during the Financial Year 2025-2026, Mr. P will be considered as person resident outside India as he left India on 15th July 2024.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit



of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further provision to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

#### **Question 89**

**Examine the given situations in the light of the FEMA, 1999:**

- 1. LMN Ltd. had total foreign exchange earnings of USD 600 million in the last three financial years. What is the maximum amount the company can donate without RBI approval?**
- 2. STU Ltd. had foreign exchange earnings of USD 250 million over the last three financial years. It plans to donate USD 3 million to a university fund. Does it need RBI approval?**

**(MTP May 2025)**

#### **Answer 89**

The given situations can be examined in the light of the Schedule II of the FEM (Current Account Transactions) Rules, 2000. According to the Regulation, wherever, Donations exceeding one percent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, it shall require prior approval of RBI.

Accordingly, following shall be the answers:

(1) 1% of Foreign Exchange Earnings =  $(1/100) \times 600 \text{ million} = \text{USD } 6 \text{ million}$

USD 5 million limit (whichever is less) applies.

Since USD 5 million is less than USD 6 million, LMN Ltd. can donate up to USD 5 million without RBI approval.



(2) 1% of Foreign Exchange Earnings =  $(1/100) \times 250 \text{ million} = \text{USD } 2.5 \text{ million}$

Maximum limit before requiring RBI approval = Lesser of USD 2.5 million or USD 5 million = USD 2.5 million

Since USD 3 million exceeds the limit of USD 2.5 million, STU Ltd. needs RBI approval.

#### **Question 90**

Ravi, an Indian citizen, works as a software engineer for an international company. During the previous financial year (2023-2024), Ravi resided in India for 200 days. However, in April of the current financial year, he accepted a job offer in Canada and left India with a long-term work visa, planning to settle in Canada indefinitely.

Analyse the residential status of Ravi for the financial year 2024-2025, as per the provisions of the Foreign Exchange Management Act, 1999.

(RTP Sep 2025)

#### **Answer 90**

As per section 2(v) of the Foreign Exchange Management Act, 1999, the term 'person resident in India' means the following entities:

A person who resides in India for more than 182 days during the preceding financial year.

The following persons are not person's resident, in India even though they may have resided in India for more than 182 days.

A. A person who has gone out of India or stays outside India for any of the three purposes given below,

B. A person who has come to or stays in India otherwise than for any of the three purposes given below;

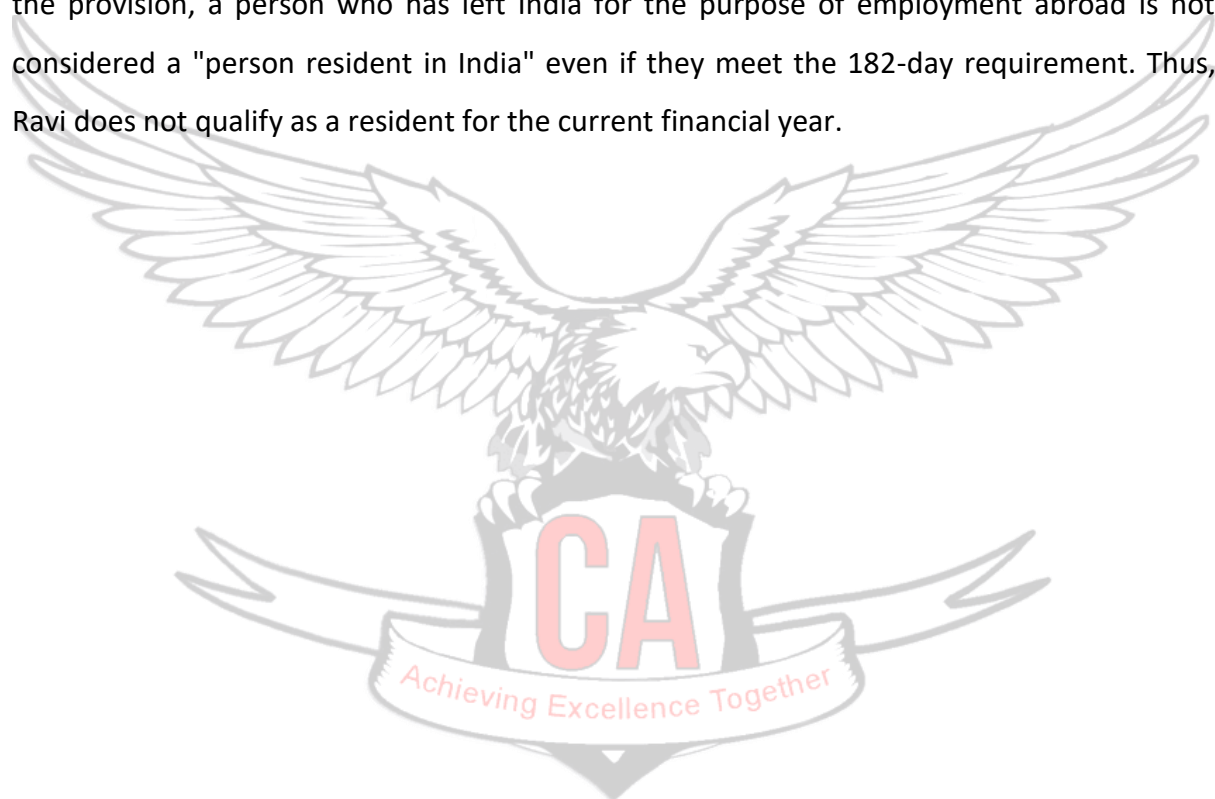
Three Purposes

(1) For or on taking up Employment

(2) For carrying on a business or Vacation

(3) For any other purpose in such circumstances as would indicate stay for an uncertain period.

Ravi's Residential Status: Ravi resided in India for more than 182 days in the preceding financial year, which would typically qualify him as a "person resident in India." However, his decision to leave India for long-term employment in Canada changes his status. According to the provision, a person who has left India for the purpose of employment abroad is not considered a "person resident in India" even if they meet the 182-day requirement. Thus, Ravi does not qualify as a resident for the current financial year.



## Chapter 16 - Case Scenarios

### Topic 1 Board Meetings – Frequency, Notice, Quorum, Conduct

#### Case Scenario 1

Ramola Textiles is a listed public company with the share capital of ten crores. The share value of the share is Rs 100/share. The company has maintained the following registers:

- (a) Register of Members indicating separately for each class of equity and preference shares held by each member residing in or outside India
- (b) Register of Debenture-holder

The company has a registered office in Ahmedabad (Gujarat) and its corporate office is situated in Mumbai. Around 17% of members who are equity share holders and 10% of the members who are preferential shareholders reside in Jaipur (Rajasthan). So out of these members 9% equity share holders and 5% preferential share holder made an application addressed to the company to shift its register of members to its liaison office in Jaipur. The company refused the request of the members by quoting that the register can only be maintained at registered office of the company. Mr. Raheem, a shareholder of the company, wants to sell all his shares in the company and wants to settle abroad. Mr. Raheem sold his equity shares to Mr. Ram on 7th May 2021. After completing all the formalities of transfer of shares Mr. Raheem left India on 10th May 2021. After three days span Mr. Ram figured out that his name was still not registered in company Register of Members (ROM). The Annual General Meeting was scheduled to be held on 25th May 2021. So, Mr. Ram wrote an e-mail to the company regarding addition of his name in ROM. But finally, after no response from the company, Mr. Ram approached the Tribunal to get his name registered in ROM.

The Tribunal passed the order on 20th May 2021 to enter Mr. Ram's name in register of members of the company. In the Annual General Meeting (AGM) the company declared to pay 10% dividend to all its shareholders out of the profits which it earned in previous financial year. Mr. Krish, a member of the company is holding 1000 equity shares in the company. Two years back Mr. Krish jointly bought fully paid 1000 equity shares of the company, with Mr. Azim, who is also a member of the company holding 1000 equity shares. Mr Krish needs to pay final call of Rs 20 per share.

After the Annual General Meeting a report on the 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 is required to be filed. A copy of the report was filed with the Registrar in Form No. MGT-15 with prescribed fees. (Chapter 7 Management & Administration)

(MTP Oct 21)

#### Multiple Choice Questions (MCQs)

1. The Tribunal passed an order dated 20.05.2021. Latest by what date the entry of Mr. Ram's name should be made in the register of members?

- (a) 25.05.2021
- (b) 27.05.2021
- (c) 30.05.2021
- (d) 31.05.2021

**Answer:** (c)

**Reason:**

As per Section 113 of the Companies Act, 2013, when a tribunal passes an order regarding the transfer or transmission of shares, the company is required to make the necessary entry in the register of members within 30 days from the date of the order.

In this case, the Tribunal passed the order on 20.05.2021. Therefore, the entry of Mr. Ram's name in the register of members should be made latest by 30.05.2021, which is 30 days from the date of the order.

Thus, the correct date is 30.05.2021.

**2. 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.**

(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.

**Answer: (d)**

**Reason:**

As per Section 118(1) of the Companies Act, 2013, the minutes of the Annual General Meeting (AGM) must be signed by the Chairman of the meeting or by the person who has been authorized by the Board in the absence of the Chairman. In the case of a report, if the Chairman is unable to sign, the signing must be done by two directors of the company. However, if there is a Managing Director (MD), then the report should be signed by at least one MD and the Company Secretary.

Since one of the signatories in this case is an additional director and there is no mention of a Managing Director or Company Secretary being involved, the signing is not in order. Therefore, the report should have been signed by two directors where one should ideally be a Managing Director or the Company Secretary if available.

**3. According to the provision of Companies Act, 2013, till what date the company should submit report of AGM to the registrar?**

- (a) 04.06.2021
- (b) 09.06.2021
- (c) 24.06.2021
- (d) 25.06.2021

**Answer: (c)**

**Reason:**

According to the Companies Act, 2013, the report of the AGM must be submitted to the registrar within 30 days from the date of the AGM.

For example, if the AGM is held on 24.05.2021, the report must be filed with the registrar by 24.06.2021, as the deadline is 30 days from the AGM date. Therefore, the correct date for submitting the report to the registrar is 24.06.2021.

## **Case Scenario 2**

**Ramji Lal is in the business of selling wheat, rice, pulses and other food grain items under the banner of Ramji Lal & Sons. Bhim Singh was working as an employee with Ramji Lal, since past 10 years and have earned good image and trust. In the absence of Ramji Lal, Bhim Singh takes care of the business of Ramji Lal as a prudent person. Ramji Lal executed**

a Power of Attorney in favour of Bhim Singh for doing the banking transactions i.e., to withdraw money, issue of cheque for making payment to creditors etc.

One day, Bhim Singh went to bank for withdrawal of Rs 50,000 to make payments for utility bills and for some petty expenses. When Bhim Singh was counting cash after taking it from the cash window, some unscrupulous persons just standing behind him, snatched the cash from his hands and disappeared quickly. Bhim Singh immediately informed the manager of the Bank, lodged FIR with nearby Police Station and also informed Ramji Lal. Police visited the bank premises and asked for the CCTV footage. However, the incident was not recorded since the CCTV were found damaged. Ramji Lal was annoyed with this news and asked Bhim Singh that he should be very careful while dealing the banking transactions, and advised to take care in future. Due to demand of the food grains in the nearby city, Ramji Lal opened a branch in that city and Bhim Singh was asked to take care of the business at the branch under the banner of Ramji Lal & Sons and shall not act beyond his delegated authority, nor he shall employ any staff or agent, without having the express authority of him (Ramji Lal). Bhim Singh started doing the business activity under the banner of Ramji Lal & Sons. He also appointed Chatur Singh, as manager there to look after this business, but this fact was not made known to Ramji Lal. Chatur Singh was a very cunning person. Since 'Ramji Lal & Sons' has established a good reputation in the market, so Chatur Singh started taking advantages of brand image. He raised money from several sources, in the name of 'Ramji Lal & Sons' and one day, ran away, without informing anyone and is absconding from that day. The fraud came to the light when creditors started demanding money from Ramji Lal on the pretext that the branch was running the business in the name and style of Ramji Lal & Sons'. (April 22)

(MTP Apr 22)

#### Multiple Choice Questions (MCQs)

1. When Bhim Singh was returning to shop after withdrawing money from the bank, theft had occurred. Who is to bear such loss?

(a) Ramji Lal will bear the loss of money due to theft.



(b) Bhim Singh will bear the loss of money due to theft.

(c) Bank will be liable since the dacoity occurred in the bank's premises.

(d) The person in charge of the CCTV in the bank is responsible.

**Answer: (a)**

**Reason:**

In this scenario, Bhim Singh withdrew money from the bank, and while returning to his shop, the theft occurred. The key factor here is that ownership of the money was transferred to Bhim Singh once he withdrew it from the bank. After withdrawal, the money was in his possession, making him the rightful owner.

The bank's responsibility ends once the withdrawal is complete, and the theft occurred outside the bank's premises, meaning the bank is not liable for the theft once the funds left the bank. Therefore, Bhim Singh, or in this case, Ramji Lal (if referring to an additional party with a responsibility), bears the loss since the funds were in transit and not under the bank's custody at the time of theft.

**2. Bhim Singh while doing business in the banner of 'Ramji Lal & Sons', appointed another person Chatur Singh as manager of the business without informing his principal, Ramji Lal. Whether Bhim Singh have the authority to do so?**

(a) It is usual to appoint staff to take care of the business. Looking to the volume of businesses, Bhim Singh has appointed Chatur Singh to manage the business.

(b) Bhim Singh has done beyond the express authority of his principal (Ramji Lal) in employing Chatur Singh as Manager of that branch.

(c) It is an implied authority to appoint sub-agent since the big business transactions cannot be handled by a single person.

(d) Chatur Singh should have directly inform to Ramji Lal that he has been appointed as sub - agent.

**Answer: (b)**

**Reason:**

In this case, Bhim Singh has appointed Chatur Singh as the manager of the business without informing his principal, Ramji Lal. Under the law of agency, an agent (in this case, Bhim Singh) cannot go beyond the scope of their express or implied authority unless the principal has authorized it. Since there was no mention of explicit or implied authority granted by Ramji Lal to Bhim Singh to appoint a manager, Bhim Singh exceeded his authority by hiring Chatur Singh.

Therefore, Bhim Singh acted beyond the express authority granted by his principal (Ramji Lal) and cannot bind Ramji Lal to the actions of Chatur Singh unless there is an express or implied consent from Ramji Lal.

### Case Scenario 3

Ronak and Bhowmik are brothers and they are engaged in the business of dairy. Ronak is having 10 cows. The monthly revenue and expenses of the cows is tabulated as under:

| S.No. | Particulars                                                                                                              | (Rs)     |
|-------|--------------------------------------------------------------------------------------------------------------------------|----------|
| 1.    | Revenue:<br><br>(25 litres per cow per day) *(10 cows) * (Sale Price Rs 40 per litre) * (30 days in a month) = 3,00,000. | 3,00,000 |
| 2.    | Expenses:<br><br>i. For feeding: (300 per cow per day) *(10 cows) * (30 days in a month) = 90,000                        |          |

|    |                                                                                                                                                                                                                                                    |            |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
|    | ii. Medical Expenses (Salary to a Veterinary Doctor per month: 10,000<br>iii. Labour's Salary: (2 person *10,000) = 20,000<br>iv. Petrol exp for milk delivery van: Lump sum = 10,000<br><br>Total Exp = 90,000 +10,000 +20,000 +10,000 = 1,30,000 | (1,30,000) |
| 3. | Savings per month                                                                                                                                                                                                                                  | 1,70,000   |
| 4. | Yearly savings = 1,70,000*12 months                                                                                                                                                                                                                | 20,40,000  |
| 5. | Salary to Bhowmik for looking after Ronak's Dairy business:<br>10,000*12 = 1,20,000                                                                                                                                                                | (1,20,000) |
| 6. | Less: Contingency Expenditure                                                                                                                                                                                                                      | (20,000)   |
| 7. | Net Revenue to be collected (after a year)                                                                                                                                                                                                         | 19,00,000  |

Ronak's son Chirag is doing Engineering in Dairy Science from Denmark and is in Final Year. He learnt a lot by his engineering education and want to invite his father to know the technical aspects of dairy business. Chirag insisted his parents to come to Denmark and stay for a year to learn the nitty gritty of the dairy business and also enjoy the life in travelling nearby places. Ronak, talked to his brother Bhowmik and explained his plan to visit to Denmark for a year and requested to take care of his cows. The labourers are engaged for the maintenance of cows and delivery of the milk, and Bhowmik is just to have a watch over it, collect the revenues etc. and take care of the cows, till he returns back from Denmark. Ronak also offered Bhowmik that for taking care of his dairy business, he will pay to him Rs 10000 per month. Ronak also told Bhowmik that the cows are covered under the Insurance Policy, for which he has already paid advance premium and also shared the Insurance Policy with Bhowmik. However, Ronak did not disclosed that one cow is under sickness, it very often falls sick and needs to be taken care. Bhowmik agreed and the cows were shifted to Bhowmik's Dairy Farm House.

Ronak and his wife went to Denmark to stay with their son and to understand the dairy business there and to visit the near places. Bhowmik was now looking after the dairy

business of Ronak along with his dairy business. During the year, 2 cows gave the birth to 2 calves.

One cow, which often used to fall ill, had also influenced the other cows, as a result, one cow of Bhowmik, and one cow of Ronak which remained in close contact with this sick cow, also fell sick. All the three cows (2 of Ronak and 1 of Bhowmik) died. When the insurance claim was lodged, the insurance company refused to pass on the claim on the following reasons:

- One cow of Ronak which was running sick was not insured.
- Post mortem Report of another two cows (one of Ronak and another of Bhowmik) revealed that these two cows were in close touch of the sick cow and due to infections, these two cows also died.

When Ronak returned back to India, he demanded his cows back. Bhowmik returned 8 cows (10-2) but did not returned calves. Bhowmik informed Ronak that due to one sick cow (of Ronak) his cow also became sick and died and no insurance claim was admitted.

(RTP Nov 21)

#### Multiple Choice Questions (MCQs)

1. What was the fault on the part of Ronak (bailor) in this case?

- (a) Ronak has not taken the Insurance Policy of the sick cow.
- (b) Ronak have not informed the continuous sickness of his cow, to Bhowmik
- (c) Ronak has left the cows to his brothers and went to Denmark to enjoy the travelling and tourism.
- (d) Ronak, before going to Denmark, should have sold this sick cow.

**Answer:** (b)

**Reason:**

In the case of a bailment contract, the bailor (Ronak) has a duty to disclose to the bailee (Bhowmik) any information that is crucial for the safekeeping or use of the property being bailed, especially if it affects its condition or usability.

Here, Ronak failed to inform Bhowmik about the continuous sickness of the cow, which could have been important information for Bhowmik to manage or care for the cow properly. This is a clear breach of his duty to inform the bailee of any material facts regarding the condition of the cow.

Had Ronak informed Bhowmik about the cow's illness, Bhowmik might have taken special care or made arrangements accordingly. Since this was not done, Ronak's fault lies in not disclosing the cow's sickness to Bhowmik.

**2. Can Bhowmik claim damages for loss of his cow, which died, since this cow, remained in the close contact of the sick cow of Ronak:**

- (a) Ronak is not liable for such loss.
- (b) Bhowmik should himself take care of his cow.
- (c) Ronak is liable to pay the price of the deceased cow of Bhowmik, since this cow died on account close contact of sick cow of Ronak.
- (d) Bhowmik should be vigilant in taking care of the cows.

**Answer: (c)**

**Reason:**

Under the law of bailment, the bailor (Ronak) has a duty to ensure that the property (in this case, the cow) is in a condition that will not harm the bailee's (Bhowmik's) property. Since Ronak failed to inform Bhowmik about the continuous sickness of his cow, and this sick cow was in close contact with Bhowmik's cow, the death of Bhowmik's cow is directly linked to Ronak's negligence in failing to disclose the sickness.

Therefore, Ronak's failure to inform Bhowmik about the sickness of the cow constitutes a breach of his duty as a bailor, making him liable for the loss of Bhowmik's cow. Ronak would be required to compensate Bhowmik for the loss of his cow, as the death occurred due to the sick condition of Ronak's cow.

**3. Whether Bhowmik is responsible to give delivery of two calves which took birth during the year, when Ronak was on his tour to Denmark:**

(a) Bhowmik is not bound to give delivery of two calves, since he has already lost his own cow due to mistake of not disclosing the sickness of Ronak's cow by him (Ronak).

(b) Bhowmik is duty bound to hand over the delivery of two calves.

(c) Ronak should not insist for delivery of the calves.

(d) Bhowmik can keep the calves with him as the calves were born when the cows were in Bhowmik's custody.

**Answer: (b)**

**Reason:**

In a bailment relationship, the bailee (Bhowmik) has a duty to take care of the property (the cow) during the term of the bailment and to return the property, or any increase from it (in this case, the calves), as per the conditions of the agreement or law.

Since the calves were born while the cow was in Bhowmik's custody, they are considered "product of the cow". Therefore, Bhowmik, as the bailee, is legally bound to deliver the two calves to Ronak (the bailor) upon request, as the calves are considered part of the bailment property.

Even though Bhowmik's cow died due to the sick condition of Ronak's cow, this does not relieve Bhowmik of his obligation to deliver the calves. The calves are a natural increment of the cow and belong to the bailor (Ronak), so Bhowmik is required to hand them over.

**4. Bhowmik returns only 8 cows, since 2 cows of Ronak died. Whether Ronak is entitled to claim damages for 2 cows:**

- (a) Ronak is not entitled to claim damages.
- (b) Ronak is entitled to claim damages only, if he can prove that Bhowmik has not taken care of the cows as a prudent person, not taken the medical help of the doctor etc.
- (c) Bhowmik should morally paid the loss of cows to his brother Ronak
- (d) Bhowmik should not claim his salary, since Ronak has already suffered the loss of two cows.

**Answer: (b)**

**Reason:**

Under the law of bailment, the bailee (Bhowmik) has a duty to take care of the property (the cows) as a prudent person would. This means Bhowmik must ensure the cows are well taken care of, including providing necessary medical attention. If the cows die due to Bhowmik's negligence (such as not seeking medical help for the sick cows), then Ronak (the bailor) is entitled to claim damages for the loss of the two cows.

However, to claim damages, Ronak must prove that Bhowmik failed to fulfill his duty of care. If Bhowmik can show that he took reasonable care and the cows died due to reasons beyond his control, then Ronak would not be entitled to any compensation.

Thus, the claim for damages depends on whether Bhowmik was negligent in his duties or not.

**Case Scenario 4**



Yukti has opened a showroom of electronic goods, viz: Air-Conditioner, Colour TV, Refrigerator, Washing Machines etc. which are commonly used for house- hold purposes. She also has a godown, in which the white goods are stored.

Since the electric items are costly and require heavy investment, so she availed a working capital finance from OKEY Bank Ltd. (the Bank), by pledging the white goods lying in her godown, with the Bank. The Bank put its lock, on the godown and whole of white goods were now in possession of the Bank. The Bank granted a working capital finance of Rs 100 lakhs to Yukti by keeping the pledged goods.

The drawing power limit (DP Limit) was kept as 60% of the value of the goods pledged. As and when, Yukti needs to withdraw some white goods from the godown, she requests the Bank, deposits the value of goods to be withdrawn. A godown keeper of the Bank comes with her, opens the lock of the godown and allows Yukti to draw the specified goods, of which she has made payment to the Bank.

The Bank got the comprehensive insurance policy on the value of the goods pledged to cover it from theft, fire, flood and earthquake etc.

Yukti, after some time, availed another loan of Rs 20 lakh from the same Bank for her sister's marriage. This was a personal loan and no security was insisted by the Bank. Yukti hired a locker from the Bank, in which she kept some jewellery, which was to be given to her sister on her marriage.

After a year, Yukti decided to transfer its running business to Shekhar, for which Shekhar paid the amount to Yukti as agreed between them. Yukti thereafter repaid all the outstanding loan amount given by the Bank towards the working capital finance and asked the Bank to open the lock of the godown, to get goods, in order to hand over the same to Shekhar. However, there was some dispute over the insurance charges paid by the Bank. The Bank insisted to first pay the interest amount then only it will allow her to remove the goods. The Bank also asked Yukti to settle her personal loan account and only thereafter the Bank will allow to take the goods lying in the godown.

(RTP Nov '22)

### Multiple Choice Questions (MCQs)

**1. In the light of the given facts, state which statement is correct as regards the right of the Bank on retaining of the goods lying in the godown.**

- (a) When the outstanding amount taken for working capital, has been paid, the Bank cannot retain the goods
- (b) The Bank can retain the goods till all the charges, including the interest, insurance and other charges are paid by Yukti
- (c) The Bank can retain only a portion of the goods to cover its dues and may release the rest of the goods.
- (d) The Bank may first release the goods and then for recovery of its dues file suit against Yukti:

**Answer: (b)**

**Reason:**

In the case of a pledge, the bank (as the pledgee) has the right to retain the goods pledged by the borrower (Yukti, in this case) until the full repayment of the outstanding dues, which includes not just the principal amount but also interest, insurance, and other charges as agreed upon in the pledge agreement.

Since the goods have been pledged as security for the loan, the bank has a right of retention until all charges are cleared by the borrower. This right protects the bank from potential non-payment of the dues.

Thus, the bank can hold onto the goods until all the amounts owed, including any additional charges like interest and insurance, are fully paid by Yukti.

**2. If in the given case, Yukti pays all the expenses (including the disputed insurance premium) but the Bank insist to clear the personal loan account also, then only it will release the goods. Determine whether the Bank is entitled to do so:**

(a) Yes, the Bank can do so

(b) The Bank can sale the part amount of the goods lying in the godown in order to liquidate the personal loan account of Yukti

(c) The Bank can ask the Shekhar to give guarantee for the personal loan taken by the Yukti

(d) No, the Bank has no right to retain the goods pledged with it, since the personal loan was not taken on the security of such goods:

**Answer: (b)**

**Reason:**

In this case, the bank holds a pledge on the goods in the godown as security for the working capital loan. While the personal loan is not directly secured by these goods, the bank has a lien on the pledged goods. The bank is legally entitled to sell a portion of the pledged goods to recover its dues from Yukti. This is because the goods are still in the bank's possession, and it can use them to recover the outstanding loan balance, regardless of whether the personal loan is secured by the same goods.

However, this action is contingent on the bank's right to retain or sell the goods in case of default. Since the personal loan is not tied to the pledged goods, the bank cannot directly use the goods for recovery, but it has the option to liquidate or sell a portion of the goods to cover Yukti's dues related to the personal loan as part of its right to recover outstanding amounts.

**3. Yukti disputed the amount demanded by the Bank towards the insurance premium paid by the Bank. Yukti emphasised that there was no need to take the insurance policy on the**

**goods pledged, because it is an extra burden on the part of the borrower. Identify the correct statement:**

(a) Yes, it is an extra financial burden on the part of the borrower and is dependent on the will of the borrower.

(b) Every bank has a policy to get the security insured on which it grants loan, so in this case also, the Bank for the purpose of protection of the goods took the insurance policy and paid the premium, so demand of the Bank is justified.

(c) The godown is just near by the Police Station, hence there should not be the fear of theft. No need of taking insurance policy.

(d) Happening of the Earthquake and Flood are the remote possibility, so the expenses on the insurance premium could have been avoided as it is not a mandatory requirement.

**Answer: (b)**

**Reason:**

When a bank provides a loan secured by assets (in this case, goods in a godown), it typically takes measures to protect its interests. Insuring the pledged goods is a standard banking practice to mitigate any risks, such as theft, fire, or other natural calamities that may result in the loss or damage of the collateral. This insurance is generally a requirement by the bank, as it ensures that the value of the pledged goods is protected, thus safeguarding the bank's financial exposure.

In this case, the bank paid the insurance premium to protect the goods. The demand for reimbursement of the insurance premium from Yukti is therefore justified because it was part of the loan terms and an expense incurred to protect the collateral. The borrower cannot dispute this as an extra burden since it is a standard practice to safeguard both the lender's and borrower's interests.

Thus, the bank's demand is legitimate, and Yukti should bear the cost of the insurance premium as part of the loan conditions.

**4. When Yukti is availing the working capital finance from the Bank on the security of the white goods, by submitting these goods in the custody of the Bank, said course of transaction can be termed as:**

- (a) Bailment of goods
- (b) Pledge of goods
- (c) Safe keeping of goods
- (d) Lessor and Lessee relationship

**Answer: (b)**

**Reason:**

In the given scenario, Yukti is availing working capital finance from the bank and providing white goods as security for the loan. The key characteristic of a pledge is that the borrower (Yukti) provides goods as security for a loan, and the lender (Bank) takes physical possession of the goods until the loan is repaid.

The relationship between Yukti and the bank is defined as pledge, where the goods are held by the bank as collateral to ensure the repayment of the loan. This is different from bailment (where goods are delivered for a specific purpose without any financial interest) or safe keeping (which refers to a situation where goods are simply held in trust).

Therefore, the correct legal relationship here is a pledge of goods.

## **Topic 2 Resolutions by Circulation – Applicability and Procedure**

### **Case Scenario 5**

Atul want to wear a new coat for his seminar which is to be held (after 15 days). He bought cloth material from the market to make a new coat. Atul gives material to Babu, a tailor, to make the coat. Babu promised Atul to deliver the coat within the stipulated time of one week. Atul paid 10% advance so that he stitches his coat on priority basis. After one week when Atul went to the tailor he was shocked to see that the coat is still unstitched. The tailor demanded two more days' time from Atul to stitch the coat, but Atul refused and asked the tailor to return his piece of cloth. Tailor retained the cloth and asked Atul to pay the price, as he already did the cutting of the cloth. Yash, Atul's friend left his car at the company's authorised showroom for servicing. As Yash house is located in the remote area of the city, so he instructed the manager of the showroom to park the vehicle at Atul's residence. So as per Yash's instructions the car was sent to Atul house after servicing. The worker of the showroom parked the car outside Atul's residence and handed over the key to Atul's servant. Next day when Yash went to pick up his car he found that somebody has hit the car while it was parked there. Yash found a mobile phone and a branded pen lying on the road outside Atul's residence. Yash tried to enquire about the real owner. He took the phone and pen with him and kept it in the drawer of his study table. Next day, Yash's wife came to the room searching for a pen, she saw the pen and took the pen and went out. Unfortunately, Yash's wife lost the pen. After two days the real owner, approached him (Yash), Yash humbly delivered his phone and apologized for the loss of pen. (Chapter 11 The Indian Contracts Act, 1872)

(MTP Oct 21 & Sep '22)

#### Multiple Choice Questions (MCQs)

1. According to the provisions of the Indian Contract Act, 1872, do you think the tailor has a right of lien over the cloth?

- (a) Yes, he is entitled to retain the coat until he is paid.
- (b) No, he has not completed the work within the agreed time
- (c) Yes, in case of particular lien he can retain the cloth.
- (d) No, but he is not required to return the advance amount



**Answer: (b)**

**Reason:**

Under the Indian Contract Act, 1872, a lien is a right to retain goods until a debt owed by the owner of those goods is paid. However, the right of lien arises only when the work has been completed or services have been rendered. In this case, if the tailor has not completed the work (such as stitching the cloth into a coat) within the agreed time, he cannot exercise the right of lien.

In the context of particular lien, the tailor would have the right to retain the goods only if he has completed the work or services. Since the work was not completed, he loses the right to retain the cloth under the lien. Therefore, option (b) is correct.

**2. Referring to the provision of the Indian Contract Act, 1872, what are the repercussions, when Yash found goods belonging to another and takes them into his custody? Choose the correct statement.**

- (a) He becomes subjected to the same responsibility as of a bailee.
- (b) Merely possession of the goods does not make him a bailee
- (c) No act is done by owner for placing the goods in the possession of Yash, so he cannot be treated as bailee.
- (d) In the absence of any express or implied contract, absolves Yash's liabilities as bailee

**Answer: (a)**

**Reason:**

According to the Indian Contract Act, 1872, a bailee is someone who temporarily holds goods or property on behalf of the owner, under a contract (express or implied). Even if Yash finds goods belonging to another and takes them into his custody, he assumes the responsibilities of a bailee. This is based on the concept of "finding of goods" under Section



71 of the Indian Contract Act, which states that when a person finds goods belonging to someone else, they are considered a bailee for the purpose of safekeeping.

Yash's duties would include taking reasonable care of the goods, and if he fails to do so, he could be liable for any loss or damage to those goods. This makes (a) the correct answer.

#### **Case Scenario 6**

**Mr. Ajay is a renowned finance professional with wide experience in banking operations. Due to his experience, he has been appointed as director on the Board of various companies. He is working as the Executive Director- Finance of Doon Carbonates Limited (DCL) for the past 4-5 years and heading the finance department there. As per the object clause of the Memorandum of Association of DCL, it can raise funds by way of loans for the advancement of its business. Articles of Association of DCL authorizes the directors to borrow up to INR 50 lakhs on behalf of the company after passing a valid board resolution and any loans for amounts exceeding the above limit can be raised only after approval at a general meeting. Board of Directors of DCL raised INR 80 lakhs from Srikant Finance Services after passing a board resolution and out of this amount, INR 60 lakhs was used to pay a legitimate liability of DCL by the directors. DCL is a widely held company with around 5600 members as per the members register.**

**The 21st AGM of DCL is convened on 1st September 2020. A total of 34 members attended the meeting out of which 7 members attended through proxy. 6 of such members are represented by single proxy, Mr. Das. The articles of DCL is silent about the quorum.**

**Mr. Ajay is also director of Padmani Silk Limited (PSL). PSL was established around 25 years back as a private company operating as a micro business with 10 employees in a three- room building. During these years, the company grew exceptionally and went public and was also listed on SME exchange. PSL declares the interim dividend out of the previous year's undistributed profit on 31st August anniversary of the company. PSL deposited the amount of said 2020 on the occasion of the 25 dividend in a separate bank account with a NBFC on 4th of September, 2020.**

Mr. Ajay hails from a farming family and carries on the business of cultivation and milling of paddy. He is also the sole member of New-Deal Limited (NDL), a one person company. NDL is operated as rice sheller and also deals in trading of high quality basmati rice. Mr. Ajay's father is operating as a nominee for the purposes of this OPC. The accounts department of NDL prepared and published only Profit and Loss Account and Balance Sheet as a financial statement and did not prepare cash flow statements and explanatory notes to accounts. A statement of changes in equity is not required in the case of NDL.

(RTP May 21)

#### Multiple Choice Questions (MCQs)

1. Regarding compliance for declaration and distribution of Interim dividend by PSL, which of the following statements is correct? (Chapter 8 Declaration & Payment of Dividend May 21)

- (a) There is a violation of the provisions because interim dividend can only be declared out of current year's profits.
- (b) There is no violation at all, and all the provisions prescribed by law have been complied with.
- (c) There is a violation because the bank account shall be designated and shall be one of existing banks account of company.
- (d) There is a violation because the bank account shall be opened with scheduled banks only.

**Answer:** (d)

**Reason:**

According to the provisions laid out under the Companies Act, 2013, and the relevant rules on dividend declaration and payment, the interim dividend must be paid through a designated bank account. The rules specifically state that such an account should be opened only with a scheduled bank.

A scheduled bank is one that is included in the Second Schedule of the Reserve Bank of India Act, 1934, and is recognized by the RBI. This ensures that the account used for the payment of dividends is properly regulated and monitored, thus preventing any potential misuse or discrepancies.

Therefore, if the company uses a non-scheduled bank or fails to open a designated account with a scheduled bank, it would be in violation of the requirements. Hence, the correct statement is (d).

**2. Which of the following statements is correct, with reference to the requirement for financial Statements of 'New Deal Limited' (One Person Company)**

- (a) NDL fails to meet the requirement because its financial statement do not include explanatory notes to accounts
- (b) NDL fails to meet the requirement because its financial statements do not include cash flow statement
- (c) NDL fails to meet the requirement because its financial statements do not include explanatory notes to account and cash flow statement
- (d) NDL has complied with the requirements related to financial statements

**Answer: (a)**

**Reason:**

Under the Companies Act, 2013, for a One Person Company (OPC), the financial statements must include certain basic components, which typically include:

1. Balance Sheet
2. Profit and Loss Account (Income Statement)
3. Cash Flow Statement (although it is generally not required for OPCs unless specified)

#### 4. Explanatory Notes to Accounts

For OPCs, the requirement to prepare a Cash Flow Statement is generally not mandatory unless the company is listed or falls under specific criteria. However, explanatory notes to accounts are always required as they provide additional information regarding the financial statements, helping users understand the underlying figures and policies.

Therefore, the omission of explanatory notes to accounts would result in non-compliance with the financial statement requirements. Hence, (a) is the correct answer.

#### 3. The borrowing of the sum of INR 80 lakhs by the directors of DCL is

- (a) Void-ab-initio
- (b) Void
- (c) Voidable
- (d) Valid

**Answer:** (c)

**Reason:**

Under the Companies Act, 2013, a company cannot borrow money or take loans from its directors unless explicitly authorized by the company's Articles of Association or with the prior approval of the shareholders. If the directors of DCL (the company) borrow money without such authority, the transaction is voidable, meaning that it is not automatically invalid but can be canceled by the company or the shareholders.

**Void** would mean the transaction is entirely without legal effect from the beginning, but in this case, the transaction isn't automatically void.

**Voidable** means the company has the option to either ratify or reject the borrowing after considering the circumstances, which is why the answer is "voidable."

**Void-ab-initio** would apply if the borrowing was prohibited by law or the company's constitutional documents entirely.

Therefore, since the borrowing by the directors is not automatically void but can be contested, it is voidable.

**4. Regarding the validity of the 21st Annual General Meeting of DCL, which of the following statements is correct?**

- (a) The meeting doesn't have a quorum, because 30 members need to be present in person at the meeting.
- (b) The meeting is valid and has a quorum because 30 members are present at meeting either personally or through a proxy.
- (c) The meeting is valid and has a quorum, because only 5 members are required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand
- (d) The meeting is valid and has a quorum, because only 15 members are required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand

**Answer: (a)**

**Reason:**

Under the Companies Act, 2013, for a private company, the quorum requirement for an Annual General Meeting (AGM) is typically two members personally present. However, for a public company (like DCL, which is implied here), the quorum for a General Meeting is specified by the company's Articles of Association. The common requirement for a public company with more than 1,000 members is that two members must be present in person. If the number of members exceeds 1,000 but is less than 5,000, 30 members are required to be present, either personally or by proxy, to establish a quorum.

Thus, if the quorum requirement in DCL's case is 30 members, the absence of sufficient members would mean that the meeting doesn't have a quorum and therefore is invalid.

### **Topic 3 Powers of Board of Directors – Section 179 & 180**

#### **Case Scenario 7**

Mr. Hari Dutta is an Operation head of North India region of Hilton Ltd. He was a full-time employee of the company. Mr. Hari draws a monthly salary of Rs. 1,00,000. On 14th May 2020, Mr. Hari applied for a loan of Rs. 10,00,000, to buy 1000 fully paid-up equity shares of Rs. 1000 each in Mohan Limited (holding company of Hilton Ltd). The company refused to grant loan to Mr. Hari saying he is not eligible for the loan for the said amount of Rs. 10,00,000.

Hilton Ltd. is a listed company, authorized by its articles to purchase its own securities. According to the balance sheet and Annual statements of the company for the year 2020-21:

- Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of Rs. 100 each, fully paid-up)
- Free Reserves Rs. 30,00,00,000
- The security premium account Rs. 20,00,00,000
- The secured and unsecured Debt Rs. 50,00,00,000
- Accumulated losses Rs. 50,00,000

The company issued a circular as it wanted to buy back shares worth Rs. 10,00,00,000 from the funds it has in its free reserve and security premium account. The board of directors passed a resolution for the same on 28th April, 2021.



The company has filed with the Registrar of Companies a Letter of Offer in e-form SH-8 on 1st May 2021. The company had also filed with the Registrar of Companies, along with the letter of offer, a declaration of solvency. The Letter of Offer was dispatched to all the shareholders on 3rd May, 2021. The company announced to avail the buy back offer latest by 10th May, 2021. Many shareholders who approached the company after the due date were not considered applicable for this buy back scheme. The shareholders raised strong objection on giving just 7 days time to avail the offer by the company.

A special resolution has been passed at a general meeting of the company authorizing the buy-back of shares, which was accompanied by an explanatory statement containing the particulars required to be mentioned as per the provisions of the Companies Act, 2013. (Chapter 4 Share Capital & Debentures)

(MTP Nov 21)

#### Multiple Choice Questions (MCQs)

1. The company has planned to buy back shares worth rupees 10,00,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?

- (a) Rs. 2,00,00,000
- (b) Rs. 5,00,00,000
- (c) Rs. 7,00,00,000
- (d) Rs. 8,00,00 000

**Answer:** (b)

**Reason:**

According to the Companies Act, 2013 and the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, the maximum amount of shares that a company can buy back is regulated by a percentage of the company's paid-up capital and free reserves.



- A company is permitted to buy back its shares up to 25% of its paid-up capital and free reserves in a financial year.

So, if the company has planned to buy back shares worth Rs. 10,00,00,000, it can only buy back 25% of its paid-up capital, which is a maximum of Rs. 5,00,00,000.

Thus, the company is allowed to buy back shares worth Rs. 5,00,00,000 based on the regulatory limit.

**2. Suppose the company intends to buy back some partly paid equity shares. Which of the following statement is correct?**

- (a) The company is allowed to buy back partly paid equity shares
- (b) The company is allowed to buy back partly paid equity shares if the total amount of such partly paid equity shares does not exceed 2% of the total buy back.
- (c) The company is allowed to buy back partly paid equity shares but it cannot buy back partly paid other specified securities.
- (d) All the shares or other specified securities for buy back must be fully paid up.

**Answer: (d)**

**Reason:**

According to the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, and the Companies Act, 2013, only fully paid-up equity shares or fully paid-up securities are allowed to be repurchased under the buyback mechanism.

The buyback provisions clearly state that partly paid shares or other securities cannot be repurchased under the buyback offer. Therefore, all shares or securities involved in the buyback process must be fully paid up to comply with the regulations.

Thus, the company cannot buy back partly paid equity shares or any other partly paid securities under the buyback provisions.

**3. Some shareholders and officers of the company are of the opinion that it was not necessary for the company to pass a special resolution in general meeting with respect to buy back. Choose the correct reasoning:**

- (a) It was not necessary to pass the special resolution as the approval of Board had already been granted for such buy back of shares
- (b) It was necessary to pass special resolution as the amount of buy back exceeds ten percent of the total paid up equity share capital and free reserves
- (c) It was not necessary to pass the special resolution as the buy back was authorized by the articles of the company
- (d) It was necessary to pass special resolution as the amount of buy back exceeds fifteen percent of the total paid up equity share capital and free reserves

**Answer: (b)**

**Reason:**

According to the Companies Act, 2013, particularly Section 68, a company is required to pass a special resolution in a general meeting if it intends to buy back its shares. Specifically, a special resolution is mandatory if the buyback amount exceeds 10% of the total paid-up equity share capital and free reserves of the company.

In this case, since the buyback amount exceeds 10% of the total paid-up equity share capital and free reserves, a special resolution is required for the buyback to be valid. This ensures that shareholders have a say in the decision and provides an extra layer of governance and transparency for significant transactions like share buybacks.

## Case Scenarios 8

Prem and Amar are friends. Prem is the owner of three cars. Amar is a resident of Bhiwadi. He had to daily commute from Bhiwadi to Gurugram. He was using the services of various cab providers for commuting. Due to the rising prices and daily tension of booking a cab, Amar asked his friend Prem to rent one of his cars to him for a period of two month. They mutually agreed for a monthly rent of ₹ 8,000. Prem bought a new car to gift to his son on his 19th birthday. Prem's son Guddu, wanted to take his friends out for a ride in the new car for a treat. They went the famous Labela Café. Guddu found a Rado watch in the cafe; lying on the floor. Guddu tried to find the owner of the watch but all his efforts went in vain. Guddu got the watch repaired from the showroom by paying ₹ 9,500. Three days after Guddu found the watch, he came to know about the real owner of the watch, from the advertisement newspaper stating the loss of a watch in Labela Café, along with the reward of ₹ 10,000 to the finder of the watch. Guddu went to the owner to return the watch. Guddu demanded ₹ 15,000 as he had paid ₹ 9,500 for the repair of the watch.

After the expiry of one month from the date of lending the car to Amar, Prem went to Paris for 1.5 months. Prem informed Amar to return back the car at his residence. After the expiry 2 months (from the date of renting the car), Amar thought to retain the car with him for a further period of 1 month, for the ease of commuting. However, he did not inform Prem about the same and thought of paying ₹ 4,000 for this extra 15 days to Prem (Prem was already not in India for 15 days, so in any case car could not be delivered to him directly).

(MTP Oct'22)

### Multiple Choice Questions (MCQs)

1. With reference to the provision of the Indian Contract Act, 1872, which of the statement is correct?

(a) Amar can retain the car as he had no malicious intention and was ready to pay ₹ 4,000 for retaining the car for 15 days

(b) Amar being a friend of Prem is authorised to retain the car after 2 months and also Prem was not in India at that time

(c) After the expiry of 2 months, the car can be retained at least for the time of 15 days when Prem was not in India but not for the balance 15 days for which Amar was ready to pay ₹ 4,000

(d) It was not justifiable for Amar to retain the car after the expiry of 2 months (Oct'22)

**Answer: (d)**

**Reason:**

Under the Indian Contract Act, 1872, the principle of "lien" allows a person (bailor) to retain the goods until the amount due for services or expenses related to the goods is paid. However, the lien must be exercised within a reasonable period, and the retention of goods beyond that period requires valid justification.

In this case, Amar cannot retain the car after the expiry of 2 months unless there is a specific agreement or legal reason to do so. The fact that Amar was ready to pay ₹4,000 for retaining the car for an additional period is not sufficient to justify his actions if the original agreement or understanding (if any) did not permit such an extended period of retention. Once the agreed time (2 months) expired, the right to retain the car without consent or justification becomes unreasonable and unjustifiable under the Indian Contract Act, 1872. Hence, Amar is not entitled to retain the car after October 2022.

**2. According to the provision of the Indian Contract Act, 1872, choose the correct statement.**

(a) Guddu has a right to claim only the amount spent on repairing the watch.

(b) Guddu has no right to claim the prize money.

(c) Guddu can retain the watch till the owner pays him at least the prize money.

(d) The owner is not liable to pay anything to Guddu. Rather, he can sue Guddu for stealing the watch. (Oct'22)

**Answer: (c)**

**Reason:**

Under the Indian Contract Act, 1872, the concept of lien (specifically particular lien) applies in cases where a person has provided services (e.g., repairs or other improvements) on the goods of another party. In such cases, the person providing the service (in this case, Guddu) has the right to retain the goods until the payment is made for the services provided.

In this scenario, since Guddu repaired the watch, he has a right to retain the watch until the owner pays for the services rendered, which could include the prize money if it's connected to the repair work or any agreement regarding payment. This is in line with the principle of lien, which entitles a person to retain possession of the property until the debt owed is cleared.

Thus, Guddu can retain the watch until the owner compensates him, which may include the prize money, if it was agreed as part of the arrangement.

#### **Case Scenario 9**

**Mr. M. Mishra is a director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Mishra (father of Mr. M. Mishra) on 05th July 1995 as a public company. SCCL accepts a loan of Rs 1.5 crores from Mr. M. Mishra for short term purpose and the loan is expected to be repaid after twenty four months. SCCL in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. M. Mishra 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 his loan transactions are furnished in the boards' report.**

**DBSL which is an unlisted public company, also accept the deposits from the public as on 1<sup>st</sup> November 2018, which is due for repayment on 30th September 2023. DBSL also**

accepts a LAP (Loan against property) for a term of 10 years from a financial institution on 18th June 2020. Charge was created on that day, but DBSL has neglected to register the charge with the registrar. Finally, the application for registration of charge is furnished on 18th August 2020. SCCL has registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members register are residents of Nainital (Uttarakhand). SCCL has a liaison Office at Nainital. Management of the company is willing to place, the Register of Members at the Nainital Liaison Office. DBSL convene its 7th AGM on 10th September 2020 at the registered office of the company. Notice for same was served on 21st August 2020. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19.

(RTP May 21)

#### Multiple Choice Questions (MCQs)

1. Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office.

(a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL is not correct in placing it at the Nainital liaison office

(b) Register of members cannot be kept at any other place by SCCL, without passing an ordinary resolution

(c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there

(d) Register of members cannot be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there



**Answer: (c)**

**Reason:**

According to the Companies Act, 2013, the register of members must typically be kept at the registered office of the company. However, it is allowed to be maintained at another place if certain conditions are met.

One of the conditions is that if more than 1/10th of the total members of the company reside in a particular area, the company may pass a special resolution to maintain the register of members at a place other than the registered office, but within the same city or town. This provision enables companies to accommodate members who are geographically distant from the registered office.

Since in this case, more than 1/10th of the members of SCCL reside in Nainital, the company can maintain the register of members at the Nainital liaison office after passing a special resolution. Therefore, the statement in option (c) is correct.

**2. With reference to deposit accepted by DBSL and its duration, you are required to identify which of the following statements is correct:**

(a) There is no requirement relating to the duration of deposit, DBSL can accept a deposit for any duration.

(b) Since DBSL is an unlisted company, provision relating to the duration of the deposit is not applicable.

(c) There is a provision of a minimum duration of six months, but no upper cap to length is provided. Hence deposit accepted by DBSL is in compliance to provisions of Law.

(d) Acceptance of deposits by DBSL is in violation of provision of law, because the maximum period of acceptance of deposit cannot exceed thirty -six months.

**Answer: (d)**



**Reason:**

According to the provisions of the Companies Act, 2013, and the rules governing the acceptance of deposits by companies, the duration for which a company can accept deposits is regulated. Specifically:

For public companies, the duration of a deposit must not exceed 36 months (3 years).

For private companies, the duration of a deposit can be up to 36 months, but it is subject to other conditions as per the law.

In this case, since DBSL (assuming it is a company covered by the relevant deposit provisions) has accepted deposits for a period exceeding 36 months, this would be in violation of the provisions of law. Hence, option (d) is correct because the maximum duration for accepting a deposit cannot exceed 36 months, regardless of the company's status as listed or unlisted.

**3. With reference to application to the registrar for registration of charge by DBSL, which of the following statements is correct?**

- (a) The charge cannot be registered now, even if the Registrar permits the same.
- (b) The charge can be registered, if registrar permits with payment of ad-valorem fee.
- (c) The charge can be registered, if registrar permits but with payment of an additional fee.
- (d) The charge can be registered, with payment of a standard fee.

**Answer: (b)**

**Reason:**

Under the Companies Act, 2013, a company is required to register a charge with the Registrar of Companies (ROC) within a specific time frame (30 days from the date of

creation of the charge, with an extension of up to 300 days on payment of an additional fee).

Ad-valorem fee refers to the fee calculated as a percentage of the value of the charge.

If the company fails to register the charge within the prescribed period, the Registrar may still permit registration, but the company will need to pay an ad-valorem fee, which is a fee based on the value of the charge, in addition to the standard registration fee.

Thus, option (b) is correct because, under such circumstances, the charge can be registered with the payment of ad-valorem fee as per the provisions in the law.

**4. With reference to the loan advanced by Mr. M. Mishra to SCCL, state whether the same is to be classified as a deposit or not?**

- (a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit.
- (b) Deposit, because the tenor of the loan is for a period of more than six months.
- (c) Not a deposit, because such amount is recorded as loan in books of account of SCCL.
- (d) Not a deposit, because the written declaration is provided by Mr. M. Mishra, who was a director when the loan was advanced that the loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

**Answer: (d)**

**Reason:**

Under the Companies Act, 2013, loans given by directors to the company are not classified as deposits if the director provides a written declaration that the loan is not being funded by borrowing from others or by accepting loans or deposits. This exemption applies as long as the loan is directly given by the director from their personal resources.

**In this case,** Mr. M. Mishra, the director, provided a written declaration confirming that the loan was not funded by borrowed money. Therefore, the loan advanced by him is not classified as a deposit under the law.

Thus, option (d) is correct because the written declaration from Mr. M. Mishra ensures that the loan is not considered a deposit.

**5. Considering the provision relating to length of Notice for AGM, pick out the right option:**

(a) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by all the members entitled to vote at AGM.

(b) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by at- least 95% of members entitled to vote thereat.

(c) Notice served by DBSL is valid because the shorter length has been consented to by 75% of members entitled to vote thereat.

(d) Notice served by DBSL is not valid, because notice given within a shorter length duration needs has to by at- least 50% of the members entitled to vote at AGM that too in writing.

**Answer: (b)**

**Reason:**

According to the Companies Act, 2013, the standard notice period for the Annual General Meeting (AGM) is 21 clear days. However, if a company wishes to give a shorter notice, it must obtain the consent of the members entitled to vote at the meeting. The law specifically requires that for a shorter notice to be valid, at least 95% of the members entitled to vote at the AGM must consent in writing.

In this case, since the notice was served within a shorter duration, it would be valid only if the consent of at least 95% of the members entitled to vote was obtained. Therefore, option (b) is the correct answer.

## **Topic 4 Committees of the Board – Audit Committee, etc.**

### **Case Scenario 10**

Kirtee Agarwal and Kishan Shaw are two friends studying in the Mumbai City College. They both are pursuing Bachelor of Commerce (Hons) and are in their Semester V. Kirtee Agarwal is also pursuing Chartered Accountancy Course. She has completed her Foundation Level and is presently preparing for the Intermediate Level. On the other hand, Kishan Shaw is interested in Fashion Designing and is preparing to become a fashion designer after completing B.COM (Hons). One fine morning over a cup of tea both Kirtee and Kishan heard two persons promising to financially help each other. One person named Mr. P promised the other Mr. Q, that he will pay him a certain sum of money on the 76th Independence Day of India. To this Mr. Q asked Mr. P to pay this sum to Mr. R (friend of Mr. Q). After a moment's thought Mr. P changed his mind and promised to pay a reduced sum of money to Mr. R along with an I-Pad. Over hearing this conversation both Kirtee and Kishan started discussing over Promissory Notes. Since Kirtee is a CA Student she shared her knowledge about Promissory notes and explained Kishan about Section 4 of the Negotiable Instrument Act, 1881.

Having heard the details Kishan was curious in his mind regarding Promissory Notes. He had the following questions for which he needed answers. Considering the above data and assuming you are Kirtee, answer the following questions of Kishan: (Chapter 12- The Negotiable Instruments Act, 1881)

(MTP Nov 21)

### **Multiple Choice Questions (MCQs)**

1. Kishan asks, 'If Mr. P promises Mr. Q that he will pay Rs. 4,00,000. However, he will pay the sum to Mr. Q on the 76th Independence day of India'. Will this promise constitute a valid Promissory Note?

(a) No. This is not a valid promissory note as it is conditional and promissory note should be unconditional.

(b) No. This is not a valid promissory note as there is no express of promise. It is a mere statement.

(c) Yes. This is a valid promissory note as the event stated in the promise is bound to happen.

(d) Yes. This is a valid promissory note as there is a promise to pay irrespective of the promise being conditional or unconditional.

**Answer:** (c)

**Reason:**

A promissory note is a written and signed promise made by one person (the maker) to pay a specific sum of money to another person (the payee) either on demand or at a fixed future date.

**In this case,** the promise made by Mr. P to pay Rs. 4,00,000 to Mr. Q on the 76th Independence Day is a conditional promise based on the occurrence of a future, identifiable event, i.e., the 76th Independence Day. Although the promise is tied to a specific date, the event (the 76th Independence Day) is certain to happen. Therefore, the promissory note remains valid as it is a clear promise to pay at a definite time, which complies with the requirement for a valid promissory note.

Thus, option (c) is correct because the event stated is bound to happen, making the promise enforceable.

**2. Kishan asked, 'when Mr. P promises to pay a friend of Mr. Q, Rs 2,00,000 along with an I-Pad, on his birthday'. Will that be a valid Promissory Note?**

(a) No. It is not a valid Promissory note as the order to pay must consist of money only.

(b) No. It is not a valid promissory note as there is no clarity on which birthday the payment will be made. It is a promise for an indefinite period.

(c) Yes. It is a valid promissory note as the maker and payee are certain, definite and different person.

(d) Yes. It is a valid promissory note as there is an express promise to pay Rs 2,00,000 along with I Pad on friend's birthday.

**Answer: (a)**

**Reason:**

A promissory note is a written, unconditional promise to pay a specific amount of money to a specified person or the bearer. According to Section 4 of the Negotiable Instruments Act, 1881, a promissory note must be a promise to pay money.

**In this case**, the promise made by Mr. P to pay Rs 2,00,000 along with an I-Pad does not comply with the requirement because it involves a promise to pay both money and a non-monetary item (I-Pad). A promissory note must involve only a monetary payment. Therefore, this promise, as it includes both money and a non-monetary item, cannot be considered a valid promissory note.

Thus, option (a) is correct because the payment must consist only of money for it to be considered a valid promissory note.

### **Case Scenario 11**

Ramesh started a new venture of on-line business of supply of grocery items at the door-step of consumers. Initially it was having the area of operations of Jaipur City only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sudhanshu who is a Chartered Accountant, suggested him to corporatize this business



form, from proprietorship business to a One Person Company (OPC). Ramesh agreed and a OPC was incorporated in the name of “Ask Ramesh 4 Online Grocery (OPC) Pvt Ltd.” (For short OPC-1). In this OPC Ramesh became the member and director and Sudha (the mother of Ramesh) was made as nominee.

After a year Ramesh got married with Rachna. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of “Rachna Milk Products (OPC) Pvt Ltd” (for short OPC-2) was incorporated with the help of his professional friend Sudhanshu. In this OPC-2, Rachna (his wife) became the member and director and Ramesh was named as Nominee. To summarise the position, the information is tabulated as under:

| Name of OPC         | Ask Ramesh 4Online Grocery (OPC) Pvt Ltd [OPC-1] | Rachna Milk Products (OPC) Pvt Ltd [OPC-2] |
|---------------------|--------------------------------------------------|--------------------------------------------|
| Member and Director | Ramesh                                           | Rachna                                     |
| Nominee             | Sudha (Mother of Ramesh)                         | Ramesh (Husband of Rachna)                 |

After some time, Sudha (the mother of Ramesh) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Suresh be made nominee in the OPC-1. When Suresh came to know this fact, he argued with Ramesh to fulfil the wish of Sudha as per her WILL (Mother of Ramesh and Suresh), but Ramesh denied this and appointed Rachna (his wife) as nominee. Aggrieved from the decision of Ramesh for not nominating him (Suresh), Suresh threatened Ramesh to take appropriate legal action against him for not honouring the WILL of mother Sudha and consulted his lawyer. Meanwhile due to continuous threatening and hot talks between Suresh and Ramesh, Rachna became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Ramesh being the nominee in OPC-2 became member and director of this OPC-2. One of the friends of Ramesh advised him to do some charitable work of providing free education to the girl



children of his native village near by Jaipur. Ramesh thought about this proposal and asked his professional friend Sudhanshu to convert this OPC-2 into Section 8 Company.

(RTP Nov 21)

### Multiple Choice Questions (MCQs)

**1. Since Rachna, being insane, lost the capacity to contract, Ramesh (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:**

- (a) Ramesh in the capacity of husband of Rachna can nominate any person as Nominee of OPC-2
- (b) Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
- (c) When no person is nominated, the Central Govt. will make nomination of such OPC-2.
- (d) When no person is nominated the Registrar shall order the company to be wound up.

**Answer: (b)**

**Reason:**

As per the provisions of the Companies Act, 2013, in the case of a One Person Company (OPC), the nominee appointed by the sole member (in this case, Rachna) becomes the member of the company in the event of the member's death or incapacity. Since Rachna lost her capacity to contract due to insanity, Ramesh, who was originally nominated by her, has become the member of OPC-2.

Once Ramesh becomes a member of the OPC, he has the right to nominate another person to become the nominee for the company, as long as he is the sole member. The nomination would need to be in accordance with the rules set by the Companies Act, 2013 and the company's articles of association.

Thus, option (b) is correct as Ramesh, now being the member, can nominate any person of his choice to be the nominee for the OPC.

**2. Whether conversion of OPC-2 into a company governed by Section 8 is permissible?**

(a) Yes, OPC can be converted into Section 8 Company

(b) No, OPC cannot be converted into Section 8 Company

(c) This OPC-2 can be converted into section 8 company, provided the Central Govt give license

(d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company

**Answer: (b)**

**Reason:**

As per the provisions of the Companies Act, 2013, One Person Company (OPC) cannot be converted into a Section 8 Company.

Section 8 companies are formed with the objective of promoting commerce, art, science, religion, charity, or any other useful object, and are typically non-profit in nature. OPC, on the other hand, is designed for a single member and is a more business-oriented structure. There are clear provisions in the Companies Act that prohibit the conversion of an OPC into a Section 8 Company.

Section 8 companies are governed under specific provisions that require the company to operate on a non-profit basis, which conflicts with the structure of an OPC.

Therefore, conversion of OPC into a Section 8 company is not permissible under the law, making option (b) the correct answer.

**3. Ramesh is a member in OPC-1 and became a member in another OPC-2 (on 2nd April, 2020) by virtue of his being a nominee in that OPC-2. Ramesh shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:**

- (a) 17th May 2020
- (b) 25th August 2020
- (c) 26th August 2020
- (d) 29th September 2020

**Answer: (d)**

**Reason:**

According to the Companies Act, 2013, an individual can be a member of only one One Person Company (OPC). However, if an individual becomes a member of more than one OPC (for example, by being a nominee in the second OPC), they must comply with the requirement and ensure that they are a member in only one OPC within a specific timeframe.

The law provides a period of 180 days from the date of becoming a member of the second OPC to meet the eligibility requirement of being a member of only one OPC. Since Ramesh became a member in OPC-2 on 2nd April 2020, the 180-day period starts from that date.

180 days from 2nd April 2020 would be 29th September 2020.

Hence, Ramesh must meet the eligibility criteria by 29th September 2020, which makes option (d) the correct answer.

**4. After the demise of Sudha (the mother of Ramesh), Rachna was nominated by Ramesh for OPC-1 as Nominee. But now Rachna has become insane, so what recourse you will suggest to Ramesh:**

- (a) Ramesh is required to nominate another person as nominee
- (b) Ramesh should wait till Rachna becomes good of her health and able to have the capacity to contract
- (c) Although Rachna has become insane, but if she is able to sign, her nomination in OPC-1 may continue
- (d) Sudhanshu (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Rachna

**Answer: (a)**

**Reason:**

As per the provisions of the Companies Act, 2013, a One Person Company (OPC) requires the nomination of a person who will become the member of the OPC in case of the death or incapacity of the original member. However, in this case, Rachna, who was nominated by Ramesh, has become insane and thus lacks the capacity to contract.

Since insanity results in a lack of contractual capacity, Rachna's nomination is no longer valid under the law. Therefore, Ramesh must nominate another person as the nominee for the OPC in compliance with the requirements of the Companies Act.

Thus, option (a) is the correct course of action.

## **Case Scenario 12**

**Bharat Sanskar Limited** having its registered office at Haridwar, is a listed public company. It is registered with an authorised share capital of Rs 300 crore divided into 30 crore equity shares of Rs 10/- each. The paid-up share capital of the company is Rs 200 crore divided into 20 crore equity shares of Rs 10/- each. The company is very renowned in manufacturing and supplying devotional items such as high-quality worship materials, fragrances, various types of decorative goods, idols etc.

The Board of Directors of the company constituted of Sagar as the Managing Director and Hari, Rahi, Sansar & Nabh as directors of the company. In the company Raju was holding the post of Company Secretary, Sonu designated as Chief Financial Officer and Moti as Assistant Accountant. The company prepared its Financial Statement for the year 2022 - 23, the Board of Directors approved the same and it was signed by the concerned authorities and thereafter submitted to the auditors on 10th May, 2023 for their report. The turnover of the company was Rs 100 crore during the year 2022-23. The auditor's report was duly received and the annual accounts with Board's report and all necessary annexures were ready on 15th July 2023 after complying with all the formalities as per company law.

The Board Meeting was called on 25th July, 2023 and the Annual General Meeting was fixed on 20th August, 2023. At the Annual General Meeting the Financial Statement along with all annexures was duly received and adopted by the members present. However, the company could not file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting, with the Registrar. It is also informed that in April, 2023, the company had destroyed all the books of account together with relevant vouchers up to financial year ending on 31st March, 2018. On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following queries given herein under: -

(RTP Nov 23)

#### Multiple Choice Questions (MCQs)

1. The Companies Act, 2013 provides that the financial statement should be approved by the Board of Directors, signed by the prescribed authorities and submitted to the auditors for their report. Accordingly, the financial statements of Bharat Sanskar Limited shall be signed by:

- (a) Sagar, Raju and Sonu
- (b) Sansar, Hari, Raju and Sonu

(c) Sagar, Sansar, Raju and Moti

(d) Sagar, Sansar, Raju and Sonu

**Answer: (d)**

**Reason:**

According to the Companies Act, 2013, the financial statements must be approved by the Board of Directors and then signed by the Chairman of the Board (if authorized), and two directors of the company. Additionally, the financial statements must be submitted to the auditors for their report.

In the given case, Sagar, Sansar, Raju, and Sonu are presumably the members of the Board of Directors, and these four individuals need to sign the financial statements to ensure compliance with the provisions of the Act.

Since the requirement is to have the financial statements signed by the Board members, the correct set of individuals in this case would be Sagar, Sansar, Raju, and Sonu (option d).

**2. As per provisions of company law, the Board's report with annexures thereto of the above company is required to be duly signed by -**

(a) Sagar only

(b) Sagar and Hari

(c) Sagar and Raju

(d) Sagar and Sonu

**Answer: (b)**

**Reason:**

As per the Companies Act, 2013, the Board's report (including annexures) must be signed by the Chairman of the Board (if authorized) and by two directors of the company. The report needs to be signed by the Chairman and at least one other director to fulfill the requirement of signing the Board's report.

In the given scenario, Sagar (presumably the Chairman) and Hari (presumably another director) are required to sign the report, as per the provisions of the law. Therefore, Sagar and Hari (option b) is the correct choice.

**3. In the above case scenario, the company failed to file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting with the Registrar. In this context, which of the following statements is correct?**

- (a) Sagar, Raju and Sonu shall be liable to a penalty.
- (b) The company, Sagar and Raju shall be liable to a penalty.
- (c) The company, Sagar and Sonu shall be liable to a penalty.
- (d) Sagar, Raju and Sonu shall be liable to a penalty.

**Answer: (c)**

**Reason:**

As per the Companies Act, 2013, when the company fails to file its financial statements, including all the annexed documents, with the Registrar of Companies (RoC) after adoption at the Annual General Meeting (AGM), the company and its officers are held liable for penalties.

The company itself is liable for non-compliance with the statutory filing requirements.

The directors, including the Managing Director (if any), are also liable for penalties if they fail to comply with these provisions.



In this case, Sagar and Sonu (presumably responsible officers, such as directors or the Chairman) will be held liable along with the company for the failure to file the required documents with the RoC.

Therefore, the correct option is (c), where the company, Sagar, and Sonu are liable for the penalty due to the failure to file the financial statement and annexures.

**4. As per provisions of the Companies Act, 2013, the act of the company in destruction of all books of account together with relevant vouchers was not correct because –**

- (a) The books of accounts etc. relating to a period not less than 6 preceding financial years are required to be kept in good order.
- (b) The books of accounts etc. relating to a period not less than 8 preceding financial years are required to be kept in good order.
- (c) The books of accounts etc. relating to a period not less than 10 preceding financial years are required to be kept in good order.
- (d) The books of accounts etc. relating to a period not less than 12 preceding financial years are required to be kept in good order.

**Answer: (b)**

**Reason:**

Under the Companies Act, 2013, Section 128(1) mandates that every company must keep books of account and other relevant records in a manner that reflects the company's financial position. The act requires the company to preserve these books of accounts for a minimum of 8 years from the end of the financial year to which they relate.

This provision ensures that the records are available for inspection and audit, as well as for compliance purposes. Therefore, destroying books of account for periods not exceeding 8 years would be a violation of the statutory requirements.

Thus, the correct option is (b) because the company is required to maintain the books of account for at least 8 preceding financial years.

**5. A method of interpretation which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.**

(a) Rule of Literal Construction

(b) Rule of Harmonious Construction

(c) Rule of Beneficial Construction

(d) Rule of Exceptional Construction

**Answer: (c)**

**Reason:**

The Rule of Beneficial Construction is a method of interpretation that aims to give effect to provisions in a way that benefits and improves the conditions of certain classes of people, especially those who are underprivileged or have historically been treated unfairly. This rule is applied to ensure that laws or statutes are interpreted in a way that promotes fairness and justice, particularly for marginalized or disadvantaged groups.

This approach focuses on the intent of the law to provide relief or benefits to certain sections of society, even if the language of the law may not explicitly state it. Therefore, the Rule of Beneficial Construction is used to interpret provisions in favor of improving conditions for those in need.

Thus, the correct answer is (c) because this rule ensures that laws are interpreted in a manner that supports the welfare of the disadvantaged.

## Topic 5 Managerial Remuneration – Limits and Approval Requirements

### Case Scenario 13

Mr. Anay, a business graduate from a leading B-School, has been running a chain of restaurants as a sole proprietor concern. The business is based in Chennai. Mr. Anay, in order to develop the business; decided to corporatize his business but he is concerned with dilution of his control over business decisions. Mr. Anay, during a journey met Mr. Dsouza; one of his old school friends. Mr. Dsouza is presently working in one of leading corporate advisory firms. Mr. Anay seeks advice from Mr. Dsouza, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the entire control in his hand. Mr. Dsouza informed Mr. Anay, about a new type of company, called One Person Company (OPC), which can be formed under Companies Act, 2013. Mr. Dsouza quoted section 2(62), which defines 'one person company' as a company which has only one person as a member. Mr. Anay felt OPC is correct form of business for him, hence he promoted an OPC 'Casa Hangout Private Limited' (One Person Company) on 14th September 2019, to which he sold his sole proprietary business and became the sole member. Mr. Anay, appointed his younger son Mr. Amar, who was 21 year old then, as Nominee to OPC. Mr. Anand who is a famous food blogger and old friend of Mr. Anay was appointed as director of OPC, Mr. Anay himself also become director of company.

Mr. Amar is a professional photographer, and went abroad for a certification course on 23rd October 2019. He came back on 1st of March 2020. He established a photo-studio as an OPC called 'Best Click Private Limited' (one Person Company) on 20th March 2020, in which Mr. Anay is nominee and he became sole member. In the mean time, Mr. Amar also gave his consent as nominee to another OPC in which his elder brother Mr. Shankar is sole member.

Mr. Anay met with an accident on 25th March 2020, in which he lost his life. Nomination clause was invoked, as a result Mr. Amar has to take charge over 'Casa Hangout Private Limited' (One Person Company) as member with immediate effect. On 30th March 2020 Mr. Shankar was appointed as a new nominee to 'Casa Hangout Private Limited' (One

Person Company), who gave written consent on 31st March 2020. Mr. Shankar who is an investment banker by profession, is of the opinion that 'Casa Hangout Private Limited' (One Person Company) needs to amend its object clause and add 'carry out investment in securities of body corporate' as one of the objects.

The Financial year closed on 31st March 2020. Financial statements of 'Casa Hangout Private Limited' (One Person Company), which is not containing cash flow statements were signed by Mr. Anand who left as only director after death of Mr. Anay. (Chapter 2 Incorporation of Company & Matters Incidental There to)

(April 21)

### Multiple Choice Questions (MCQs)

1. With reference to appointment of Mr. Amar and Mr. Shankar as nominee to 'Casa Hangout Private Limited' (One Person Company)', out of followings, who is eligible to be nominee of Mr. Shankar if he wishes to withdraw his consent as nominee, can do so by giving written notice to

- (a) Director of OPC and to sole member of company
- (b) Director of OPC and to Registrar of companies
- (c) Sole member of company and to OPC
- (d) Sole member of company and to Registrar of companies

**Answer:** (c)

**Reason:**

As per the provisions of the Companies Act, 2013, the nominee of an One Person Company (OPC) can withdraw his consent for nomination. The nominee must give written notice of withdrawal to:

Sole member of the company - Since the sole member is the only person in the OPC, they need to be informed directly about the change.

**OPC** - The company itself needs to be notified so that they can update their records accordingly.

The Registrar of Companies is not directly involved in the consent withdrawal process for the nominee, nor is it required to notify the Director of the OPC specifically. Hence, the correct approach is for the nominee to notify both the sole member and the OPC.

Thus, the correct answer is (c).

**3. With reference to legal position of Mr. Amar as member/s and nominee/s to various OPCs, which of the following statement is correct with reference to ceiling limit in relation to membership and being nominee to OPC? A person, other than minor; at specific point of time;**

(a) Can be member in any number of OPCs but nominee in one OPC

(b) Can be member in one OPC and nominee in any number of OPCs

(c) Can be member in one OPC and nominee in another one OPC

(d) Can be member and nominee both in any number of OPCs

**Answer: (c)**

**Reason:**

According to the provisions of the Companies Act, 2013:

A person can only be a member in one OPC at any given time. This is a strict restriction aimed at limiting membership in a single OPC to ensure that the concept of OPC (One Person Company) remains intact.

However, the same person can be a nominee in any number of OPCs. The nominee is appointed to represent the sole member in case of the sole member's death or incapacity. There is no limit on the number of OPCs where a person can be a nominee.

Thus, the correct legal position is that a person can be a member in one OPC and a nominee in any number of OPCs.

Therefore, the correct answer is (b).

#### Case Scenarios 14

Waste Papers Ltd. is company engaged in the business of collecting waste papers and old newspapers and manufacture from these wastes the corrugated boxes which are used in packing of the products by various suppliers.

The company is earning good profit margin and paying dividend consistently, which can be seen by the following information: (Rs in Lakh)

| Year               | Payment of dividend | Paid-up share capital | Free Reserves |
|--------------------|---------------------|-----------------------|---------------|
| 2012-13 to 2017-18 | 10                  | 100                   | 45            |
| 2018-19            | 15                  | 100                   | 60            |
| 2019-20            | 20                  | 100                   | 75            |
| 2020-21            | 22                  | 100                   | 95            |
| 2021-22            | 24                  | 100                   | 120           |

During the year 2022-23, the company's business was severally affected due to low demand of the corrugated boxes on account of recession situation (slow- down of economy) prevailing all over the country. The company showed a loss of Rs 20 lakh in the annual accounts.

However, the company wants to maintain its image of consistently dividend paying company and for this year also, it also wants to declare dividend. The company have accumulated free reserves in its hand and want to declare dividend @ 26% (since there is increasing trend of 2% from the preceding years).



During the year 2022-23, Somesh, a shareholder of the company died due to cardiac arrest. He was having 10,000 shares in his D-mat account in which he has made nomination in favour of his son Romesh. When Romesh applied for transmission of the shares, his sister Sanjana, objected and filed a case in the court that she also has right in the property of her father and mere making of nomination do not dilute the rights of the legal heirs to claim share in the property. The matter is sub-judice in the court of law awaiting decision.

The company has business dealing with Mahesh Kumar, who is also a shareholder of the company. The company has supplied some goods to Mahesh Kumar worth Rs 10,000, but he was not making payment to the company. The company while making payment of the dividend to Mahesh Kumar deducted the due amount, and as a result, nothing was payable to Mahesh Kumar towards the dividend. Mahesh Kumar threatened to take action against the company.

(MTP April 23)

#### Multiple Choice Questions (MCQs)

1. Whether Waste Papers Ltd, who suffered losses in year 2022-23, can make payment of dividend to the shareholders:

- (a) In case of losses, the company can't pay dividend
- (b) Company may pay dividend out of profits of previous years (which are free reserves), subject to the fulfilment of conditions prescribed for declaration of dividend when there is inadequacy of profits in a particular year
- (c) Company may dividend out of Asset Revaluation Reserve Account
- (d) Company may dividend without any restriction as it has enough amount in its free reserves

**Answer (b)**

**Reason:**



As per the Companies Act, 2013, a company can declare a dividend even when it incurs losses in the current financial year, but only under certain conditions:

1. The company can pay a dividend out of its free reserves (profits from previous years) if there is an inadequacy of profits in the current year.

2. The company must adhere to certain conditions, such as:

Ensuring that the payment does not impair the financial health of the company.

Passing a board resolution and meeting any other necessary criteria laid out by the Act.

Option (a) is incorrect because the company is allowed to pay dividends if it has enough reserves, even in the case of current year losses.

Option (c) is incorrect because Asset Revaluation Reserves cannot be used to pay dividends, as these are not distributable reserves.

Option (d) is incorrect because while free reserves can be used, there are still specific conditions that must be fulfilled before making the dividend payment, even if the company has adequate reserves.

Thus, Option (b) is the correct answer.

**2. Romesh (son of the deceased) made a complaint, that even after declaration of dividend, the company has not posted the dividend warrant at the address given in his transmission form. Which is the most correct statement in this regard:**

(a) The company is not liable to pay dividend to a deceased person

(b) The company is not liable to pay dividend to the legal heirs of the deceased person

(c) The company should deposit the dividend in the court, where the matter is under consideration

(d) The company is not liable where there is a dispute regarding the right to receive the dividend.

**Answer (d)**

**Reason:**

In this scenario, since Romesh is the son of the deceased, he is likely a legal heir entitled to the dividend. However, if there is a dispute about the right to receive the dividend or if the legal heir's claim is unclear, the company is not liable to distribute the dividend until the dispute is resolved.

Thus, Option (d) is the correct answer as the company is not liable to pay the dividend when there is a dispute regarding who should receive it.

**3. In the given case, the amount due to be recovered from Mahesh Kumar was deducted by the company and nothing was now payable to him on account of dividend. Is the action of the company right:**

(a) No, payment of dividend is a separate matter and should not be clubbed with any other matter

(b) Yes, Mahesh Kumar can take action against the company for not paying any dividend to him

(c) The company can adjust the any sum, due to it, from the shareholder

(d) The company should take into confidence and consent of Mahesh Kumar's family members to adjust its dues

**Answer (c)**

**Reason:**

According to the provisions under the Companies Act, 2013, a company has the right to adjust any dues owed by a shareholder to the company, such as unpaid loans, advances, or dues, against the dividends payable to that shareholder. This is a legitimate practice as long as the amounts due are properly documented, and the company has the right to recover the amounts before paying the dividend.

Thus, Option (c) is the most appropriate, as it allows the company to adjust any dues from the shareholder against the dividend payable.

### **Case Scenario 15**

**Modern Limited is a company limited by shares that manufactures furniture items apart from material used in modular kitchens. Modern Limited is an unlisted company with a registered office in Mumbai, Maharashtra. It has a corporate office in Delhi and branch offices throughout the country. Following are facts regarding the 18th annual general meeting (AGM) of Modern Limited. Modern Limited is the lead sponsor of the furniture trade event India Furniture EXPO 2022 and a member of the Association of Furniture Manufacturers and Traders. Modern Limited, on behalf of the Association, booked the Expo Hall in Mumbai for the event and also decided to convene its 18th AGM at the same hall after the conclusion of EXPO 2022. But later, they found that the India Furniture Expo 2022, which was scheduled to be held from September 16– 19, 2022, had to be postponed as Bombay Municipal Corporation (BMC) continued to occupy the hall as a vaccination center. Therefore, Modern Limited has to rethink its plan and now convene its 18th annual general meeting on September 27, 2022, at the IMA Auditorium in Delhi, near its corporate office. All the members consented to same. The notice of the said meeting was posted on September 5, 2022, specifying place, date and day, in additions to business to be transacted. In case of Mr. Ashok, who is declared insolvent but undischarged, notice was sent to assignee, while a wilful omission was made in giving notice in case of Ms. Anjum. At the meeting, Mr. Singh was elected as chairman of the meeting by a show of hands, while Mr. Manohar registered his dissent on the appointment of Mr. Singh as chairman of the meeting and sought a poll to elect the chairperson. Mr. Manohar has**

substantial voting right of company being part of promoter group. A poll was held to elect the chairman of the meeting, and Mr. Singh voted twice in his capacity as a member as well as chairman while the poll was taking place. Mr. Singh was elected chairman through the poll as well, by overwhelming majority.

Ms. Varnika, who is not a member of company, attended the meeting as Mr. Alok's proxy, voted both times: when Mr. Singh was elected by show of hands and when he was elected by poll. When she initially voted, she raised her hand in favour of electing Mr. Singh as chairman of the meeting, while during the election through a poll, she cast a vote against. Mr. Manohar raises the question on a vote that is casted by Mr. Singh in his capacity as chairman, hence he pass the remarks on him and his allies; which can be considered defamatory in nature. Chairman at his opinion, instructed the company secretary to exclude the remarks passed by Mr. Manohar while preparing the minutes; but some members raised a voice against the discretion of Mr. Singh, because they find remarks didn't carry any matter which can be considered defamatory, while some other members feel remarks are made with intent to defame chairman. Chapter Management & Administration

(RTP May 23)

#### Multiple Choice Questions (MCQs)

1. Regarding the notice of meeting given by Modern Limited, you are required to pick the correct option in light of provisions of the Companies Act, 2013 and rules notified thereunder.

I Modern Limited observe the length of notice, as required.

II Notice shall be given to member irrespective he is solvent, adjudged or declared insolvent, or discharged insolvent; Modern Limited committed default

III Notice shall be given to assignee of insolvent member, Modern Limited correctly did so

IV Willful omission in giving notice will invalidate the proceeding of the meeting in case of

Modern Limited Options

(a) Only I, II and IV are correct

(b) Only III and IV are correct

(c) Only I is correct

(d) Only IV is correct

**Answer: (b)**

**Reason:**

**Statement I:** "Modern Limited observe the length of notice, as required."

This statement is correct, as the Companies Act, 2013 requires the company to give a notice of at least 21 clear days for a general meeting. However, the question does not provide enough context to confirm this specific action, but it's typically expected.

**Statement II:** "Notice shall be given to member irrespective he is solvent, adjudged or declared insolvent, or discharged insolvent; Modern Limited committed default."

This statement is incorrect. According to the Companies Act, a company is not required to send a notice to a member who is an insolvent or whose insolvency has been declared, as such members do not have voting rights unless they regain solvency.

**Statement III:** "Notice shall be given to assignee of insolvent member, Modern Limited correctly did so."

This statement is correct. When a member of a company becomes insolvent, the assignee (the person to whom the rights of the insolvent member are transferred) must be notified of meetings. The assignee holds the rights of the member and is entitled to receive notices, so Modern Limited's action in this regard was correct.

**Statement IV:** "Willful omission in giving notice will invalidate the proceeding of the meeting in case of Modern Limited."

This statement is also correct. If a company willfully omits to send notices to shareholders, it can invalidate the proceedings of the meeting, as proper notice is a fundamental requirement for holding valid meetings.

Therefore, the correct answer is (b) Only III and IV are correct.

**2. Regarding the place of 18th AGM of Modern Limited, decide whether applicable provisions violated or not; in light of provisions of the Companies Act, 2013 and rules notified thereunder.**

- (a) Violation, because Modern Limited shall convene and conduct AGM only at its registered office
- (b) Violation, because AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate
- (c) No violation, because AGM shall be held either at the register or corporate office of the company or even at some other place within the city, town or village in which the registered or corporate office of the company is situate
- (d) No violation, because AGM of the said company may be held at any place in India

**Answer: (d)**

**Reason:**

As per the Companies Act, 2013, the Annual General Meeting (AGM) can be held at a place within India, as long as it is convenient for the members of the company. There is no restriction that mandates the AGM be held strictly at the registered office or corporate office.

Section 96 of the Companies Act, 2013 allows the AGM to be held at any place in India, provided that it is within a reasonable distance from the place where the registered office is located. The company is not restricted to holding the AGM only at the registered office or



corporate office, and the law offers flexibility on where the AGM can be held within the country.

Thus, holding the AGM at any place in India is permitted and does not violate any provisions of the Companies Act, 2013.

Therefore, the correct answer is (d) No violation, because AGM of the said company may be held at any place in India.

**3. Regarding vote casted by Ms Varnika, which of following statements hold truth; in light of provisions of the Companies Act, 2013 and rules notified thereunder.**

- (a) Being proxy Ms. Varnika is not allowed to cast vote on a poll, while she can cast vote by show of hand
- (b) Being proxy Ms. Varnika is not allowed to cast vote by show of hand, while she can cast vote on a poll
- (c) Despite being non-member Ms. Varnika can be proxy, but can't cast vote either by show of hand or on a poll
- (d) Ms. Varnika can cast vote in both the cases; by show of hand as well as on a poll

**Answer: (b)**

**Reason:**

As per the Companies Act, 2013, a proxy (like Ms. Varnika) cannot vote by a show of hands. This is because a proxy is not considered a member of the company and voting by show of hands is reserved for members who are physically present at the meeting.

However, a proxy can vote on a poll, which is a voting process that occurs when the shareholders request a more formal voting procedure. During a poll, the proxy is allowed to cast votes on behalf of the member they represent.



Therefore, Ms. Varnika, acting as a proxy, is not allowed to vote by show of hands but can vote on a poll.

Thus, the correct answer is (b).

**4. Regarding the inclusion/exclusion of the remarks by Mr. Manohar, advise the company defame chairman. Chapter Management & Administration**

**1. Regarding the notice of meeting given by Modern Limited, you are required to pick the correct option in light of provisions of the Companies Act, 2013 and rules notified thereunder.**

**I Modern Limited observe the length of notice, as required.**

**II Notice shall be given to member irrespective he is solvent, adjudged or declared insolvent, or discharged insolvent; Modern Limited committed default**

**III Notice shall be given to assignee of insolvent member, Modern Limited correctly did so**

**IV Willful omission in giving notice will invalidate the proceeding of the meeting in case of Modern Limited Options**

(a) Only I, II and IV are correct

(b) Only III and IV are correct

(c) Only I is correct

(d) Only IV is correct

**Answer: (b)**

**Reason:**

**Point I:** The notice period for a meeting is a mandatory requirement as per the Companies Act, 2013, which Modern Limited has correctly adhered to in this case. However, this does

not mean it's sufficient in all circumstances, as other criteria must be fulfilled, such as notifying insolvent members and assignees.

**Point II:** A notice is required to be given to members irrespective of their insolvency status. If Modern Limited failed to send notice to a member because they were insolvent or discharged, it constitutes a default. This would mean Modern Limited did not comply with the provision of giving notice to all members, including those declared insolvent, and it is a violation of the law.

**Point III:** A notice must be given to the assignee of an insolvent member, and if Modern Limited did so correctly, then this is in compliance with the law.

**Point IV:** Willful omission in sending the notice would invalidate the proceedings, meaning the meeting could be deemed invalid if the notice was intentionally withheld or neglected, which could render any actions taken in that meeting legally invalid.

Therefore, Option (b) correctly reflects the situation where III and IV are correct.

**5. Regarding the place of 18th AGM of Modern Limited, decide whether applicable provisions violated or not; in light of provisions of the Companies Act, 2013 and rules notified thereunder.**

(a) Violation, because Modern limited shall convene and conduct AGM only at its registered office

(b) Violation, because AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate

(c) No violation, because AGM shall be held either at the register or corporate office of the company or even at some other place within the city, town or village in which the registered or corporate office of the company is situate

(d) No violation, because AGM of the said company may be held at any place in India

**Answer: (d)**

**Reason:**

As per the Companies Act, 2013, an Annual General Meeting (AGM) of a company may be held at any place in India, provided it is held within the city, town, or village where the company's registered office is situated. The law allows flexibility, meaning the AGM can be conducted at a location other than the registered office, such as the corporate office or another suitable place within the same area.

Hence, the company is not restricted to holding the AGM only at its registered office, but can hold it at any other place within the same city, town, or village, as long as it is in compliance with the local provisions and the requirements of the Act. Therefore, there is no violation of the provisions in this case.

**6. Regarding vote casted by Ms Varnika, which of following statements hold truth; in light of provisions of the Companies Act, 2013 and rules notified thereunder.**

(a) Being proxy Ms. Varnika is not allowed to cast vote on a poll, while she can cast vote by show of hand

(b) Being proxy Ms. Varnika is not allowed to cast vote by show of hand, while she can cast vote on a poll

(c) Despite being non-member Ms. Varnika can be proxy, but can't cast vote either by show of hand or on a poll

(d) Ms. Varnika can cast vote in both the cases; by show of hand as well as on a poll

**Answer: (b)**

**Reason:**

According to the Companies Act, 2013, proxies are not permitted to vote by a show of hands. This is because a show of hands is meant for those who are present and entitled to vote at the meeting, and proxies do not fall into this category.

However, proxies are allowed to vote on a poll. A poll is a more formal and structured voting process where a proxy, representing a shareholder, can cast votes on behalf of the shareholder they represent.

Therefore, Ms. Varnika, being a proxy, cannot cast her vote by show of hands but can participate in voting if a poll is conducted.

**7. Regarding the inclusion/exclusion of the remarks by Mr. Manohar, advise the company secretary; which of the following statement hold truth, in light of provisions of the Companies Act 2013 and rules notified thereunder.**

(a) Mr. Manohar's remark shall be included in minutes because minutes shall contain fair summary of the proceedings.

(b) Mr. Manohar's remark shall be excluded from minutes because remarks are made with intent to defame chairman, the chairman's opinion of inclusion and exclusion is immaterial in such case.

(c) Mr. Manohar's remark shall be excluded from minutes because chairman has absolute discretion to exclude any matter which is defamatory in his opinion

(d) Mr. Manohar's remark shall be included in minutes because many members challenge the chairman's opinion and feels remarks were not defamatory.

**Reason:**

Under Section 118 of the Companies Act, 2013, the minutes of a meeting should include a fair and accurate summary of the proceedings of the meeting. However, the minutes must not contain any matter that could be defamatory or prejudicial to the reputation of individuals.

In this case, if Mr. Manohar's remark was intended to defame the chairman, it is not appropriate to include it in the minutes, regardless of the chairman's opinion. The company secretary should exclude such remarks from the minutes as they serve no constructive purpose and are legally inappropriate.

Even if members challenge the chairman's opinion, defamatory statements should not be included to protect the integrity and reputation of the individuals involved.

**8. ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?**

- (a) 2018-2019
- (b) 2016-2017
- (c) 2013-2014
- (d) 2014-2015

**Answer: (d)**

**Reason:**

As per the Companies Act, 2013, and the provisions under Section 130, the books of accounts of a company can only be reopened or re-cast by the Tribunal if there are irregularities detected. The Tribunal can order the reopening of books for up to 8 years prior to the current financial year, i.e., the Tribunal can apply for reopening the books of accounts for the last 8 completed financial years.

Since the current financial year is 2022-2023, the last 8 completed financial years would be from 2015-2016 to 2014-2015. Therefore, the earliest financial year for which the books can be reopened is 2014-2015.

Hence, the correct option is (d) 2014-2015.

**9. The amount accumulated in the Investor Education and Protection Fund shall not be used for:**

- (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.

**Answer:** (c)

**Reason:**

The Investor Education and Protection Fund (IEPF) is a fund created under the Companies Act, 2013, to protect the interests of investors by promoting investor education and awareness. The fund primarily receives amounts from unclaimed dividends, matured deposits, matured debentures, and any other unclaimed amounts.

As per the provisions of the Companies Act, the amount accumulated in the IEPF can be used for the following purposes:

Refunds: It can be used to refund unclaimed dividends, matured deposits, matured debentures, application money, etc.

Legal expenses: It can be used to reimburse legal expenses for class action suits under Section 37 and Section 245 of the Companies Act.

Disgorgement: The amount can be distributed among eligible and identifiable applicants who have suffered losses, particularly from fraudulent activities.

However, grants or donations to the Central Government for the purpose of investor education and training are not permissible uses of the IEPF. The fund is meant to directly benefit investors through the activities specified above.

Therefore, the correct answer is (c).

**10. Which among the following will not be considered as a "Foreign Instrument" under the provisions of the Negotiable Instruments Act, 1881?**

- (a) A bill drawn on a person residing outside India but payable in India or outside India
- (b) A bill drawn on a person resident outside India but payable outside India
- (c) A bill drawn on a person residing outside India but payable in India
- (d) A bill drawn on a person resident in India but payable outside India

**Answer: (d)**

**Reason:**

Under the Negotiable Instruments Act, 1881, a "foreign instrument" refers to a bill of exchange or promissory note that involves foreign elements, typically in terms of the place of drawing or the place of payment.

**Let's break down the options:**

**Option (a):** A bill drawn on a person residing outside India but payable in India or outside India. This is considered a foreign instrument because it involves a party (the drawer) who is residing outside India.



**Option (b):** A bill drawn on a person residing outside India but payable outside India. This is also a foreign instrument because both the drawer and the payment are outside India.

**Option (c):** A bill drawn on a person residing outside India but payable in India. This qualifies as a foreign instrument because the drawer resides outside India, even though the payment is within India.

**Option (d):** A bill drawn on a person resident in India but payable outside India. This does not qualify as a foreign instrument because, although the payment is outside India, the drawer is a resident of India, making it a domestic instrument in terms of the relationship with the drawer.

Therefore, (d) is the correct answer, as it does not meet the criteria for being considered a foreign instrument under the Negotiable Instruments Act, 1881.

#### MCQ

**11. 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.**

(a) Six, thirty six, six

(b) Three, twenty four, three

(c) Six, sixty, six

(d) Three, sixty, six

**Answer: (a)**

**Reason:**

According to Section 73 of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, the provisions are as follows:

1. An eligible company is not permitted to accept deposits from the public or renew the same if:

The deposit is repayable on demand or is repayable in less than 6 months.

2. The maximum period for which deposits can be accepted cannot exceed 36 months.

3. However, for meeting short-term funding requirements, a company can accept or renew deposits for less than 6 months, subject to certain conditions and limitations.

Thus, the correct limits are 6 months for the minimum period and 36 months for the maximum period, making the answer (a) six, thirty six, and six.

## **Topic 6 Managing Director, Whole-time Director, and Manager – Appointment & Term**

### **Case Scenario 16**

Sehzad Color Limited (SCL) was incorporated on 12th August 2018 with its registered office situated in Dehradun and branch offices at Delhi and Jaipur. The company was engaged in the business of manufacturing herbal products used as cosmetics. The company had prepared its “books of accounts” and other relevant books and records and financial statements for the year ending 31 st March 2019.

The company maintains its books of accounts on a double entry system of accounting on an accrual basis and keeps the books of account and other relevant books and papers and financial statements in the city of Jaipur in Rajasthan, which happens to be its major branch office.

Gradually, the activities of the company grew and it opened its first branch office outside India in Colombo, Sri Lanka. The business started developing well and necessary records and documents including the books of account of the branch were maintained. One of the Directors, Mr. Mac, felt it necessary to inspect the books of account and other relevant documents maintained at Colombo branch. However, due to his busy schedule, he could not personally inspect the records and accordingly sought necessary financial information through his attorney holder.

The board of directors of the company had entrusted Ms. Anjali, the General Manager of the Company to fulfil all the duty with regard to the complying with the provisions of the company law in relation to maintaining the books of account, place of keeping the books of account, time period for preservation of books and all relevant papers and such things as prescribed under the Companies Act, 2013 in this regard.

In view of the aforesaid scenario relating to “books of account” of SCL, answer the following questions: (Chapter 9 Accounts of Companies)

(MTP Apr 21)

#### Multiple Choice Questions (MCQs)

1. As observed in the case scenario above, Mr. Mac (a director) has sought financial information maintained outside the country (i.e. financial information relating to books of account maintained in Colombo). Can a director do so under the provisions of the Companies Act, 2013?

- (a) A director can inspect and seek information from any Branch of the Company located within the country only.
- (b) The director can seek the information through his attorney holder with respect to financial information maintained outside the country also.
- (c) The director can seek the information only individually and not through his attorney holder with respect to financial information maintained outside the country.

(d) The director can seek the information through his representative with respect to financial information maintained outside the country.

**Answer:** (c)

**Reason:**

Under the Companies Act, 2013, a director is allowed to inspect the books of accounts and other records of the company. However, the law primarily allows directors to inspect records within the country where the company's registered office or books are maintained. As per the provisions of Section 128 of the Act, the financial records maintained outside the country can only be accessed by the director individually. They cannot delegate this right to an attorney or representative for information kept outside India.

Therefore, the director can personally request and inspect the financial information but cannot do so through an attorney or representative in the case of records maintained outside the country. Hence, option (c) is correct.

**2. With regard to preservation of the books of SCL, the books of accounts for the FY 2018-19 needs to be kept in good order until at least which of the following years?**

(a) FY 2025-26

(b) FY 2026-27

(c) FY 2027-28

(d) FY 2028-29

**Answer:** (b)

**Reason:**

As per the Companies Act, 2013, specifically Section 128, a company is required to maintain its books of accounts and records for a minimum period of eight years from the end of the financial year to which they relate.

For the financial year 2018-19, the books of accounts must be kept until 2026-27 (i.e., 8 years after the end of the financial year 2018-19). Therefore, the books for FY 2018-19 need to be preserved until FY 2026-27.

**3. The board of directors of the company had entrusted Ms. Anjali, the General Manager of the Company to fulfil all the duty with regard to complying with the provisions of the company law in relation to maintaining the books of account. Which of the statement is correct with respect to entrusting Ms. Anjali for maintaining the books?**

(a) Only the Managing Director can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(b) Only the Managing Director or any Whole time director can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(c) Only Whole time director (in charge of finance) or Chief Financial Officer can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

(d) Only the Managing Director or the Whole time director (in charge of finance) or Chief Financial Officer or any other person of a company charged by the Board with the duty can be entrusted to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

**Answer: (d)**

**Reason:**

Under the Companies Act, 2013, specifically Section 128(6), the responsibility for ensuring that the company complies with the provisions related to the maintenance of books of account can be entrusted to the Managing Director, Whole-time director (in charge of finance), Chief Financial Officer (CFO), or any other person who is specifically charged by the Board of Directors with the duty of ensuring compliance.

Thus, the Board has the discretion to delegate this responsibility to persons other than the Managing Director or CFO, as long as they are appointed for this specific purpose. Hence, option (d) is correct.

#### **Case Scenarios 17**

Jai and Veeru, two friends, formed a private limited company as Basanti Taanga Private Limited and got it registered on 10th January, 2018. The registered office of the company was situated at Kolkata, West Bengal. The company had an authorised share capital of ₹ 50 lacs divided into 5 lacs equity shares of ₹ 10/- each. The issued, subscribed and paid-up share capital of the company was of ₹ 30 lacs divided into 3 lacs equity shares of ₹ 10 each. The company was engaged in supplying various motor parts to the vehicles companies. 'Basanti' was a registered Trade mark of Basanti Motorwala Private Limited of Mumbai since 15<sup>th</sup> January, 2016 under the Trade Marks Act, 1999. This company was also engaged in manufacturing and supplying various auto parts to the vehicles companies.

Basanti Motorwala Private Ltd. of Mumbai came to know on 20th January, 2022 about Basanti Taanga Private Limited of Kolkata who was using identical name and mark. Being a registered proprietor of a trade mark, Basanti Motorwala Private Ltd. filed an objection with an appropriate authority under Companies Act, 2013 on 15th March, 2022 that the name Basanti Taanga Private Limited or the mark the company was using is found to be identical with or too nearly resembles to the registered trade mark of Basanti Motorwala Private Ltd. and as such the appropriate authority should direct Basanti Taanga Private Limited to change its name. The appropriate authority after going through all the details rejected the application of Basanti Motorwala Private Ltd.



Thereafter on 14th July, 2020, Basanti Motorwala Private Ltd. requested Basanti Taanga Private Limited to change its name and Basanti Taanga Private Limited accepted the same in good relationship. Basanti Taanga Private Limited complied with all the formalities under Companies Act, 2013 such as passing of all necessary resolutions, taking approval from appropriate authority, filing of documents with the Registrar of Companies etc. The name of the company Basanti Taanga Private Limited was changed to Jai Veeru Private Limited. A fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Subsequent to the issuance of the new incorporation certificate, steps were taken up to incorporate the new name in all copies of the Memorandum of Association, Articles of Association and other documents of the company.

(MTP Oct'22)

#### Multiple Choice Questions (MCQs)

1. In the above case scenario, what can be the most evident reason for the appropriate authority to reject the application of Basanti Motorwala Private Ltd?

(a) The appropriate authority rejected the application on the basis that the names of both the companies are different- Basanti Motorwala Private Ltd and Basanti Taanga Private Limited.

(b) The appropriate authority rejected the application as Basanti Motorwala Private Ltd (owner of the registered mark) should have filed the objection within three years of the registration of company with identical name.

(c) The appropriate authority could have rejected the application on the basis that both the companies are located in different cities and thus can use almost similar names.

(d) The appropriate authority could have rejected the application on the basis that both the companies have different years of incorporation and both are located in different cities.  
(Oct'22)

**Answer: (b)**



**Reason:**

Under the Companies Act, 2013, a company can object to the registration of a name that is identical or very similar to its registered trademark. However, the company must file the objection within three years of the registration of the company with the identical or similar name.

In this case, Basanti Motorwala Private Ltd, being the owner of the registered mark, should have raised the objection within three years of the registration of Basanti Taanga Private Limited. If this time period has passed, the appropriate authority may reject any application for name change or dispute related to the name based on the lapse of this period.

Thus, option (b) is the most valid reason for rejection.

**2. In the above case scenario, what ought to have been the time limit within which Basanti Motorwala Private Ltd, should have filed the objection for wrong name:**

- (a) On or before 9th January, 2021
- (b) On or before 9th January, 2022
- (c) On or before 9th January, 2023
- (d) They can file the objection at any time (Oct'22)

**Answer: (a)**

**Reason:**

As per the provisions of the Companies Act, 2013 and the rules regarding the objection to company names that are identical or similar to a registered trademark, the objection must be filed within three years from the date of registration of the company with the identical or similar name.

In this case, if the company Basanti Taanga Private Limited was incorporated on 9th January, 2018, then Basanti Motorwala Private Ltd should have filed the objection by 9th January, 2021 (i.e., three years from the incorporation date).

Thus, the correct time limit for filing the objection would have been on or before 9th January, 2021, making option (a) the right answer.

**3. According to above case, a fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Which of the following statements is correct in this context?**

- (a) The change in name of the company is said to be complete and effective from the date of passing of resolution in the general meeting of members.
- (b) The change in name of the company is said to be complete and effective from the date of issue of fresh certificate of incorporation by the Registrar.
- (c) The change in name of the company is said to be complete and effective from the date on which documents were filed with the Registrar.
- (d) The change in name of the company is said to be complete and effective from the date of the order of Ministry of Corporate Affairs approving the change of name.(Oct'22)

**Answer: (b)**

**Reason:**

According to the provisions of the Companies Act, 2013, once a company passes a resolution for changing its name, it must file an application with the Registrar of Companies (RoC). After being satisfied with the application and the required documentation, the Registrar issues a fresh certificate of incorporation with the new name.

The change in the company's name becomes effective only from the date of issuance of this certificate. Therefore, the company is legally recognized under the new name from the date

the Registrar issues the fresh certificate of incorporation, not from the date of the resolution or when the documents are filed.

Hence, option (b) is the correct statement.

### **Case Scenario 18**

Mr. B R Mohanty, around two-decade back; along with two of his elder brothers and few friends, who are pharma and chemical engineers by profession promoted two companies; first being WellMount Limited (WML) dealing in wellness products and pharmaceuticals ; whereas other is TexMount Limited (TML) dealing in textile products. During these two decades, both WML and TML has grown magnificently as both the sectors expanded beyond imagination. Both companies went public and stock of same listed on leading stock exchanges of countries.

TML did well in the past and emerged as a major export unit but in recent years the textile sector witness stiff competition due to new entrants. The increased cost of the workforce and other input materials is also made sector unprofitable and recent lockdown hit the sector further adversely. TML's bottom line for the current financial year is red. TML was declaring dividends since the very first year of operation and willing to continue the tradition considering dividend as signalling effect to an investor for valuation purpose. Rate of dividend for the recent five years was 9%, 10%, 8%, 5% and 2% (9% being five years ago and 2% being the previous year) respectively. The management at TML decided to declare dividends out of the profit of previous years. TML deals in export hence came under the scanner of enforcement authority, who seek financial statements and books of accounts of TML for scrutiny for the last 10 preceding financial years. In response to notice, TML furnish financial statements and books of accounts for last 8 immediately preceding financial years only, stating as per its Article of Association; TML is required to maintain and keep the books of accounts for 8 immediately preceding financial years only and that too without any record of vouchers pertaining to such accounts.

WML is doing well, it seizes outbreak of COVID-19 as a business opportunity and registers significant growth in both top and bottom line. For the past many years, WML declare a dividend at a constant rate of 20%. During the financial year 2019-20, WML earns a profit of 580 Crores. Board of directors of WML declares 25% dividend without transferring any % to reserve on 15th June, 2020. On 14th July, 2020 some of the amount remaining unpaid, due to operation of law; has been transferred to unpaid dividend account on 20th July, 2020. CA. Dev was appointed as auditor under section 139 of Companies Act, 2013 of WML in individual capacity during 17th AGM for against the financial year 2018-19

(RTP Nov '20)

### Multiple Choice Questions (MCQs)

1. In case of TML, which of the following statements are correct regarding the declaration of dividend?

- (a) TML can't declare the dividend because it earns a loss in the current financial year.
- (b) TML can declare the dividend but only up to 9%
- (c) TML can declare the dividend but only up to 5%
- (d) TML can declare the dividend but only up to 6.8%

**Answer:** (c)

**Reason:**

Under the provisions of the Companies Act, 2013, a company is generally allowed to declare a dividend from its free reserves if it has not earned a profit in the current year. However, the rate of dividend is restricted in such cases. According to Section 123 of the Companies Act, when a company incurs a loss or has inadequate profits, it may declare a dividend only from the free reserves, subject to certain conditions.

**In this scenario,** where TML has incurred a loss, it can declare a dividend, but only from its reserves and not exceeding a maximum rate of 5% (or the rate prescribed under the company's Articles of Association, if lower). Therefore, option (c) is correct.

The maximum rate of 5% is aligned with standard practice when companies declare dividends despite financial losses, subject to compliance with the provisions for protecting the company's financial health.

**2. CA. Dev, who is the auditor of WML have to vacate the office of the auditor in and can be reappointed again only in.**

(a) 22nd AGM and 27th AGM

(b) 27th AGM and 32nd AGM

(c) 22nd AGM and 23rd AGM

(d) 22nd AGM and can't be re-appointed again.

**Answer: (a)**

**Reason:**

As per the Companies Act, 2013, an auditor can hold office for a term of five consecutive years. After completing their term, the auditor must vacate the office, but they can be reappointed only after a cooling-off period of five years. This rule is part of the provisions aimed at ensuring auditor independence and preventing long-term association that might affect the auditor's impartiality.

**In this case:**

CA. Dev would have served for a consecutive term of five years and would need to vacate the office at the 22nd AGM.

After vacating the office, CA. Dev can only be reappointed in the 27th AGM after the 5-year cooling-off period.

Thus, option (a) is the correct answer, as the reappointment can only happen after a 5-year gap, as required by the law.

**3. In case of WML, which of the following statements is correct regarding the declaration of dividend?**

- (a) WML can't declare the dividend at a rate more than 20%
- (b) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 20% to reserve first.
- (c) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 10% of paid-up share capital to reserve first.
- (d) WML can declare the dividend out of current years' profit without transferring any % to reserve.

**Answer: (d)**

**Reason:**

As per the Companies Act, 2013, the ability of a company to declare a dividend is subject to certain conditions regarding profits and reserves. However, the law allows companies to declare a dividend out of current year's profits without requiring any mandatory transfer to reserves, provided that the company has sufficient profits.

**Specifically:**

- There is no legal requirement that a company must transfer a fixed percentage of its profits to reserves before declaring dividends.
- A company can declare a dividend from its profits, subject to the condition that it is not in default of the provisions regarding repayment of any debts or other statutory requirements.

Thus, option (d) is the correct statement, as it aligns with the flexibility companies have in declaring dividends from current year's profits without the need for mandatory transfers to reserves, unless specific conditions apply.



**4. In case of TML, regarding maintenance and keeping the books of account; which of the following statements hold truth?**

(a) TML needs to maintain and keep the books of account for 10 preceding financial years, hence TML violate the law.

(b) TML doesn't violate the provision of law because it keeps the books of account for 8 immediate preceding financial years.

(c) TML violate the provision of law because it keeps the books of account for 8 immediately preceding financial years without keeping relevant vouchers in the record pertaining to such books of account.

(d) TML doesn't violate the provision of law because it is complying to its Article of Association.

**Answer: (c)**

**Reason:**

Under the Companies Act, 2013, Section 128 requires that companies maintain their books of account for a minimum of 8 immediately preceding financial years. However, keeping the books of account alone is not sufficient. The company is also required to keep the relevant vouchers and supporting documents that substantiate the entries in the books of account.

If TML is maintaining the books for the required 8 years but fails to keep relevant vouchers or supporting records, this constitutes a violation of the legal provisions under the Companies Act. Therefore, option (c) is correct as it reflects that the failure to keep the supporting documents would be a legal violation, even if the books themselves are maintained for the prescribed period.

**5. Regarding declaration and distribution of dividend by WML, which of the following statements is correct from the view of the timeline?**



(a) WML violates the law, because some of the dividend remain unpaid; irrespective of reason for non-payment

(b) WML violates the law, because unpaid dividend need to transfer to unpaid dividend account by 19th July 2020.

(c) WML doesn't violate the law, because an unpaid dividend transferred to unpaid dividend account prior to 21st July 2020.

(d) WML doesn't violate the law, because an unpaid dividend can be transferred to unpaid dividend account at any time within 90 days from the date of declaration.

**Answer:** (c)

**Reason:**

Under the Companies Act, 2013, Section 124(1) mandates that if the dividend declared at the annual general meeting (AGM) is not paid or claimed by the shareholders within 30 days from the date of declaration, the company must transfer the unpaid dividend to a special Unpaid Dividend Account. This must be done within 7 days from the expiry of the 30-day period, i.e., by 19th July 2020 for a dividend declared in June.

In this case, WML does not violate the law because the unpaid dividend was transferred before 21st July 2020, which means it complied with the timeline specified under the Companies Act, ensuring that the unpaid dividend was transferred within the prescribed time limit. Therefore, option (c) is correct.

## **Topic 7 Key Managerial Personnel (KMP) – Definition and Compliance**

### **Case Scenario 19**

**Kaisha Packers and Movers Limited, a reliable and well-established company, was incorporated on 20th September, 2014 with an aim to provide convenient and innovative**

ways of moving customers' household items, re-location of businesses and offices, shifting of vehicles, etc. in the northern region. Their services have been professionally designed to ensure maximum customers satisfaction. The company had been formed by the directors Kashi Sharma, Pranav Chaturvedi, Abhinav Mehra, Anoop Bhargava and Vikash Kumar whose friendship had developed during their college days. Due to hard work and their business acumen, the promoters had successfully created a niche for themselves amid cut-throat competition.

The company has a fleet of over 500 vehicles, 55 branches, professionals and technical and non - technical employees. Over a period of time, Kaisha Packers and Movers has become a trusted brand and prospective customers prefer to engage it whenever they want to re-locate their offices or homes since services are provided in a convenient and cost-effective manner.

The authorised capital of the company is Rs. 150.00 lacs divided into 15,00,000 equity shares of Rs. 10 each. At the time of incorporation, its paid-up capital was Rs. 1,00,00,000 and there were 50 shareholders. The registered office of the company is situated in Hyden Park, Bangalore. With a view to provide world-class relocation and moving solutions throughout the country, the directors decided to enlarge the capital base of the company. During the mid of the current financial year, it offered remaining 5,00,000 shares to another 120 persons at a premium of Rs. 10 per share on private placement basis. Among others, Ruchi, a freelance software consultant and her younger sister Rumi, a management consultant in Info Solutions Limited which is well-known company for its high export turnover, were also identified as the prospective subscribers. However, they requested the company to offer them only the minimum number of shares. Similar requests were also received from another twelve persons. Their requests were given due consideration by the directors. All the identified persons who were offered shares paid the required amount (including premium) as per the terms of the offer. The allotment of the shares was made much before the statutory period. Immediately after the aforesaid allotment of shares, the company rolled out its expansion plan as envisaged earlier and utilised the funds so obtained for the requisite purpose.

However, the company is desirous of tapping more prospective investors by offering them equity shares on private placement basis during the remaining part of the current financial year. For this purpose, it is proposed to increase the authorised capital from the present Rs. 150.00 lacs to Rs. 300.00 lacs. In addition to the further allotment of shares on private placement basis, the company is also contemplating to raise deposits from the members.

However, Kashi Sharma and Anoop Bhargava are of the opinion that the company should consider raising of deposits only in the next financial year since the funds already raised need to be properly utilized.

(MTP Mar 21)

#### Multiple Choice Questions (MCQs)

1. According to the case scenario, the company is desirous of raising deposits from its members to augment the funding requirements. In case, the company also contemplates to raise deposits from public in addition to its members, which of the following option is applicable:

- (a) In order to raise deposits from public besides members, the company should have net worth of minimum Rs. 100 crores and a turnover of minimum Rs. 500 crores.
- (b) In order to raise deposits from public besides members, the company should have net worth of minimum Rs. 150 crores and a turnover of minimum Rs. 250 crores.
- (c) In order to raise deposits from public besides members, the company should have net worth of minimum Rs. 150 crores or a turnover of minimum Rs. 750 crores.
- (d) In order to raise deposits from public besides members, the company should have net worth of minimum Rs. 100 crores or a turnover of minimum Rs. 500 crores.

**Answer: (d)**

**Reason:**

According to the provisions under the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, a company wishing to raise deposits from the public (in addition to members) must fulfill certain financial criteria. Specifically:

The company must have a net worth of at least Rs. 100 crores or a turnover of at least Rs. 500 crores.

This ensures that only financially stable companies are allowed to raise public deposits, reducing the risk to investors and ensuring compliance with regulatory requirements.

Option (d) correctly reflects these provisions.

**2. According to the case scenario, during the mid of the current financial year, the company offered 5,00,000 shares to 120 persons at a premium of Rs. 10 per share on private placement basis. During the remaining part of the current financial year, the company is desirous of tapping more prospective investors by offering them equity shares on private placement basis. How many more such prospective shareholders can be invited by the company for investment in the capital of the company.**

(a) The company can offer equity shares maximum up to the 30 prospective shareholders in the remaining part of the current financial year.

(b) The company can offer equity shares maximum up to the 55 prospective shareholders in the remaining part of the current financial year.

(c) The company can offer equity shares maximum up to the 80 prospective shareholders in the remaining part of the current financial year.

(d) The company can offer equity shares maximum up to the 130 prospective shareholders in the remaining part of the current financial year.

**Answer: (c)**

Reasoning:

According to Section 42 of the Companies Act, 2013 and the Companies (Prospectus and Allotment of Securities) Rules, 2014, when a company makes a private placement of shares, it is restricted to offering shares to a maximum of 200 persons (excluding qualified institutional buyers) in a financial year.

In the given case, the company has already offered shares to 120 prospective shareholders. The remaining number of prospective shareholders that can be invited during the rest of the financial year would be:

$200 - 120 = 80$  prospective shareholders.

Hence, the company can offer shares to a maximum of 80 more prospective shareholders in the remaining part of the current financial year.

**3. In the given case scenario, suppose the company has failed to allot the shares within the statutorily allowed period. In such a case, the only remedy available with the company is to refund the application money. State the time period within which the company is required to refund the application money to the subscribers if it has failed to allot the shares within the statutorily allowed period.**

(a) The application money must be refunded within sixty days from the expiry of statutorily period allowed within which the allotment of shares ought to have been made.

(b) The application money must be refunded within forty-five days from the expiry of statutorily period allowed within which the allotment of shares ought to have been made.

(c) The application money must be refunded within thirty days from the expiry of statutorily period allowed within which the allotment of shares ought to have been made.

(d) The application money must be refunded within fifteen days from the expiry of statutorily allowed period within which the allotment of shares ought to have been made.

**Answer: (d)**

**Reason:**

As per Section 42(6) of the Companies Act, 2013 and the Companies (Prospectus and Allotment of Securities) Rules, 2014, if a company fails to allot shares to the subscribers within the prescribed time frame (i.e., 60 days from the receipt of the application money), it must refund the application money to the subscribers.

The company is required to refund the application money within 15 days from the expiry of the statutory period within which the allotment should have been made. If the company does not do so, it may face penalties as per the provisions of the Act.

Thus, the correct answer is 15 days.

#### **Case Scenarios 20**

**Shiv IT Solutions Ltd. is a company engaged in the business of providing customized software to its clients. These software's are usually related to the employee's attendance, leave management, salary preparation, tax calculation and other matters incidental to HR. The company is having its own building and other infrastructure in Bengaluru and also at Brussels, Belgium. The company have patent rights over few of its software's and also have the trade mark right over the company's logo.**

**The company got sanctioned term loan facility of Rs 10 crores from Best Bank Ltd on 1st January, 2022 by creating a charge on the assets of the company which includes the company's own buildings and intangible assets. The charge should have been created by the company within the time prescribed under the Companies Act, 2013 with the Registrar, however, the company could not get registration of charges within the prescribed time line.**

**During the course of Secretarial Audit of the company, for the year ended March 2022, it came in the knowledge of the Company Secretary in Practice, that charge was not registered with the Registrar. He mentioned it in the report and advised the company to get it registered. However, the Action Taken Report (ATR) on the audit objection made by the Company Secretary was not apprised to the Board and no follow up was made by the company thereafter.**



Bank's concurrent auditor and statutory auditor also pointed out this issue and narrated that since charge was not created by the company, hence this advance be treated as clean advance and interest rate of clean / unsecured advance, which is 22% (as against the normal rate of 11%) should be applied from the date of disbursement on the outstanding amount till date. Bank also asked a professional, whether it can get the charge registered, at its own, to satisfy the audit objection.

The Bank applied for registration of charge which was considered by the Registrar and registration of creation of charge was granted. The Bank in order to address the audit objections, applied the interest @ 22% on the outstanding amount in the loan account of the company. The company aggrieved with the decision of the Bank, managed to liquidate the term loans account by raising funds from other sources and filed the 'Satisfaction of Charge' with the Registrar.

(MTP March 23)

#### Multiple Choice Questions (MCQs)

1. The company can create charge in favour of the lender on the the assets which are:

- (a) Tangible Assets and situated in India only
- (b) Intangible Assets and situated in India only
- (c) Assets that are tangible or otherwise and situated in India or Brussels (Belgium)
- (d) Assets that are tangible or otherwise and situated in India only

**Answer:** (c)

**Reason:**

As per the provisions of the Companies Act, 2013, particularly under Section 77, a company is allowed to create a charge in favor of a lender on its assets, whether they are tangible or intangible, provided that these assets are located in India or outside India. Specifically, the law recognizes the creation of charges on assets located both in India and outside India, including international locations such as Brussels (Belgium).



This flexibility allows companies to secure loans against assets located in different countries, provided those assets fall within the jurisdiction where the charge is being registered, as per international norms and agreements. Therefore, the company can create a charge on both tangible and intangible assets located in India or Brussels (Belgium).

**2. Where the company fails to get the registration of charge, whether the Best Bank Ltd, in whose favour the charge was to be created, can move the application for creation of charge:**

- (a) No. It is the responsibility of the borrower company only to get the charge registered in favour of the lender.
- (b) If the company do not get the charge registered in favour of the lender, the lender suo-moto cannot move application for registration of charge in its favour.
- (c) The borrower company can be held liable to pay the penalty only.
- (d) Yes. The lender company can move the application for registration of charge in its favour, if the borrower do not get the charge registered with the prescribed time.

**Answer: (d)**

**Reason:**

Under the Companies Act, 2013, specifically Section 77, it is the primary responsibility of the borrower company to register the charge with the Registrar of Companies within 30 days of its creation. However, if the borrower company fails to do so, the lender (in this case, Best Bank Ltd) has the right to approach the Registrar of Companies to get the charge registered in its favor.

The law allows the lender to move an application for the registration of the charge if the company (borrower) has failed to comply with the statutory requirement. The lender can request the registration of the charge, thereby ensuring that the charge is legally recognized and enforceable.

## Case Scenario 21

Shree Tyres Ltd. is an unlisted public limited company. The company's accounts for the financial year ending on 31st March, 2022 were finalised and audited by the Statutory Auditor. The meeting of the Board of Directors was convened and approved the financial accounts of the company and proposed to convene the Annual General Meeting of the shareholders on Thursday, the 25th August, 2022 at 10 am.

The total number of members is 3500. The Article of the company provides that the quorum for the general meeting of the shareholders shall be at least fifty members. On the day of the meeting only 10 members were physically present. Even after waiting of 30 minutes, the quorum was not present. Accordingly, the meeting was adjourned. According to the provisions of the Companies Act, 2013, the meeting shall adjourn to the same day in the next week at the same time and place.

However, on the same day in the next week i.e., on Thursday, the 1st September, 2022, the same venue (which is a Hotel's Conference Hall) was available from 3 pm only. The Board agreed to conduct the meeting from 3 pm and the all the members were informed individually via mail and also published it in the newspapers (one in English and another in vernacular language)

The adjourned meeting started at 3 pm on 1st September, 2022, the quorum required as per the Articles was 50, and however 75 members were present. Out of the 75 members attending the meeting 25 persons were having the residence near the venue of Annual General Meeting and rest of the members were staying far away. Due to heavy rainfall and scarce availability of public transportation, 40 persons left the meeting so that they can reach home on time. By that time only the ordinary business resolutions were approved and two special business agendas were pending for approval by the members.

(RTP Nov '22)

Multiple Choice Questions (MCQs)

**1. In the light of the given facts, the General Meeting of the shareholders was decided to be scheduled. Determine by which date the notices to the shareholder should have been given to the members:**

- (a) 1st August, 2022
- (b) 2nd August, 2022
- (c) 3rd August, 2022
- (d) 4th August, 2022

**Answer: (c)**

**Reason:**

As per the provisions of Section 101 of the Companies Act, 2013, a company is required to give clear 21 days' notice for calling a General Meeting of its shareholders. This means that the notice must be sent at least 21 clear days before the meeting is scheduled to take place.

In this case, assuming the General Meeting is scheduled for a date after 24th August, 2022, the notice must be sent by 3rd August, 2022 (21 days before the meeting). Therefore, the correct date for sending the notice to the shareholders is 3rd August, 2022, as it ensures compliance with the 21-day notice requirement.

The calculation is based on ensuring that 21 full days, excluding the day of the meeting and the day the notice is sent, are provided for members to prepare for the meeting.

**2. Whether adjournment of the general meeting of shareholders of Shree Tyres Ltd. for want of quorum, was justified as per the requirement of the Companies Act, 2013:**

- (a) Yes, it was justified, since the quorum was not present within 30 minutes from the time appointed for holding the meeting

(b) No, it was not justified since the waiting time for the arrival of the requisite quorum is 30 minutes as per the provisions of the Companies Act, 2013, whereas the decision of the adjournment of the meeting was just taken after 15 minutes.

(c) Yes, if the quorum is not present at the given time (sharp) of meeting, the meeting stands to be adjourned, and there is no requirement of waiting time.

(d) Yes, it was justified, since the quorum was not present within 45 minutes (as per statutory requirement) from the time appointed for holding the meeting.

**Answer: (a)**

**Reason:**

As per Section 103 of the Companies Act, 2013, a quorum is required to be present to hold a valid general meeting. If a quorum is not present within 30 minutes from the appointed time for the meeting, the meeting is adjourned to the same day, time, and place in the next week or any other day as determined by the board.

The statute provides a clear 30-minute waiting period for the quorum to be established before the meeting can be adjourned. If no quorum is present after this time, the adjournment is justified, which is the case here. Therefore, the decision to adjourn the meeting after 30 minutes of waiting for quorum is in compliance with the provisions of the Companies Act, 2013.

**3. What shall be the quorum for the General Meeting of the Shareholders, where the number of members is 3500:**

(a) Five

(b) Fifteen

(c) Thirty

(d) Fifty

**Answer: (d)**

**Reason:**

As per Section 103 of the Companies Act, 2013, the quorum for a general meeting is determined based on the number of members in the company. The general rule is as follows:

**Private companies:** The quorum for the general meeting is two members.

**Public companies:** The quorum is generally two members present in person, unless the company's articles specify a higher number. For companies with a large number of members, the articles may specify a higher quorum.

For public companies, the Articles of Association (AoA) typically determine the quorum for general meetings. Given the number of members (3500) in this case, the company is likely to require a quorum of fifty members, especially if specified by the AoA. Hence, fifty is a common quorum for larger companies to ensure a more representative meeting.

So, the most reasonable choice here is (d) Fifty.

**4. As some members left the meeting, the quorum was not present all the time during the Annual General Meeting. The agendas for special business transactions remained unapproved. What is your opinion:**

(a) The quorum once present in the beginning of the meeting is enough.

(b) The quorum should be present all the time when the meeting is in progress. Any items which could not be approved by members for want of quorum, shall be treated as NIL.

(c) When the quorum is present in the beginning of the meeting, it may be assumed that all the resolutions have been approved, until and unless objected later on by the members present therein.

(d) The Board may seek special written consent from all the members later on:

**Answer: (b)**

**Reason:**

As per Section 103 of the Companies Act, 2013, the quorum must be maintained throughout the meeting. If the quorum is lost during the meeting, any further resolutions or business items cannot be passed, regardless of the quorum being present at the start.

**Quorum Requirement:** It is crucial that the quorum is present at the beginning and throughout the meeting to ensure that valid decisions are made.

**Business Approval:** If the quorum is not present during the meeting when the special business (or any resolutions) is discussed, those resolutions cannot be approved, and they will be treated as not approved (i.e., NIL).

Hence, the correct view is that the quorum must be maintained throughout the meeting to approve the business. If not, the business remains unapproved.

## **Topic 8 Register of Members and Place of Keeping Records**

### **Case Scenario 22**

Krishnakant Limited was incorporated on 24th September, 2010 under the jurisdiction of Registrar of Companies, Rajasthan with its registered office located in Jaipur and its manufacturing units spread out in Mumbai, Kanpur, Delhi and Ludhiana. Under the dynamic leadership of Hans Rajpal, the Chairman and Managing Director (CMD) of the company, the company had reached new heights of success. The directors of the company numbered eight including CMD out of which two were the independent directors.

The turnover of the company for the Financial Year 2019-2020 was Rs. 750.00 crores – a whopping rise of more than 20% from the previous year and the net profit stood at an impressive figure of Rs. 6.60 crores – an increase of Rs. 1.80 crores as compared to the net



profit of the previous year. The company had a net worth of Rs. 250.00 crores; and it was noticed that the net worth had also registered a northern- western trend by more than 15%.

The authorised and paid-up share capital of the company was Rs. 8.00 crores. Keeping in view the applicability of forming a CSR Committee for the current financial year 2020-21, a CSR Committee was formed with four directors as members of which one was an independent director. The Committee was, among other objectives, given the responsibility of formulating and recommending to the Board, a Corporate Social Responsibility Policy which would indicate the activities to be undertaken by the company within the framework specified in Schedule VII. As the company has huge profits it has proposed a dividend @ 10% for the year 2019-20 out of the profits of current year.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous of shifting its registered office to Mumbai from Jaipur which will help the company in carrying on the new business for effectively. Another strategically important segment which the company tapped earlier and now wishes to engage itself in on a large scale relates to manufacturing of stationery items.

During the current Financial Year 2020-21, the company provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana as part of its CSR activities. In addition, the company contributed towards establishment of Digital Smart Classroom, Libraries and computer labs in these cities. The company also deployed mobile medical units equipped with medical facilities and qualified doctors. In addition to this a large number of public health and sanitation activities had been initiated under Swachh Bharat Abhiyan. The total amount spent on these activities was, till date, almost equal to the minimum amount prescribed and it is hoped that as the current Financial Year 2020-21 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure. (Chapter 9 Accounts of Companies)

(MTP Mar 21 & May 20)

Multiple Choice Questions (MCQs)



**1. Which of the following factors would have prompted Krishnakant Limited to mandatorily form a Corporate Social Responsibility (CSR) Committee for the current financial year? (Chapter 9 Accounts of Companies)**

(a) The net profit had increased to Rs. 6.60 crores and it was more by Rs. 1.80 crores in comparison to previous year's net profit.

(b) The turnover was Rs. 750.00 crores which was an increase of more than 20% as compared to the previous year.

(c) The net worth was Rs. 250.00 crores which when compared to the previous year had registered an increase by more than 15%.

(d) The paid-up share capital was Rs. 8.00 crores.

**Answer: (a)**

**Reason:**

Under Section 135 of the Companies Act, 2013, a company is required to form a Corporate Social Responsibility (CSR) Committee if it meets any of the following criteria during a financial year:

- Net worth of Rs. 500 crores or more.
- Turnover of Rs. 1000 crores or more.
- Net profit of Rs. 5 crores or more.

Since the net profit for Krishnakant Limited has increased to Rs. 6.60 crores (which is more than Rs. 5 crores), the company falls under the criteria of having a net profit of Rs. 5 crores or more and is thus required to form a CSR committee.

Thus, option (a) is correct, as it satisfies the mandatory requirement for forming a CSR committee based on the net profit criterion.

**2. What is the minimum amount (in percentage) that Krishnakant Limited is required to spend during the Financial Year 2020-21 on the CSR activities? (Chapter 9 Accounts of Companies)**

(a) 2% of the average net profits made during the two immediately preceding financial years.

(b) 2% of the average net profits made during the three immediately preceding financial years.

(c) 2.5% of the average net profits made during the two immediately preceding financial years.

(d) 2.5% of the average net profits made during the three immediately preceding financial years.

**Answer: (b)**

**Reasoning:**

Under Section 135 of the Companies Act, 2013, companies meeting the CSR criteria (net worth, turnover, or profit thresholds) are required to spend on CSR activities. The amount to be spent on CSR activities is mandated as 2% of the average net profits of the company made during the three immediately preceding financial years.

If a company meets the thresholds, the required CSR expenditure is calculated as 2% of the average of the net profits made during the three immediately preceding financial years (as per Section 198 of the Companies Act).

Therefore, the correct answer is (b).

**3. In the given case scenario, Krishnakant Limited decided to undertake CSR activities on its own. In case, it had decided to engage an external Section 8 company for undertaking its CSR activities and such charitable company is not established by Krishnakant Limited nor it is established by the Central/State Government or by any entity established under**

**an Act of Parliament or a State Legislature, then what should be the established track which this Section 8 company should have in undertaking similar programs or projects which Krishnakant Limited wants it to accomplish?**

- (a) Track record of minimum one year
- (b) Track record of minimum two years
- (c) Track record of minimum three years
- (d) Track record of minimum four years

**Answer: (c)**

**Reason:**

As per the provisions of Section 135 of the Companies Act, 2013, when a company engages an external Section 8 company (a non-profit organization) for undertaking its CSR activities, the Section 8 company must have a track record of at least three years in carrying out similar programs or projects. This ensures that the external entity has the experience and capability to effectively execute CSR initiatives on behalf of the company.

Hence, the correct answer is (c) Track record of minimum three years.

### **Case Scenario 23**

**GHWX Private Limited was incorporated in the year 2009. The registered office of the company GHWX Private Limited was situated in city T of state V. The Board of Directors of GHWX Private Limited comprised of five directors namely Mr. K, Mr. N, Mr. R, Mr. U and Mr. W. During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018.**

**Out of 5 directors, Mr. K, Mr. N, Mr. R and Mr. W were present for the said meeting. During the meeting of Board of Directors a resolution on one of the important matters**

was passed. While three directors namely Mr. K, Mr. N and Mr. R agreed with the resolution and voted in favour of resolution, however, Mr. W did not agree with the resolution and voted against the resolution.

The minutes of the second meeting of Board of Directors of GHWX Private Limited held on 7 September, 2018 were prepared and they were entered in Minutes Book of meeting of Board of Directors of GHWX Private Limited. One of the director Mr. K was of the opinion that minutes of second meeting of Board of Directors of GHWX Private Limited must be prepared and entered in Minute Book of meeting of Board of Directors of GHWX Private Limited by end of October, 2018. The remaining four directors namely Mr. N, Mr. R, Mr. U and Mr. W did not agree with the opinion of Mr. K because they thought that it was not within the time limit as prescribed by the law.

One of the directors, Mr. N. opined that minute books of meetings of Board of Directors of GHWX Private Limited for the years starting with 2009 to 2015 should be shredded to ruins as these papers were taking a lot of space. He further added that since the Companies Act, 2013 is silent as to maintaining the minute book of meetings of Board of Directors, it is not necessary to maintain such minute books. The Board of Directors of GHWX Private Limited did not decide any place where minute book of meetings of Board of Directors of GHWX Private Limited will be kept. Keeping the provisions of the Companies Act, 2013, in mind answer the following

(RTP May '20)

#### **Multiple Choice Questions (MCQs)**

1. The second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018 for the financial year 2018-19. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018 -19 must contain:

(a) Name of director Mr. U who was absent from the meeting of Board of Directors held on 7 September, 2018.

(b) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W comprising Board of Directors of GHWX Private Limited.

(c) Name of one director Mr. U who was absent and atleast one director who was present in the meeting of Board of Directors held on 7 September, 2018.

(d) Names of directors Mr. K, Mr. N, Mr. R and Mr. W who were present in the meeting of Board of Directors held on 7 September, 2018.

**Answer: (d)**

**Reason:**

As per the provisions of Section 135 of the Companies Act, 2013, when a company engages an external Section 8 company (a non-profit organization) for undertaking its CSR activities, the Section 8 company must have a track record of at least three years in carrying out similar programs or projects. This ensures that the external entity has the experience and capability to effectively execute CSR initiatives on behalf of the company.

Hence, the correct answer is (c) Track record of minimum three years.

**2. In case of the resolution talked in the case study, the minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018 -19 held on 7 September, 2018 must contain:**

(a) Name of any two directors who were present in meeting and voted in the resolution.

(b) Name of director Mr. W who voted against the resolution.

(c) Name of directors Mr. K, Mr. N and Mr. R who voted in favour of the resolution.

(d) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W who all had the right to attend the meeting and vote in the resolution.

**Answer: (b)**

**Reason:**

As per the provisions under Section 118 of the Companies Act, 2013, the minutes of a board meeting must contain a record of the names of the directors who attended the meeting, and it should specifically include the names of any directors who voted against a resolution.

This ensures transparency and clarity in the decision-making process, as it provides a clear record of dissent and the reasons behind any disagreements. Therefore, in this case, the minutes should reflect the name of Mr. W, who voted against the resolution.

Hence, the correct answer is (b) Name of director Mr. W who voted against the resolution.

**3. The opinion of one of the director, Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:**

(a) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018.

(b) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.

(c) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.

(d) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018.

**Answer: (a)**

**Reason:**



As per Section 118 of the Companies Act, 2013, the minutes of the board meetings should be signed by the chairman and entered into the minutes book of the company within thirty days from the date of the meeting.

This requirement ensures that the company's official records are promptly updated and reflects decisions made by the board. Therefore, the opinion of Mr. K, which suggests a later date, is incorrect because the minutes must be recorded within 30 days of the conclusion of the meeting, which in this case would be by 7th October 2018.

Hence, the correct answer is (a).

## **Topic 9 Registers and Returns to be maintained at Registered Office**

### **Case Scenario 24**

Mr. Abhinav Gyan is a tech expert and one among the promoter of Doon Technology Limited (DTL). He did his engineering from one of the prestigious IIT in CSE and then perused masters in management from IIM. He started DTL fifteen years back. DTL is famous for advance technologies such as artificial intelligence, block-chain solutions and many others. The company went public a decade ago but not listed. Since DTL is expanding its operations in wake of opportunities arises out of industrial revolution, hence willing to retain the profit for growth of the company, but shareholders are seeking dividend; because for shareholders larger the bottom line means larger the dividend. The outbreak of COVID-19 is another reason which forced the directors to retain the earnings. After the closure of books of account for year 2019-20, directors proposed the dividend of 10% against the expectation of 20% by shareholders. But considering the extended lock-down which causes a delay in delivering the projects (results in deferment of revenue and additional cost), directors are of the opinion to revoke the dividend. Shareholders seeks appointment of internal auditor for audit on a concurrent basis, whereas management of DTL states it does not require to appoint an internal auditor under the law and it will



cause an unnecessary financial burden on the company. The excerpts from financial statements of the preceding financial year 2019-20 are as under:

| Particulars                     | Amount in Crore |
|---------------------------------|-----------------|
| Paid-up share capital           | 45              |
| Turnover                        | 495             |
| Outstanding loans or borrowings | 105             |
| Outstanding deposits            | 22              |

Includes inter-corporate loan of INRs 25 crores up-till 31st January, 2020 the outstanding deposit was INRs 30 crores

Mr. Gyan, one of the shareholder of DTL, out of his savings bought 40,000 shares of another company Time Consultancy Services (TCS) of face value 10 each. On such shares, the final call of 2 is due but unpaid by Mr. Gyan. In the meantime, TCS declared the dividend at a rate of 15%. Out of total dividend of INRs 8.4 crores declared on 31st August 2020, INRs 0.42 crores remain unpaid as on 30th September 2020 at the end of TCS. Out of such INRs 0.42 crores, INRs 12 lakhs are on account of the operation of law and INRs 3 lakhs on account of legal disputes of right. The unpaid dividend was finally paid on 12th December, 2020 in full.

Mr. Gyan came from humble background, hence as part of ethical commitment to uplift the society by promoting education to children of the economically weak section, he decided to form a section 8 company around 2 years back with the support of fellow professional, who later become a member of such a company. Receipts are excess of expenditure hence it was decided that Gyan foundation will declare some dividend to its members.

(MTP Oct 20)

Multiple Choice Questions (MCQs)

**1. Regarding un-paid call money by Mr. Gyan, in light of dividend due to him from TCS, state which of following statements hold truth?**

- (a) Dividend can't be adjusted against the unpaid call money
- (b) The dividend of INRs 48,000 can be adjusted against unpaid call money
- (c) The dividend of INRs 48,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan
- (d) The dividend of INRs 64,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan (Chapter 8 Declaration & Payment of Dividend)

**Answer: (b)**

**Reason:**

As per the provisions under the Companies Act, 2013, Section 49(2), the company can adjust unpaid calls against any dividend that is due to the shareholder. Specifically, if a shareholder has unpaid call money on shares, the company is entitled to adjust the amount of dividend due to that shareholder against the outstanding call money.

In this case, since Mr. Gyan has unpaid call money, the company can adjust the dividend amount of INR 48,000 against the unpaid call money. This adjustment can be made automatically without needing the shareholder's explicit consent, as the law allows for such adjustments between dividend and unpaid calls.

Thus, the correct statement is (b).

**2. Does DTL is required to appoint Internal Auditor under section 138 of Companies Act, 2013?**

- (a) No, because DTL is unlisted company
- (b) No, because paid-up share capital is less than INRs 50 crores

(c) Yes, because turnover is more than INRs 200 crores

(d) Yes, because outstanding loan is above INRs 100 crores

**Answer: (c)**

**Reason:**

As per Section 138 of the Companies Act, 2013, the following companies are required to appoint an internal auditor:

- Listed companies.
- Unlisted public companies having a paid-up share capital of INR 50 crore or more.
- Private companies having a turnover of INR 200 crore or more.
- Companies having outstanding loans or borrowings from banks or financial institutions of INR 100 crore or more.

Since DTL has a turnover of more than INR 200 crores, it meets the threshold requirement for appointing an internal auditor, regardless of whether it is listed or unlisted.

Thus, the correct answer is (c).

**3. With reference to the declaration of dividend by Gyan Foundation, state which of following statements hold truth?**

(a) Gyan Foundation can declare dividend out of the capital as well.

(b) Gyan Foundation can declare dividend either out of current years or previous year s' profit, but need to transfer a certain % to reserve.

(c) Gyan Foundation can't declare the dividend because three years has not been elapsed since its incorporation.

(d) Gyan Foundation can't declare the dividend in any case.

**Answer: (d)**

**Reason:**

As per the Companies Act, 2013, dividends can only be declared by a company out of its profits. Specifically, only companies that have accumulated profits, either from the current financial year or previous years, can declare dividends. Non-profit organizations, like Gyan Foundation (assuming it's a charitable trust or a similar organization), are prohibited from declaring dividends as they do not aim to generate profits for distribution to members.

Since Gyan Foundation cannot declare dividends due to its nature as a non-profit entity, the correct answer is (d).

**4. What will be the amount of penalty which TCS needs to pay under section 127 of the Companies Act, 2013?**

- (a) Up-to INRs 1000 per day till the default continues
- (b) INRs 64,800
- (c) INRs 97,200
- (d) INRs 1,08,000

**Answer: (c)**

**Reason:**

Under Section 127 of the Companies Act, 2013, if a company fails to declare or pay the dividend as per the provisions, the company and its officers in default will be liable for a penalty.

The penalty for non-compliance with the declaration and payment of dividends is as follows:

A penalty of INRs 1,000 per day for each day the default continues.

This penalty is subject to a maximum limit of INRs 1,00,000.

In the given case, INRs 97,200 represents the penalty that could be applicable for a specified duration, assuming the default continued for a certain period, without exceeding the maximum limit of INRs 1,00,000.

Thus, the correct answer is (c).

#### **Case Scenario 25**

A private company by the name of Neha Pvt. Limited was incorporated in the year 2002. The registered office of the company Neha Pvt. Limited was situated in city K of state Y. During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the turnover of the company Neha Pvt. Limited was Rs 1010 crore. The net profit of the company Neha Pvt. Limited for the financial year 2018-19 was Rs 4 crore.

The Board of Directors of Neha Pvt. Limited consisted of only two directors namely Mr. M and Mr. N. Mr. M and Mr. N were the only directors of company Neha Pvt. Limited since its incorporation in the year 2002.

Mr. M one of the two directors of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of the Board was required to be formed as for the financial year 2019 – 20 due to the reason that net profit of the company Neha Pvt. Limited for financial year 2018-19 was Rs 4 crore which was less than Rs 5 crore.

Mr. N the other director of Neha Pvt. Limited was not having the same opinion as Mr. M. He was of the opinion that Corporate Social Responsibility Committee of the Board must be formed for the company Neha Pvt. Limited.

The net profit of the company Neha Pvt. Limited for the financial year 2015-16, 2016-17 and 2017-18 were Rs 1 crore, Rs 2 crore and Rs 3 crore respectively. Keeping the basic provisions of Companies Act in mind answer the following

(RTP May '20)

### Multiple Choice Questions (MCQs)

1. Mr. M one of the director of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of Board was required to be formed for financial year 2019-20 but Mr. N other director was of opinion that it was required to be formed.

According to your understanding which one of the two director is right and why:

- (a) Mr. M because net profit of Neha Pvt. Limited for financial year 2018-19 was less than Rs 5 crore.
- (b) Mr. N because turnover of Neha Pvt. Limited for financial year 2018-19 was more than Rs 1,000 crore.
- (c) Mr. N because net profit of Neha Pvt. Limited for financial year 2018-19 was more than Rs 2 crore.
- (d) Mr. M because turnover of Neha Pvt. Limited for financial year 2019-19 was less than Rs 1,500 crore.

**Answer: (b)**

**Reason:**

Under the Companies Act, 2013, a Corporate Social Responsibility (CSR) Committee is required to be formed by a company if it satisfies any of the following conditions:

- Net worth of the company is Rs. 500 crore or more.
- Turnover is Rs. 1,000 crore or more.
- Net profit is Rs. 5 crore or more during any financial year.

Since Mr. N stated that a CSR Committee is required to be formed, the correct reason is that the turnover of Neha Pvt. Limited for the financial year 2018-19 was more than Rs. 1,000 crore. This condition makes the formation of the CSR Committee mandatory.

Therefore, Mr. N is correct because the company's turnover exceeded the threshold of Rs. 1,000 crore.

**2. The company Neha Pvt. Limited must give preference to spend the amount of contribution towards Corporate Social Responsibility in area of:**

- (a) City O of State Y
- (b) City A of State Z
- (c) City G of State Z
- (d) City K of State Y

**Answer: (d)**

**Reason:**

Under the Companies Act, 2013, when a company allocates its Corporate Social Responsibility (CSR) spending, it must prioritize activities that are related to areas where the company operates or has a direct impact. This means that the company should focus its CSR efforts on the communities or regions in which it has its business operations or facilities.

Therefore, Neha Pvt. Limited should prioritize spending the CSR funds in City K of State Y, as it is likely to be the area where the company has its operations, which aligns with the law's requirement to focus CSR contributions on the regions that benefit the company's operations and local communities.

**3. According to law Corporate Social Responsibility Committee shall consist of three or more directors, so for company Neha Pvt. Limited the Corporate Social Responsibility Committee will:**

- (a) Not be formed as it has only two directors namely Mr. M and Mr. N
- (b) Be formed only after appointing one more director apart from Mr. M and Mr. N
- (c) Be formed with two directors only namely Mr. M and Mr. N



(d) Be formed only after appointing two more directors apart from Mr. M and Mr. N

**Answer: (c)**

**Reason:**

As per the Companies Act, 2013, a Corporate Social Responsibility (CSR) Committee must consist of three or more directors. Since Neha Pvt. Limited only has two directors (Mr. M and Mr. N), the committee cannot be formed unless the company appoints at least one more director to fulfill the requirement of having three members in the CSR Committee.

Therefore, the company needs to appoint an additional director before forming the CSR Committee.

**4. The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of at least:**

(a) Rs 0.04 crore

(b) Rs 0.12 crore

(c) Rs 0.18 crore

(d) Rs 0.06 crore

**Answer: (a)**

**Reason:**

According to the Companies Act, 2013, a company is required to spend at least 2% of its average net profits of the three immediately preceding financial years on Corporate Social Responsibility (CSR) activities if it meets certain criteria.

In the case of Neha Pvt. Limited, assuming the company falls under the provisions of CSR as per the Companies Act, the calculation would involve:

- Net Profit for the previous 3 years (average of the net profits).
- The CSR amount is 2% of the average net profits of the last three years.

The amount Rs 0.04 crore (or Rs 4,00,000) is the minimum required to be spent, which fits the answer based on the company's financial performance and profit criteria for CSR spending.

## **Topic 10 Annual General Meeting – Time, Place, Adjournment**

### **Case Scenario 26**

Mr. Mohit Aggarwal is the director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Aggarwal (father of Mr. Mohit) on 05th July 1995 as a public company. SCCL accepts a loan from Mr. Mohit of INRs 1.5 crores for short term purpose and expected to repay after 24 months. SCCL in its book of accounts, records such receipt as loan and borrowing under non-current liabilities. At the time of advancing loan, Mr. Mohit 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 transactions are furnished in the board report.

SCCL has its registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members' register are residents of Nainital (Uttarakhand). At Nainital, SCCL has Liaison Office. Management of the company is willing to place, register of members at Nainital Liaison Office.

SCCL convene its 7th AGM on 10th September, 2020 at the registered office of the company. Notice for same was served on 21st August, 2020. More than 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19.

**Multiple Choice Questions (MCQs)**

**1. With reference to the loan advanced by Mr. Mohit to SCCL, apprise whether same is classified as deposit or not?**

- (a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit
- (b) Deposit, because the length of the loan is for a period; more than six months.
- (c) Not a deposit, because such amount is recorded as loan in books of account of SCCL
- (d) Not a deposit, because the written declaration is provided by Mr. Mohit that said sum of loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. (Chapter 5 Acceptance of Deposits by Companies)

**Answer: (d)**

**Reason:**

According to the Companies Act, 2013, the classification of loans advanced by directors is governed under the provisions related to deposits. A loan made by a director to the company may not be classified as a deposit if the following conditions are met:

The loan is advanced in the form of a genuine loan and not out of funds raised through borrowing or deposits from others.

A written declaration or confirmation from the director (Mr. Mohit, in this case) stating that the loan is not funded through borrowed funds is required. This declaration ensures that the loan is not treated as a deposit under the relevant laws governing deposit acceptance.

Since Mr. Mohit has provided such a declaration, the loan is not classified as a deposit, making option (d) the correct answer.

**2. Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office.**

- (a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL can't place it at Nainital liaison office
- (b) Register of members can't be kept at any other place by SCCL, without passing an ordinary resolution
- (c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there
- (d) Register of members can't be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there. (Chapter 7 Management & Administration)

**Answer: (c)**

**Reason:**

According to the Companies Act, 2013, a company may maintain the register of members at a place other than its registered office, subject to certain conditions. Specifically:

- The company can maintain the register at a place other than the registered office, provided that more than one-tenth (1/10th) of the total members of the company reside at that place.
- Additionally, the company must pass a special resolution to authorize the maintenance of the register at that location.

In this case, since more than 1/10th of the members reside at the Nainital liaison office, SCCL can maintain the register of members there after passing a special resolution. Hence, option (c) is the correct answer.

**3. considering the provision dealt with length of Notice of AGM, pick the right option depicting the validity of notice served by SCCL.**

(a) Notice served by SCCL is not valid, because shorter length needs to be consented by all the members entitled to vote at AGM.

(b) Notice served by SCCL is not valid, because shorter length needs to be consented by atleast 95% of members entitled to vote thereat.

(c) Notice served by SCCL is valid because the shorter length is consented by 75% of members entitled to vote thereat.

(d) Notice served by SCCL is not valid, because shorter length need to be c onsentd by atleast 50% of the members entitled to vote at AGM that too in writing.

**Answer: (b)**

**Reason:**

Under the Companies Act, 2013, the general requirement for the notice period for an Annual General Meeting (AGM) is 21 clear days. However, the Act allows for a shorter notice period if the following conditions are met:

The notice period can be reduced only with the consent of members entitled to vote, and the consent must be given in writing.

To make the shorter notice valid, the consent of at least 95% of members entitled to vote at the meeting must be obtained.

Since the notice served by SCCL was shorter than the statutory period and was consented to by less than 95% of members, it does not meet the legal requirement. Therefore, option (b) is the correct answer.

**Case Scenario 27**

Rupesh took a house loan of Rs 80 lakhs from Best Bank Ltd. While granting the house loan, the bank insisted to provide a guarantee. Rupesh's neighbour, Mithun gave the guarantee for such housing loan. Rupesh also purchased a life insurance policy on his life from A-One Life Insurance Company Ltd., for a sum assured of Rs 1 crore for a policy term of 20 years. He paid the first premium to the insurance company. This policy was purchased by Rupesh in order to protect his family, in case of untimely death of Rupesh. Rupesh made nomination of the policy in favour of Archana, his wife. After some time Rupesh's business started running into losses and he was not able to pay the instalments of housing loan to the bank. As a result, his loan account was classified by the bank as Non- Performing Asset (NPA) and the bank initiated to recover its pending dues. The Bank first sent the reminder letters/ mails to both the borrower and his guarantor and thereafter a legal notice was served.

Even after notices, when the loan account was not regularised, the bank filed a suit in Debt Recovery Tribunal (DRT) against the guarantor. The guarantor objected and asked the bank to first get it recovered from the borrower and if the borrower does not pay, then only the guarantor will be liable to pay. But the bank continued to follow up the matter in DRT and ultimately the decree was passed in favour of the Bank to recover the dues from the guarantor.

Bank recovered entire outstanding loan from the guarantor as per the decree. Now the guarantor filed a suit against Rupesh to pay the amount, which he paid to the bank. Mithun also requested to the court to provide the possession and ownership of the house, if Rupesh is not able pay such amount.

Meanwhile, Rupesh met with an accident and died on the spot. Claim was lodged by his wife and the insurance company paid the sum assured along with bonus amount to Archana (nominee of the deceased). Archana paid the amount to Mithun, which had been paid by Mithun to the bank in discharge of his guarantee and settled down all the issues. (March '22)

(MTP Mar 22)

Multiple Choice Questions (MCQs)

**1. In the given case, who is discharging the liability of a third person in case of his default in relation to the contract of guarantee?**

- (a) Mithun
- (b) Rupesh
- (c) Archana
- (d) The Bank

**Answer: (a)**

**Reason:**

In a contract of guarantee, there are three parties involved:

The Creditor (who is being guaranteed).

The Principal Debtor (who owes the debt).

The Guarantor (who guarantees to pay the debt in case the principal debtor defaults).

Here, Mithun is the Guarantor in the contract of guarantee. This means Mithun has agreed to discharge the liability of Rupesh (the principal debtor) if Rupesh defaults on his obligation. The bank, in this case, would be the creditor, but it is Mithun who is ultimately responsible for discharging the liability of the third person (Rupesh) in case of default.

Thus, Mithun is discharging the liability of the third person, which is Rupesh.

**2. What is the consideration in case of contract between Mithun and the Bank?**

- (a) Promise made for the benefit of the principal debtor to avail loan on the guarantee of the surety
- (b) In contract of guarantee, there is no consideration involved between surety and the creditor



(c) Mithun can freely utilise the house

(d) Any past consideration

**Answer: (a)**

**Reason:**

In a contract of guarantee, the consideration for the surety (Mithun in this case) is the promise made for the benefit of the principal debtor (Rupesh). The surety's agreement to guarantee the loan is based on the benefit of the principal debtor being able to avail of the loan, and in return, the surety promises to pay the debt in case the principal debtor defaults.

Thus, Mithun's promise to the bank serves as a guarantee for Rupesh's loan, which is the consideration for Mithun's involvement in the contract.

Option (b) is incorrect because there is indeed consideration in a contract of guarantee, which is the benefit to the principal debtor and the promise made by the surety.

Option (c) is incorrect because Mithun is providing a guarantee, not utilizing a house.

Option (d) is incorrect because past consideration does not apply to a guarantee contract; the consideration is based on the promise to benefit the principal debtor.

Therefore, the correct answer is (a).

#### **Case Scenario 28**

**Mr. Purshottam Prasad, a business graduate from leading B-School, running the chain of restaurants; as sole proprietor concern; based in Chennai. Mr. Prasad being dynamic businessman, in order to develop the business; decided to give corporate form to his business; but concerned with dilution of the control over business decisions.**

Mr. Prasad, during some journey met Mr. Chinmay Dass; who is school days friend of Mr. Prasad and presently working in one of leading corporate advisory firm. Mr. Prasad seeks advice from Mr. Dass, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the entire control in his hand. Mr. Dass told, about new type of company; which can be formed under Companies Act, 2013; One Person Company (OPC). Mr. Dass quoted section 2 (62), which define 'one person company', a company which has only one person as a member.

Mr. Prasad, felt OPC is correct form of business for him, hence promotes an OPC 'Casa Hangout Private Limited' (One Person Company) on 14th September 2019, to which he sold his sole proprietor business and himself became sole member. Mr. Prasad, appointed his younger son Mr. Vijay, who was 21 year old then; as Nominee to OPC. Mr. Anand who is old friend of Mr. Prasad was appointed as director of OPC, Mr. Prasad himself also become director of company.

Mr. Vijay is professional photographer, and for some certification course went to abroad on 23rd October 2019. He came back on 1st of March 2020. He established photo-studio in form of OPC 'Best Click (OPC) Private Limited' on 20th March 2020, in which Mr. Prasad is nominee and he became sole member. In mean time, Mr. Vijay also gave his consent as nominee to another OPC in which his elder brother Mr. Shankar is sole member.

Mr. Prasad met an accident on 25th March, 2020, in which he lost his life. Nomination clause invoked, resultantly Mr. Vijay has to take charge over 'Casa Hangout (OPC) Private Limited' (One Person Company) as member with immediate effect. On 30 th March, 2020 Mr. Shankar was appointed as new nominee to 'Casa Hangout (OPC) Private Limited', who gave written consent on 31st March 2020. Mr. Shankar who is investment banker by profession, is of opinion that 'Casa Hangout (OPC) Private Limited' need to amend its object clause and add 'carry out investment in securities of body corporate' as one of object.

Financial Period closed on 31st March 2020. Financial statements of 'Casa Hangout (OPC) Private Limited', which is not containing cash flow statement; signed by Mr. Anand (who left as only director after death of Mr. Prasad).

**Multiple Choice Questions (MCQs)**

**1. With reference to appointment of Mr. Vijay and Mr. Shankar as nominee to 'Casa Hangout (OPC) Private Limited', out of followings, who is eligible to be nominee of OPC?**

- (a) Any natural person excluding minor
- (b) Any legal person excluding minor
- (c) Any natural person, who is resident of India; but excluding minor
- (d) Any natural person, who is resident as well as citizen of India; but excluding minor

**Answer: (d)**

**Reason:**

According to the Companies Act, 2013, for a One Person Company (OPC), the nominee must be a natural person who is a resident and citizen of India. The nominee should be an individual and cannot be a minor or a legal person like a company or a body corporate.

Thus, Mr. Vijay and Mr. Shankar must be natural persons, citizens, and residents of India to qualify as nominees.

Option (a) is incorrect because the nominee must be a citizen of India, not just a resident.

Option (b) is incorrect because legal persons (e.g., companies) cannot be nominees.

Option (c) is incorrect because the nominee also needs to be a citizen of India, not just a resident.

Therefore, the correct answer is (d).

**2. Mr. Shankar if wish to withdraw his consent as nominee, can do so; by giving written notice to**

- (a) Director of OPC and to sole member of company
- (b) Director of OPC and to Registrar of companies
- (c) Sole member of company and to OPC
- (d) Sole member of company and to Registrar of companies

**Answer: (c)**

**Reason:**

Under the provisions for One Person Companies (OPC), if a nominee wishes to withdraw their consent, they are required to notify the sole member of the OPC and the company itself (i.e., OPC). This is because the sole member and the company need to be informed for the necessary changes in the nomination.

Option (a) is incorrect because notifying only the director and sole member is not sufficient as per the regulations.

Option (b) is incorrect because the withdrawal of consent does not require notification to the Registrar of Companies (RoC) directly; it is between the nominee, the sole member, and the OPC.

Option (d) is incorrect because there is no requirement to notify the Registrar of Companies (RoC) unless there is a change in the company records to reflect the withdrawal.

Therefore, the correct procedure is (c).

**3. With reference to legal position of Mr. Vijay as member/s and nominee/s to various OPCs, Which of the following statement is correct in reference to ceiling limit in relation to membership and being nominee to OPC? A person, other than minor; at specific point of time;**

- (a) Can be member in any number of OPCs but nominee in one OPC

(b) Can be member in one OPC and nominee in any number of OPCs

(c) Can be member in one OPC and nominee in another one OPCs

(d) Can be member and nominee both in any number of OPCs

**Answer: (c)**

**Reason:**

As per the Companies Act, 2013, a person can only be a member of one One Person Company (OPC), meaning they can have only one OPC where they are the sole member. However, the same person can be nominee in multiple OPCs, provided they are not the sole member of those companies.

Option (a) is incorrect because while a person can be a nominee in multiple OPCs, they can only be a member in one.

Option (c) is incorrect because the limitation is on the membership, not on the number of OPCs in which a person can act as a nominee.

Option (d) is incorrect because the person cannot be a member of more than one OPC at the same time.

Thus, the correct statement is (b).

**4. Which of following statement is correct, in reference to requirement for financial Statements of 'Casa Hangout (OPC) Private Limited'**

(a) Must be signed by one director

(b) Must be signed by at-least by two directors

(c) Must contain cash flow statement as part of financial statements

(d) None of the above

**Answer: (a)**

**Reason:**

For a One Person Company (OPC), the financial statements must be signed by the single director. Since an OPC has only one director, that director's signature is sufficient for the financial statements to be valid.

Option (b) is incorrect because OPCs do not require signatures from multiple directors; only the sole director's signature is needed.

Option (c) is incorrect because the requirement to include a cash flow statement is only applicable to certain companies, usually larger ones, and is not mandatory for OPCs under the Companies Act, 2013.

Thus, (a) is the correct answer.

**5. With reference to opinion of Mr. Shankar to add 'carry out investment in securities of body corporate' object, 'Casa Hangout (OPC) Private Limited'**

(a) Can't carry out non-banking financial investment activities & investment in securities of body corporate

(b) Can't carry out non-banking financial investment, but can invest in securities of body corporate'

(c) Can carry-out non-banking financial investment & invest in securities of body corporate'

(d) None of the above

**Answer: (a)**

**Reason:**

An OPC (One Person Company) is restricted in its activities as per the provisions of the Companies Act, 2013. Specifically, an OPC cannot carry out activities that are considered to

be non-banking financial investment activities such as investment in securities of a body corporate unless it is explicitly permitted under the regulations governing NBFCs (Non-Banking Financial Companies). This means that the OPC cannot engage in activities like investment in securities of other body corporates unless they are in line with the allowed activities under the Act.

Therefore, (a) is the correct answer because it highlights that OPCs are not allowed to carry out non-banking financial investment activities or investments in securities of body corporates without complying with additional regulatory frameworks.

## **Topic 11 Quorum for Meetings – Computation and Validity**

### **Case Scenario 29**

Vivek Shah is the Chief Finance Officer (CFO) and Sachin Bhatt is the Company Secretary of Jitendra Iron Works Private Ltd (JIWPL), in Manipal, Karnataka. JIWPL is an integrated set up of foundries and machine shops that add value by machining more than 75% of the castings manufactured to fully finished condition. JIWPL is one of the largest jobbing foundries producing grey iron castings required for automobile, farm equipment sector and diesel engines industry. JIWPL serves customers globally. The turnover of JIWPL is about Rs. 600 Crores, including export turnover of about Rs. 250 Crores.

During the year 2019, JIWPL planned expansion to enhance its production capacity to meet the increasing demand from its customers, by importing fully automatic plant and equipment from Germany for the unit at Manipal. The means of finance of the expansion project:-

(a) JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter director of JIWPL, Mahesh Shetty. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of Deposits.



(b) The Board and the CFO also approached the main banker of the company viz., Bank of Baroda. The Bank after proper credit analysis, sanctioned an amount of Rs. 50 Crores for meeting the working capital needs of the expansion project, which included interchangeable limits of cash credit, foreign and inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, inventory and other current assets of the expansion project in Manipal of JIWPL.

The CFO and the CS together coordinated with the legal department of the Bank on procedures relating to creation of security and registration of charges. The registered office of JIWPL is located in Manipal. Out of the company's 180 members, 20 members, who are entered in the Register of Members reside in Mangaluru, a nearby city, requested the company for some reasons to maintain the Register of Members in the company's liaison office in Mangaluru, instead of Manipal henceforth.

(MTP May 20)

#### Multiple Choice Questions (MCQs)

1. JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter directors Mahesh Shetty of JIWPL. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of deposits. The CS has to ensure -:

- (a) That the particulars of amount received are immediately entered in the register of deposits maintained in such manner and in such format as prescribed;
- (b) To issue immediately a circular to the members of the company with a statement of deposits accepted as on date with the names of each depositor, amount(s) received as on date, the due date(s) and the liability (ies) on the due date(s) in respect of each depositor
- (c) That a declaration is to be obtained to the effect that the amount given is not sourced from borrowed funds or accepting loans or deposits from others and disclose the details in the Board's Report;

(d) To file the particulars of deposits received within 30 days from the date of its receipt with the Registrar.

**Answer: (c)**

**Reason:**

Under the Companies Act, 2013, if a company receives money from a director or a relative of the director, it needs to ensure that the money is not sourced from borrowed funds or accepting loans or deposits from others. This is an important compliance requirement to prevent the company from unintentionally violating the provisions related to the acceptance of deposits.

The company must obtain a declaration from the person providing the funds that the amount is not sourced from borrowed funds or any other illegal deposits. This declaration needs to be disclosed in the Board's Report as per the regulatory norms for transparency and compliance. Therefore, (c) is the correct option.

**2. JIWPL was also sanctioned an additional amount of Rs. 50 Crores for meeting the working capital needs of the expansion project., which included interchangeable limits of cash credit, foreign and Inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, Inventory and other current assets of the expansion project of JIWPL. A floating Charge, in general is created by way of:**

- (a) Passing a board resolution
- (b) Signing and acknowledging the Credit Sanction letter
- (c) Mortgage
- (d) Hypothecation or lien.

**Answer: (d)**

**Reason:**

A floating charge is a type of security interest that is generally created over a company's assets, such as book debts, inventory, or other current assets, which may change or fluctuate over time. It allows the company to continue using and dealing with those assets in the ordinary course of business, but the charge remains in place and can be enforced if the company defaults.

This type of charge is typically created by hypothecation (where the borrower pledges assets without transferring ownership) or lien (a legal right to retain possession of property until the debt is paid). It is not a mortgage, which usually involves a specific and fixed asset.

Thus, the correct answer is (d) as hypothecation or lien is the method used to create a floating charge.

**3. The registered office of JIWPL is located in Manipal. Out of the company's 180 Members, 20 members, who are entered in the register of members (ROM) reside in Mangaluru, a nearby city. These members requested the company for some reasons to maintain the Register of members (ROM) in the company's liaison office in Mangaluru, instead of Manipal henceforth.**

(a) The ROM shall be maintained only at the registered office in Manipal and maintaining in a place other than the registered office is not permitted under the Companies Act 2013 and the relevant Rules there under.

(b) By passing a Special Resolution in a General Meeting, the ROM can be maintained in Mangaluru.

(c) The Board of Directors by passing a Board Resolution in one of its meetings, may direct the Company Secretary to maintain the ROM in Mangaluru.

(d) If more than 1/3rd of the members, whose names are entered in the ROM request for the change, then only the ROM can be maintained at Mangaluru after passing a Special Resolution in a General Meeting.

**Answer: (b)**

**Reason:**

According to Section 88(2) of the Companies Act, 2013, a company is required to maintain the Register of Members (ROM) at its registered office. However, if the company wants to maintain the register at a location other than the registered office, it can do so by passing a Special Resolution in a general meeting.

Since the company has received a request from its members to maintain the ROM in a different city (Mangaluru), this change in the location of the ROM must be approved through a Special Resolution in a General Meeting. This ensures compliance with the legal framework, as such decisions must be approved by the shareholders, not just the Board of Directors.

Hence, the correct answer is (b).

**Case Scenarios 30**

The aggregate value of the paid-up share capital of Sai Ram Limited, a listed company, was Rs 200 crore divided into 20 crore equity shares of Rs 10/- each at the end of the financial year 2021-22 having its registered office at Pune. This company had been registered with an authorised share capital of Rs 300 crore divided into 30 crore equity shares of Rs10/- each. The company has very good reputation in compliance of all legal requirements on time. The company produces health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures–

| Particulars                             | Amount (Rs in crore) |
|-----------------------------------------|----------------------|
| Free reserves created out of profits    | 200                  |
| Securities Premium account              | 80                   |
| Credit balance of Profit & Loss account | 50                   |

|                                               |    |
|-----------------------------------------------|----|
| Reserves created out of revaluation of assets | 25 |
| Miscellaneous expenditure not written off     | 10 |

Turnover of the company during the financial year 2021-22 was Rs 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 Rs 4 crore only.

The Board of Directors of the company constituted of the following persons as directors- a Chartered Accountant 'Sai Ram' as the Managing Director, 'Roshan' and 'Prachita' as independent directors, 'Hari Om', 'Bindu', 'Reddy' and 'Komal'. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2022 a CSR committee was formed to act and comply the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR Policy as under –

1. The CSR projects for the benefit of employees of the company and their families only.
2. A contribution of Rs 10,000/- to a political party under section 182 of the Companies Act, 2013.
3. A contribution to the PM CARES Fund during Covid pandemic.
4. Local activities like promotion of child and women education.
5. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.
6. CSR projects undertaken through a Section 8 company. On the basis of above facts and by applying applicable provisions of Companies Act, 2013 and the applicable Rules therein, choose the correct answer.

**Multiple Choice Questions (MCQs)**

**1. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of the Companies Act, 2013. On what basis of the following he arrived at this conclusion -**

- (a) On the basis of turnover of the company.
- (b) On the basis of turnover and net profit of the company taken together.
- (c) On the basis of net worth of the company.
- (d) On the basis of net worth and turnover of the company taken together. (Sep'22)

**Answer: (c)**

**Reason:**

Section 135 of the Companies Act, 2013 deals with the provisions related to Corporate Social Responsibility (CSR). A company is required to comply with CSR provisions if it meets any of the following thresholds during the three immediately preceding financial years:

- 1. A net worth of INR 500 crore or more.
- 2. A turnover of INR 1000 crore or more.
- 3. A net profit of INR 5 crore or more.

In this case, Prakash, the Chief Compliance Officer, determined that the company attracts the provisions of Section 135 based on the net worth of the company, which is one of the criteria for CSR applicability.

Therefore, the correct answer is (c), as CSR applicability can be triggered based on net worth alone.



**2. For the purpose of section 135 of the Companies Act, 2013, the net worth has to be calculated as defined under section 2(57) of the Act. In this context, which of the following statements is correct with reference to the above case –**

- (a) The net worth of Sai Ram Limited during the financial year 2021-22 was Rs 520 crore.
  - (b) The net worth of Sai Ram Limited during the financial year 2021-22 was Rs 530 crore.
  - (c) The net worth of Sai Ram Limited during the financial year 2021-22 was Rs 555 crore.
  - (d) The net worth of Sai Ram Limited during the financial year 2021-22 was Rs 620 crore.
- (Sep'22)

**Answer: (a)**

**Reason:**

Under Section 2(57) of the Companies Act, 2013, net worth is defined as the aggregate value of a company's paid-up share capital, free reserves, and securities premium account, after adjusting for any accumulated losses and intangible assets.

For the purpose of determining CSR applicability under Section 135, the net worth needs to be calculated according to this definition.

In the given case, the net worth of Sai Ram Limited during the financial year 2021-22 was Rs520 crore, which meets the threshold for CSR requirements under Section 135, triggering CSR obligations. Hence, the correct statement is (a).

**3. Sai Ram Limited constituted a Corporate Social Responsibility Committee as per the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014, therein consisting of-**

- (a) Sai Ram, Hari Om, Bindu and Reddy
- (b) Hari Om, Bindu, Reddy and Prakash



(c) Sai Ram, Hari Om, Bindu and Prakash

(d) Sai Ram, Hari Om, Bindu and Roshan (Sep'22)

**Answer: (d)**

**Reason:**

As per Section 135 of the Companies Act, 2013, a company that meets the specified criteria for CSR (based on net worth, turnover, or profit) is required to constitute a Corporate Social Responsibility (CSR) Committee.

According to the provisions, the CSR Committee should consist of three or more directors, with at least one of them being an independent director (if the company is required to have one).

In this case, Sai Ram Limited's CSR Committee comprises Sai Ram, Hari Om, Bindu, and Roshan, meeting the criteria of having at least three directors, with no further specified requirement for an independent director. Therefore, (d) is the correct answer based on the given information.

## **Topic 12 Voting Rights and Joint Shareholders**

*Achieving Excellence Together*

### **Case Scenario 31**

Sourabh Publishers Ltd., a listed entity, passed a resolution in its Board meeting for appointment of Jain & Jain, a Chartered Accountants firm, as Statutory Auditor of the company. The company obtained the consent in writing from Jain & Jain and also placed this recommendation before the general meeting of the shareholder and got it approved. The company thereafter informed the CA Firm about their appointment and also filed a notice of appointment with the Registrar of Companies within the prescribed time. Jain & Jain, Chartered Accountants firm is having 3 partners namely, Mridula Jain, Shyamla Jain,

Parul Jain. In this firm Mayank Jain and Shashank Jain were associates and were being paid on case-to-case basis and not on fixed salary. Prior to the appointment of Jain & Jain, the previous auditor was Agrawal Jain & Associates.

In this CA firm there were 6 partners namely, Prashant Agrawal, Vikas Agrawal, Vishal Agrawal, Vyom Agrawal, Mayank Jain and Shashank Jain. Mayank Jain and Shashank Jain were common persons in both the firms. While working with Sourabh Publishers Ltd., Jain & Jain started facing a lot of issues with the management of the company. After sometime, due to these disputes with the management, Jain & Jain resigned from the company.

(MTP Mar 22 & Sep 23)

#### Multiple Choice Questions (MCQs)

1. The newly appointed CA Firm (Jain & Jain) and retiring CA Firm (Agrawal Jain & Associates) have common persons i.e., Mayank Jain and Shashank Jain. Whether the appointment of Jain & Jain in Sourabh Publishers Ltd. is valid as per the provisions of the Companies Act, 2013:

- (a) It not valid since both the CA Firms (New and Old) have common persons
- (b) Mayank Jain and Shashank Jain are the associates in Jain & Jain and not the partners, hence appointment of Jain & Jain, is valid
- (c) Jain & Jain should expel Mayank Jain and Shashank Jain in order to retain its appointment Agrawal Jain & Associates
- (d) Should expel Mayank Jain and Shashank Jain

**Answer: (b)**

**Reason:**

According to the provisions of the Companies Act, 2013, the appointment of an auditor by a company is governed by the provisions under Section 141, which includes a restriction on

appointing an individual or a firm as an auditor if they are already appointed as an auditor of the same company or if there are common persons who are partners in both firms.

However, the key distinction here is that Mayank Jain and Shashank Jain are associates in the new firm Jain & Jain, but not partners. According to the Act, if the common persons are associates and not partners in both the firms, the appointment of Jain & Jain is still valid, as there is no restriction against having associates from a previous firm in a new one.

Thus, the appointment of Jain & Jain in Sourabh Publishers Ltd. is valid since the common persons are associates and not partners, which does not violate the provisions of the Companies Act.

**2. What would have been the position if, Mayank Jain and Shashank Jain are partners in Jain & Jain:**

- (a) The position will remain same as MCQ 1 above
- (b) There shall be no change and the Jain & Jain may continue as audit firm
- (c) The appointment of Jain & Jain would not have been in terms of the provisions of the Companies Act, 2013
- (d) The company may obtain permission from the shareholders in the general meeting by way of Special Resolution for continuation of appointment of Jain & Jain

**Answer: (c)**

**Reason:**

Under the Companies Act, 2013, specifically Section 141(3), it is prohibited for a person or a firm to be appointed as an auditor if that person or firm has common partners with the retiring auditor or its associates, and the new firm would essentially be seen as continuing the same individuals from the old firm.

If Mayank Jain and Shashank Jain were partners in both the old firm (Agrawal Jain & Associates) and the new firm (Jain & Jain), this would result in a conflict as the new firm would have common partners with the old auditor, which goes against the provisions of the Companies Act, 2013.

Therefore, the appointment of Jain & Jain in this case would not be valid unless the company seeks specific approval in accordance with the Act's provisions, which typically involves a special resolution from the shareholders.

**3. In the given case, Jain & Jain due to some dispute with the management on some issues resigned from the company. Choose the correct option in respect to filling of this vacancy:**

- (a) Jain & Jain cannot resign and has to hold the office till the conclusion of the next annual general meeting
- (b) The resignation is tendered by the auditor, the Board of Directors shall appoint new auditor within 30 days and such appointment shall also be approved by the shareholders in the general meeting within 3 months of the recommendation of the Board
- (c) This vacancy of auditor can be filled by the shareholders in consultation of the Central Government
- (d) This vacancy of auditor can be filled by the Board of Directors in consultation of the Comptroller and Auditor- General of India

**Answer (b)**

**Reason:**

Under Section 140(2) of the Companies Act, 2013, if an auditor resigns, the Board of Directors has to appoint a new auditor within 30 days of the resignation. Additionally, this appointment must be approved by the shareholders in the next general meeting, and the approval must be done within 3 months from the Board's recommendation.

Therefore, the process of filling the vacancy includes both the Board appointment and shareholder approval in the specified time frame.

### **Case Scenario 32**

Perfect Tyres and Rubbers Ltd. is a listed entity engaged in the business of manufacturing of tyres and tubes for Light and Heavy Commercial Vehicles. During the financial year 2019-20, the company has declared interim dividend of 5% on the equity shares in its Board meeting held on 17th October, 2019, out of the profits earned during the first quarter of FY 2019-20. Further, the Board of Directors of the company after reviewing results of the fourth quarter of FY 2019-20 again recommended for second Interim Dividend @ 5% on 25th April, 2020. The Board of Directors of the company approved the financial result for the FY 2019-20 in its meeting held on 5th August, 2020, and recommended a final dividend of 15% (including the interim dividends paid earlier) in this board meeting. The general meeting of the shareholders was convened on 31st August, 2020. The shareholders of the company demanded that since interim dividend @10% (5% + 5%) was declared by the company, so the final dividend should not be less than 20% (including the interim dividends). When the Company Secretary emphasised that final dividend cannot exceed, what the Board of Directors have recommended in their board meeting, some of the shareholders boycotted the meeting and moved out of the meeting hall, in protest of the company's decision.

However, the agenda for declaration of the dividend was passed unanimously by rest of the shareholders present in the meeting hall, fulfilling the criteria of requirement of quorum, as per the provisions of the Companies Act, 2013.

After approval of the shareholders, the dividend amount was paid to the shareholders, however dividend to some of the shareholders could not be paid within the prescribed period for variety of reasons. The company transferred the unpaid dividend amount to a separate bank account on 15th October, 2020. The details of the unpaid dividend amount for the previous year's lying in the unpaid dividend account is as under:

| S. No. | Dividend<br>pertaining to the<br>FY | Date of<br>declaration of<br>Dividend | Date when the<br>amount Was<br>transferred to Unpaid<br>dividend Account | Amount in the<br>Unpaid Dividend<br>Account (Rs in<br>Lakhs) |
|--------|-------------------------------------|---------------------------------------|--------------------------------------------------------------------------|--------------------------------------------------------------|
| 1      | 2019 - 20                           | 31.08.20 - 20                         | 15.10.20 - 20                                                            | 92.50                                                        |
| 2      | 2018-19                             | 25.08.20 - 19                         | 28.09.20 - 19                                                            | 85.14                                                        |
| 3      | 2017-18                             | 20.08.20 - 18                         | 22.09.20 - 18                                                            | 80.00                                                        |
| 4      | 2016-17                             | 05.09.20 - 17                         | 07.10.20 - 17                                                            | 75.25                                                        |
| 5      | 2015-16                             | 01.09.20 - 16                         | 04.10.20 - 16                                                            | 45.15                                                        |
| 6      | 2014-15                             | 07.09.20 - 15                         | 09.10.20 - 15                                                            | 35.26                                                        |
| 7      | 2013-14                             | 05.05.20 - 14                         | 08.06.20 - 14                                                            | 15.10                                                        |
| 8      | 2012-13                             | 06.06.20 - 13                         | 08.07.20 - 13                                                            | 07.25                                                        |

Sustram, one of the investors who is holding 1000 shares in physical form, by visiting website of the company, came to know that company had declared the dividends in some previous years, but have not been paid to him. This happened due to the fact the company was not having his current address and bank account details. Sustram approached the company, along with all the supporting evidence to his claim and demanded the dividend amount.

The company after being satisfied, paid all the dividend amount pertaining to the FY 2013-14 to FY 2019-20. However, for FY 2012-13, the company informed that since the amount of dividend has been transferred to Investor Education and Protection Fund, it cannot be taken back now. Aggrieved from this, Sustram threatened the company officials to take appropriate legal action.

(RTP May '22)



## Multiple Choice Questions (MCQs)

**1. When the shareholders demanded for increase in the rate of dividend, but since the shareholders cannot increase the rate of dividend what the Board of Directors have recommended, some of them walked out of the meeting hall. What shall be the consequences of it:**

- (a) If, even after boycott, quorum is present, all the time during the course of general meeting and they have approved with majority, the rate recommended by the Board shall be treated as approved.
- (b) Members present at the beginning of the meeting shall remain present all the time during the general meeting, to approve any agenda, else it will be treated as nullified.
- (c) The approval of the dividend is an ordinary business resolution of the company, so if some of the members have boycotted the meeting, it will have no effect, even if the quorum is not present.
- (d) The recommendation of the Board of Directors of the company relating to the rate of dividend shall stands withdrawn.

**Answer (a)**

**Reason:**

Under Section 103 of the Companies Act, 2013, a quorum must be present for the proceedings of a general meeting to be valid. The quorum is generally determined by the Articles of Association of the company. If quorum is present and the majority of shareholders approve the recommendation, then the resolution (in this case, the dividend rate) is considered passed, even if some shareholders have walked out or boycotted the meeting. The validity of the resolution is not affected by the walkout as long as quorum is maintained and the majority has voted in favor of it.



**2. At which date, the unpaid dividend not claimed by the shareholders, shall be transferred to a separate bank account, in the above case:**

- (a) On 5th August, 2020 (the date of Meeting of Board)
- (b) On 31st August, 2020 (the date of Meeting of Shareholders)
- (c) On 30th September, 2020 (the date, after 30 days from the meeting of shareholders)
- (d) Latest by 7th October, 2020 (within seven days from the date of expiry of 30 days)

**Answer (d)**

**Reason:**

Under Section 124 of the Companies Act, 2013, any unpaid or unclaimed dividend is required to be transferred to a separate unpaid dividend account within 30 days from the date of declaration of the dividend. After the 30-day period, the amount should be transferred to a designated bank account, and the company must take necessary steps to ensure the transfer is done within seven days from the expiry of the 30 days.

Therefore, the latest date for transferring the unpaid dividend would be 7th October, 2020, which is seven days after the expiration of the 30-day period.

**3. The company transferred the amount of unpaid dividend to a separate bank account on 15<sup>th</sup> October, 2020. What is the interest liability on the part of the company?**

- (a) No liability.
- (b) Interest @ 10% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
- (c) Interest @ 12% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

(d) Interest @ 15% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

**Answer (c)**

**Reason:**

Under Section 124 of the Companies Act, 2013, if a company does not transfer the unpaid dividend to the Unpaid Dividend Account within 30 days from the date of declaration, the company is required to pay interest at the rate of 12% per annum on the amount of the unpaid dividend.

Since the company transferred the unpaid dividend on 15th October 2020, which is more than 30 days after the declaration of the dividend (assuming the dividend declaration was before 15th September 2020), interest at the rate of 12% per annum would apply on the unpaid dividend amount.

**4. In the given case, when and how much amount, the company shall transfer the funds to the Investor Education and Protection Fund:**

- (a) Four years after 01.09.2016; Rs 45.15 lakh
- (b) Five years after 07.09.2015; Rs 35.26 lakh
- (c) Six years after 05.05.2014; Rs 15.10 lakh
- (d) Seven years after 08.07.2013; Rs 07.25 lakh

**Answer (d)**

**Reason:**

According to the Investor Education and Protection Fund (IEPF) Rules, the company is required to transfer the unpaid dividends to the IEPF seven years after the declaration of

the dividend if they remain unclaimed. This transfer happens seven years after the due date of payment or after the date when the dividend became due.

In this case, if the dividend was declared on 08.07.2013 (assuming the date given), the amount would need to be transferred to the IEPF seven years later, which falls on 08.07.2020. The amount mentioned, Rs 07.25 lakh, is the balance remaining after all previous requirements for unpaid dividends. Thus, the correct option is (d).



## Other Questions

### Topic 1 Types of Resolutions – Ordinary, Special, and Resolution with Special Notice

#### Case Scenario 1

Prakash Limited and Vasudha Private Limited (VPL) were incorporated in January 1999 by Mr. Vicky Tripathi and his family members. Both companies are engaged in the business of manufacturing machineries used in agricultural sector. Mr. Vicky Tripathi and his younger brother Vinay Tripathi actively participate in the daily operations of both the companies. Vasudha Private Limited is wholly owned by Tripathi family, while Tripathi family has a majority stake of 51% in Prakash Limited.

Due to the poor economic conditions in the agriculture sector and shifting of the farmers' focus to more advanced farming techniques, the sales of Prakash Limited is dipping and its bottom line has been in the red for the last couple of years. The unabsorbed loss of Prakash Limited for the current financial year is Rs 9.8 crore. Prakash Limited didn't pay any dividends during the last four years. Prakash Limited has accumulated profit in the form of free reserves of Rs 180 crore whereas paid-up share capital is 918 crore as per its latest audited financial statement and loss of Rs 9.8 crore has not been deducted from such amount of free reserves. Since pressure from shareholders of the free float is mounting, management at Prakash Limited decided to pay dividend this year out of accumulated profit. Finally, the dividend was declared on 31st August 2024. Some of the dividend remained unpaid as on 30th September 2024, on account of operation of law; this was transferred to unpaid Dividend Account and a statement containing only the names of such beneficiaries was hosted on the website of the company on 9th November 2024.

Vasudha Private Limited is a mid-sized unlisted entity, with few branches abroad and is not required to appoint an independent director under section 149(4). During the immediately preceding F.Y., its net worth was Rs 280 crore, turnover was Rs 590 crore and net profit was Rs 45.8 crore. The profits and other information for the immediately preceding three years are given below:

| Particulars                                                                           | Year ended<br>31.3.2024<br>(Rs in crore) | Year ended<br>31.3.2023<br>(Rs in crore) | Year ended<br>31.3.2022<br>(Rs in crore) |
|---------------------------------------------------------------------------------------|------------------------------------------|------------------------------------------|------------------------------------------|
| Net Profit for the year as per section 198 (in accordance with applicable provisions) | 41.6                                     | 42.9                                     | 28                                       |

The Board of Directors of Vasudha Private Limited is not clear whether they have to compulsorily form a CSR committee. In order to avoid adverse legal consequences, Vasudha Private Limited constituted a CSR committee comprising of two (2) non-executive directors and one (1) executive director who was appointed as chairperson of the committee.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following

(MTP 1 Jan 2025)

#### Multiple Choice Questions (MCQs)

1. In case of Prakash Limited, regarding the unpaid dividend, which of the following statements is correct?

(a) Prakash Limited is guilty, of non-payment of dividend, because some of the dividends remain unpaid even after 30 days of declaration.

(b) Prakash Limited is guilty, because the list of beneficiaries of unpaid dividend is hosted on the website after 30 days from the date it falls in the category of unpaid dividend.

(c) Prakash Limited is guilty, because the list of beneficiaries does not contain the latest known address of beneficiaries and the amount unpaid.

(d) Prakash Limited is not guilty, because it has full-filled all the provisions of law pertaining to unpaid dividend.

**Ans: (c)**

**Reason:**

Under the Companies Act, 2013, the company is required to comply with certain obligations regarding unpaid dividends. Specifically, the list of beneficiaries whose dividends remain unpaid should be accurately updated and made available with the latest known addresses of the beneficiaries. This is important for ensuring proper communication and ensuring that all beneficiaries can be contacted.

If Prakash Limited has not updated the list with the latest addresses or details of the unpaid amounts, it is in violation of the provisions of the law, making it guilty under this context.

**Option (a):** While unpaid dividends after 30 days can attract penalties, the company is not automatically guilty just because dividends remain unpaid. It depends on the actions the company has taken regarding those unpaid amounts.

**Option (b):** Hosting the list of beneficiaries after 30 days does not automatically make the company guilty; the timing depends on other factors as well.

**Option (d):** This option would only be correct if Prakash Limited had fully complied with all provisions, which is not the case based on the information provided in the question.

**2. During the current year, is Vasudha Private Limited required to constitute CSR committee under the provisions of the Companies Act, 2013?**

- (a) No, because it is a private company
- (b) No, because it is an unlisted company and it has net-worth less than Rs 500 crore
- (c) Yes, because despite being unlisted company its turnover is above Rs 500 crore
- (d) Yes, because the company meets the threshold criteria having net profits exceeding ₹5 crore in the immediately preceding financial year

**Ans:** (d)

**Reason:**

Under Section 135 of the Companies Act, 2013, a company is required to constitute a CSR (Corporate Social Responsibility) Committee if it meets any of the following criteria in the preceding financial year:

1. Net worth of ₹500 crore or more.
2. Turnover of ₹1,000 crore or more.
3. Net profit of ₹5 crore or more.

In the given scenario, Vasudha Private Limited is required to constitute a CSR Committee because it has net profits exceeding ₹5 crore in the immediately preceding financial year, irrespective of whether it is a private company, listed or unlisted.

**3. What is the implication of the fact that Prakash Limited has not paid dividends for the last four years while having free reserves?**

- (a) The company is in violation of the Companies Act, 2013, for not declaring dividends.
- (b) The shareholders can legally challenge the management for not utilizing free reserves for dividends.
- (c) There is no legal obligation to declare dividends even if the company has free reserves.



(d) The company must now use all of its free reserves to pay dividends to satisfy shareholder demands.

**Ans:** (c)

**Reason:**

Under the Companies Act, 2013, there is no legal requirement for a company to declare dividends, even if it has free reserves. The declaration of dividends is at the discretion of the Board of Directors, considering factors like the company's financial health, future plans, and cash flow needs.

**4. Considering the legal provisions regarding the constitution of CSR committee and the one constituted by Vasudha Private Limited, state which of following the statements hold truth?**

(a) Constitution of the committee is invalid because it doesn't consist of an independent director.

(b) Constitution of the committee is invalid because its chairperson is an executive director.

(c) Constitution of the committee is valid because it depends purely upon the discretion of management.

(d) Constitution of the committee is valid because company is not required to appoint an independent director.

**Ans:** (d)

**Reason:**

Under the Companies Act, 2013, for a private company, there is no mandatory requirement to appoint an independent director to the CSR committee. The CSR committee can have executive directors or other members, and the formation depends on the company's discretion, as long as the legal criteria for constituting the committee are met.

**5. What is the minimum amount to be spent by Vasudha Private Limited on CSR activities for F.Y. 2024-25?**

- (a) Rs 89.06 Lakh
- (b) Rs 78.20 Lakh
- (c) Rs 75.00 Lakh
- (d) Rs 73.80 Lakh

**Ans:** (c)

**Reason:**

Under Section 135 of the Companies Act, 2013, a company is required to spend at least 2% of its average net profits over the preceding three financial years on Corporate Social Responsibility (CSR) activities. If a company fails to do so, it must provide an explanation in its Board Report and transfer the unspent amount to a specific fund prescribed under the law.

For Vasudha Private Limited, the minimum CSR expenditure for the financial year 2024–25 is calculated as 2% of its average net profits over the last three years. Based on the company's financial performance, this amounts to Rs 75.00 Lakh. Therefore, the company is obligated to allocate this amount towards CSR activities in compliance with the statutory requirements.

## **Descriptive Question**

### **Question 2**

**Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008.**

(MTP 1 Jan 2025)

**Answer: 2**

**Financial Year:** According to section 2(1)(l) of the Limited Liability Partnership Act, 2008, “Financial year”, in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

**Question 3**

**ABHI Ltd. is holding its Annual General Meeting (AGM) to pass a crucial resolution regarding the expansion of its business operations. However, many shareholders are unable to attend the meeting in person due to their prior commitments and engagements. Despite their absence, they still wish to express their views and participate in the decision-making process.**

**Considering the provisions of the Companies Act, 2013, how can these shareholders delegate their voting rights and ensure their participation in the meeting without being physically present? What mechanisms are available under the Act to facilitate their involvement?**

(MTP 2 May 2025)

**Answer 3**

In company management, shareholder participation is essential for decision-making. However, all the shareholders may not always be able to attend meetings physically. The Companies Act, 2013, ensures that their rights are not diminished due to their absence. It facilitates the shareholders to delegate their voting power and remain actively involved in key decisions by appointing a proxy. Section 105 of the Companies Act, 2013 and Rule 19 of

the Companies (Management & Administration) Rules, 2014 contain provisions relating to the proxies.

A proxy is a person appointed by a shareholder to attend and vote on their behalf at a general meeting. Every member entitled to vote at a meeting can appoint a proxy. A proxy can be any person, not necessarily a shareholder. The appointment of proxy shall be in Form No. MGT-11. [Rule 19(3)]

The proxy form must be submitted 48 hours before the meeting. The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument shall be under its seal or be signed by an officer or an attorney duly authorised by the body corporate.

As a compliance requirement, in every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should include a statement that a member is entitled to appoint a proxy. Hence the Act ensures the shareholders participation in the meeting, keeps decisions comprehensive with fair corporate governance.

## **Topic 2 Quorum for Meetings – Computation and Validity**

### **Case Scenario 4**

Rahul and Meenakshi, two young entrepreneurs, founded “Educom Innovators LLP” under the Limited Liability Partnership Act, 2008, with a focus on providing digital education solutions. Rahul brought technical expertise, while Meenakshi managed the business operations. According to the LLP Agreement, both contributed equally and shared profits equally. After two years of growth, they decided to admit Anshul, an industry expert, as a partner to expand their reach. Anshul agreed to contribute additional capital and bring industry contacts. However, shortly after joining, Anshul discovered that certain key compliance filings, including Form 11 (Annual Return) and Form 8 (Statement of Accounts

and Solvency), were pending. Concerned, Anshul wanted to understand his liability and insisted that the LLP immediately address the compliance issues. Meanwhile, Rahul proposed to amend the LLP Agreement to reflect Anshul's new profit-sharing ratio and allocate specific decision-making powers to him. As they worked through these matters, they consulted a legal advisor to understand how the Limited Liability Partnership Act, 2008, impacted their responsibilities, liabilities, and compliance obligations.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following

(MTP 1 Jan 2025)

#### Multiple Choice Questions (MCQs)

1. When Anshul joined Educom Innovators LLP, he discovered that key compliance filings, including the Annual Return and Statement of Accounts and Solvency, were pending. What is Anshul's liability as a newly admitted partner concerning these past compliance lapses?

- (a) Anshul has no liability for past compliance lapses since he was not a partner when they occurred.
- (b) Anshul shares equal liability for past compliance lapses because he is now a partner in the LLP.
- (c) Anshul is only liable if the LLP Agreement specifically assigns responsibility to him for compliance.
- (d) Anshul's liability for past compliance is limited to his capital contribution in the LLP.

**Ans:** (a)

**Reason:**

As a newly admitted partner in an LLP, Anshul is not liable for the compliance lapses that occurred before his admission, since the lapses occurred when he was not a partner. The

liability for past non-compliance typically rests with the partners who were part of the LLP at the time the issues arose. Anshul's liability would only apply to future compliance requirements after he became a partner, unless the LLP Agreement specifically states otherwise.

**2. In light of Anshul's concern about the pending compliance filings, which of the following best describes the responsibilities of the partners in Educom Innovators LLP regarding compliance with the LLP Act, 2008?**

- (a) Only the designated partners are responsible for ensuring compliance with filing obligations under the LLP Act.
- (b) All partners, including new partners like Anshul, are equally responsible for compliance, regardless of the LLP Agreement.
- (c) Compliance responsibilities can only be assigned to one partner, who will bear full accountability.
- (d) The legal advisor is responsible for handling compliance, and the partners have no liability once they hire legal counsel.

**Ans:** (a)

**Reason:**

Under the Limited Liability Partnership (LLP) Act, 2008, it is the designated partners who are primarily responsible for ensuring that the LLP complies with all filing and legal obligations, including the filing of Annual Returns and Statement of Accounts. Other partners, including newly admitted partners like Anshul, do not bear the legal responsibility for compliance unless they are designated as partners with specific duties under the LLP Agreement.

**3. Suppose in the given scenario, Educom Innovators LLP fails to file the Statement of Account and Solvency or Annual Return for any five consecutive financial years, which of the following could occur?**

- (a) Educom Innovators LLP may be wound up the Tribunal
- (b) Takeover of Educom Innovators LLP by the persons appointed by the Registrar of Companies
- (c) Revocation of all partner rights until filings are complete
- (d) The losses for these 5 consecutive years shall be shared equally by all the partners irrespective of the profit sharing ratio as decided in the LLP agreement.

**Ans: (a)**

**Reason:**

Under the LLP Act, 2008, if an LLP fails to comply with filing requirements such as submitting the Statement of Account and Solvency or Annual Return for five consecutive years, the Registrar of Companies can initiate the process to strike off the name of the LLP from the register. In some cases, the Tribunal may order the winding up of the LLP if non-compliance is severe or persistent. This is a legal measure to ensure proper adherence to the statutory requirements.

**Option (b):** The Registrar does not take over the LLP; it may only strike off the name or refer the matter to the Tribunal.

**Option (c):** There is no provision that revokes partner rights due to non-compliance.

**Option (d):** Losses are shared according to the LLP agreement and not based on non-compliance with filing.

**Descriptive Question**



### Question 5

Kishore, Kanshik, Yuvan and Bhora were partners in ABC & Associates LLP. Yuvan resigned from the firm effective from 11th November, 2024 but this was not informed to the Registrar of Companies by the Limited Liability Partnership or Yuvan. Whether Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024? Give your answer as per the provisions of the Limited Liability Partnership Act, 2008.

(MTP 1 Jan 2025)

### Answer: 5

According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless:

- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024.

### Question 6

The company, Fateh Limited, engaged in the business of electronics manufacturing, has a paid-up share capital of Rs 12.50 crore and a shareholder base comprising 3,500 members. The company's equity shares are listed on a recognized stock exchange, and it has a history of strong shareholder participation in general meetings.

On 10th May, 2025, the Board of Directors issued a notice convening the Annual General Meeting (AGM) to be held on Saturday, 13th June, 2025 at 11:00 AM at the company's registered office in Mangalore, for considering ordinary and special business items,

including approval of the financial statements and appointment of a new independent director.

On the scheduled date, however, the required quorum, was not present. Consequently, the meeting was adjourned to the same time and place on the next Saturday, i.e., 20th June, 2025.

In connection with the meeting and its adjournment, the company's compliance officer has raised the following queries for legal clarification:

(i) If only two members (in person) are present at the adjourned meeting on 20th June, 2025, will the meeting be validly held and its business transacted?

(ii) Assume that on 13th June, 2025, 16 members (in person) were present, but due to disorderly conduct by a few shareholders during the proceedings, the Chairman exercised his discretion and adjourned the meeting to 20th June, 2025. On that date, only three members (in person) attended the adjourned meeting. Would such a meeting be valid in terms of quorum requirements?

The company has approached you to analyse both scenarios with reference to the provisions of the Companies Act, 2013.

(RTP Sep 2025)

**Answer:**

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.

(i) Where quorum is not present in the adjourned meeting (i.e. 20th June, 2025) also within half an hour, then the two members present shall form the quorum. In this case, the meeting held with 2 members shall be deemed to be validly held and the business transacted thereat shall also be deemed to be validly done.

(ii) The meeting held on 13th June, 2025 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 meeting held on 20th June, 2025, 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.

### **Topic 3 Voting Rights – Joint Shareholders, E-voting, Polling**

#### **Case Scenario 7**

In 2024, New Limited, a company specializing in international trade, needed to send an important notice to one of its clients, Mr. A, regarding a contractual amendment.

According to the company's internal regulations and the contract terms, the notice had to be served by post.

On April 15, 2024, the company's legal department prepared the notice and addressed it to Mr. A at his registered address. The notice was properly addressed, prepaid, and sent via registered post with acknowledgment due to ensure the highest level of confirmation for delivery.

A few days later, on April 20, 2024, the notice was returned with a stamp indicating that it was "not claimed" by Mr. A. The legal department recorded the return of the notice and noted the endorsement.

The company's legal advisor referred to past case laws for similar scenarios to ensure that the notice was considered legally served under section 27 of the General Clauses Act, 1897. They reviewed the following precedents:

**United Commercial Bank v. Bhim Sain Makhija:** It was noted that merely sending a notice by registered post without the acknowledgment due did not provide sufficient legal protection for proving service.

**Jagdish Singh v. Natthu Singh:** This case demonstrated that if a notice sent by registered post was returned with a refusal endorsement, it was considered served.

**Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh:** It was established that if a notice sent by registered post to a proper address was returned with an endorsement like "not claimed", it was deemed served unless proven otherwise.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 and the applicable Rules therein, choose the correct answer (one out of four) of the following

(MTP 1 Jan 2025)

Multiple Choice Questions (MCQs)

**1. According to section 27 of the General Clauses Act, 1897, what three conditions must be fulfilled for a service by post to be deemed effective?**

- (a) Properly addressed, Pre-paid, and Posting by ordinary post
- (b) Properly addressed, Pre-paid, and Posting by registered post
- (c) Properly addressed, Pre-paid, and Sending by courier
- (d) Properly addressed, Pre-paid, and Hand delivery

**Ans: (b)**

**Reason:**

Section 27 of the General Clauses Act, 1897 provides that a service of a document or notice by post is deemed effective if the following three conditions are met:

1. The document is properly addressed.
2. The document is pre-paid (i.e., postage must be fully paid).
3. The document is posted by registered post (to ensure proof of delivery and security).

These conditions ensure that there is a reliable and verifiable method for delivering the communication.

**2. In the case of United Commercial Bank v. Bhim Sain Makhija, why was the presumption of service under registered post found to be insufficient?**

- (a) Because the notice was sent by ordinary post
- (b) Because the notice was sent by registered post but not with acknowledgment due
- (c) Because the address was incorrect
- (d) Because the recipient did not respond

**Ans: (b)**

**Reason:**

In the case of United Commercial Bank v. Bhim Sain Makhija, the presumption of service under registered post was found insufficient because the notice was sent by registered post, but without acknowledgment due. The acknowledgment due system provides proof of receipt by the recipient, and without it, the bank could not prove that the notice had been received by the intended person. This was why the presumption of service was not upheld in this case.

**3. What does the case of Jagdish Singh v. Natthu Singh demonstrate about the service of notice?**

- (a) Notice sent by registered post without return endorsement is invalid
- (b) Notice sent by registered post and returned with refusal endorsement is deemed served
- (c) Notice sent by ordinary post is deemed served if not returned
- (d) Notice served by hand delivery is always valid

**Ans: (b)**

**Reason:**

In the case of Jagdish Singh v. Natthu Singh, the court held that if a notice is sent by registered post and is returned with a refusal endorsement (i.e., the recipient refuses to accept the notice), it is still deemed to be served. The refusal of acceptance by the recipient does not invalidate the service, as the law presumes that the notice was duly delivered and that the recipient had the opportunity to receive it.

**Descriptive Question**

### **Question 8**

**What are the differences between interpretation and construction in the legal context, and how do these two concepts relate to each other as per Interpretation of Statute?**

**(MTP 2 Jan 2025)**

### **Answer 8**

#### **Difference and Relationship between Interpretation and Construction**

The two terms- 'Interpretation' and 'Construction', are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

### **Question 9**

**Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM.**



It is also provided that by 1st July, 2024, the company had obtained written consent from all members via email, agreeing to hold the AGM at this out-of-state location. As per the Companies Act, 2013, evaluate whether the AGM was validly conducted.

(RTP Sep 2025)

#### Answer 9

Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 AM and 6 PM 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, Pran Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (by 1st July, 2024). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

#### Topic 4 Proxy – Appointment, Revocation, Validity

#### Case Scenario 10

New Limited, a listed entity, passed a resolution in its Board meeting for the appointment of Verma & Associates, Chartered Accountants, as the statutory auditor of the company. The company obtained written consent from Verma & Associates and placed this recommendation before the Annual General Meeting (AGM) of shareholders, where it was duly approved. After securing approval, New Limited informed the firm of their

appointment and filed a notice of appointment with the Registrar of Companies within the prescribed time.

Verma & Associates has three partners: A Verma, B Verma, and C Verma. The firm also take services of two persons, Dev Verma and Mia Verma, who work on a case-to-case basis and are not on a fixed salary.

It is also informed that prior to this appointment, Agrawal Verma & Associates was serving as the statutory auditor of New Limited. This firm had six partners: Shrey Agrawal, Alam Agrawal, Vishal Agrawal, Vyom Agrawal, Dev Verma, and Mia Verma. Notably, Dev Verma and Mia Verma were common members in both Verma & Associates and Agrawal Verma & Associates.

While working with New Limited, Verma & Associates started facing severe disagreements with the management regarding certain financial reporting matters and governance issues. As a result of these persistent disputes, the firm decided to resign as the statutory auditor.

Meanwhile, New Limited was also required to hold its Annual General Meeting (AGM) within the prescribed period, ensuring compliance with the legal provisions regarding financial reporting, auditor appointments, and shareholder approvals. However, due to internal conflicts and auditor resignation, the company faced challenges in adhering to these timelines.

Additionally, New Limited decided to shift its registered office from Mumbai to Bengaluru for operational efficiency. The company passed a Board resolution for the change and later obtained shareholder approval in the AGM. However, due to an oversight, the filing of the notice of change of registered office with the Registrar of Companies was delayed. As a result, several important communications, including regulatory notices and shareholder correspondence, were being sent to the Mumbai office, causing disruptions in company operations.

**On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following**

**(MTP 1 May 2025)**

**Multiple Choice Questions (MCQs)**

**1. The newly appointed CA Firm (Verma & Associates) and retiring CA Firm (Agrawal Verma & Associates) have common persons i.e., Dev Verma and Mia Verma. Whether the appointment of Verma & Associates in New Limited is valid as per the provisions of the Companies Act, 2013:**

- (a) It not valid since both the CA Firms (New and Old) have common persons
- (b) Dev Verma and Mia Verma are working on case-to-case basis in Verma & Associates and are not the partners, hence appointment of Verma & Associates, is valid
- (c) Verma & Associates should expel Dev Verma and Mia Verma in order to retain its appointment
- (d) Agrawal Verma & Associates should expel Dev Verma and Mia Verma

**Ans: (b)**

**Reason:**

Under the Companies Act, 2013, the validity of the appointment of a Chartered Accountant (CA) firm is not affected by the fact that both the newly appointed firm (Verma & Associates) and the retiring firm (Agrawal Verma & Associates) have common persons as long as these persons are not partners in the new firm. If Dev Verma and Mia Verma are working on a case-to-case basis in Verma & Associates and are not partners in the firm, the appointment of the firm is valid. The key factor is the lack of a direct partnership connection in the new firm, ensuring there is no conflict of interest or violation of the provisions related to CA firm appointments.

**2. What would have been the position if, Dev Verma and Mia Verma are partners in Verma & Associates:**

- (a) The position will remain same as MCQ 1 above
- b) There shall be no change and the Verma & Associates may continue as audit firm
- (c) The appointment of Verma & Associates would not have been in terms of the provisions of the Companies Act, 2013
- (d) The company may obtain permission from the shareholders in the general meeting by way of Special Resolution for continuation of appointment of Verma & Associates

**Ans: (c)**

**Reason:**

According to the Companies Act, 2013, a company cannot appoint or continue the appointment of an audit firm if the audit firm has common partners with the retiring firm. If Dev Verma and Mia Verma are partners in both Agrawal Verma & Associates (the retiring firm) and Verma & Associates (the new firm), this creates a conflict of interest, making the appointment of Verma & Associates invalid. Therefore, in this case, the appointment of Verma & Associates would not be in compliance with the provisions of the Companies Act, 2013.

**3. In the given case, Verma & Associates due to some dispute with the management on some issues resigned from the company. Choose the correct option in respect to filling of this vacancy:**

- (a) Verma & Associates cannot resign and has to hold the office till the conclusion of the next annual general meeting
- (b) The resignation is tendered by the auditor, the Board of Directors shall appoint new auditor within 30 days and such appointment shall also be approved by the shareholders in the general meeting within 3 months of the recommendation of the Board

(c) This vacancy of auditor can be filled by the shareholders in consultation of the Central Government

(d) This vacancy of auditor can be filled by the Board of Directors in consultation of the Comptroller and Auditor-General of India

**Ans: (b)**

**Reason:**

Under the Companies Act, 2013, if an auditor resigns, the Board of Directors is required to appoint a new auditor within 30 days from the resignation date. Furthermore, this appointment needs to be approved by the shareholders in the general meeting within three months of the Board's recommendation. This ensures that the company complies with the statutory requirement of having an auditor in place at all times.

**4. AGM of New Limited could not be held within the prescribed time limit. Choose the correct statement in this case.**

(a) The company can postpone the AGM indefinitely until internal conflicts are resolved.

(b) The company can apply to the Registrar of Companies (RoC) for an extension and Registrar can do so for a period not exceeding 3 months.

(c) The Board should reappoint Verma & Associates if they agree to withdraw their resignation and then conduct the AGM by 31st January of the following year.

(d) The company must approach the National Financial Reporting Authority (NFRA) for extension of date of AGM.

**Ans: (b)**

**Reason:**

As per the Companies Act, 2013, if a company is unable to hold its Annual General Meeting (AGM) within the prescribed time limit, it can apply to the Registrar of Companies (RoC) for an extension of the date. The RoC has the authority to grant an extension, but the period for the extension cannot exceed 3 months beyond the due date for holding the AGM. This ensures that the company complies with legal requirements without the AGM being delayed indefinitely.

**5. If New Limited wants to shift its registered office from Maharashtra (Mumbai) to Karnataka (Bengaluru), which of the following is required?**

- (a) Board approval only.
- (b) Only shareholder approval in a general meeting.
- (c) Approval from the Regional Director along with copy of proposed alteration in memorandum, copy of Board's resolution and Minutes of general meeting authorising the change from one state to another.
- (d) No approval is required.

**Ans: (c)**

**Reason:**

As per the Companies Act, 2013, when a company wants to shift its registered office from one state to another, it requires the approval of the Regional Director. The company must also submit the following documents for approval:

1. Proposed alteration in the memorandum of association regarding the change in the registered office.
2. A copy of the Board resolution authorizing the decision to shift the registered office.

Minutes of the general meeting approving the change.



**3.** This is necessary to ensure compliance with the legal process for altering the company's registered office from one state to another.

## **Descriptive Question**

### **Question 11**

**Lily Private Limited on 5th February 2024 obtained rupees 30 lakh working capital loan by offering its Stock and Accounts Receivables as security and rupees 5 Lakh adhoc overdraft on the personal guarantee of a Director of Lily Private Limited, from a financial institution.**

**As per the provisions of the Companies Act, 2013, whether the company is required to create charge for working capital loan and adhoc overdraft?**

**(MTP 1 May 2025)**

### **Answer 11**

As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs 30 Lakh working capital loan, Lily Private Limited is required to create a charge on it.

Lily Private Limited is not required to create a charge for Rs 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

## **Topic 5 Board Meetings – Frequency, Notice, Quorum, Conduct**



## Case Scenario 12

Star LLP is a limited liability partnership engaged in the business of eco-friendly product manufacturing. The LLP was initially established with three partners: Apeksha, Rajesh, and Riverview Limited, a corporate entity. Apeksha and Rajesh are the designated partners, with Apeksha being a resident in India. Riverview Limited has appointed Anil, an individual, as its nominee to act on its behalf.

After a few years, Rajesh decides to retire, leaving Apeksha and Riverview Limited as the remaining partners. Due to some administrative oversight, Star LLP continues its operations without appointing a new partner. This situation persists for seven months, with Apeksha being aware of the reduced number of partners. During this period, Star LLP enters into several contracts and incurs significant financial obligations.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer of the following

(MTP 2 May 2025)

### Multiple Choice Questions (MCQs)

1. Given that Rajesh retired and Star LLP continued with only Apeksha and Riverview Limited, what should Star LLP have done within six months to comply with the LLP Act?

- (a) Dissolved the LLP
- (b) Continue operating with one designated partner
- (c) Appoint at least one body corporate which should be a foreign company
- (d) Appointed at least one more partner who should also be a designated partner, as every LLP should have at least two designated partners

Ans: (d)

**Reason:**

Under the Limited Liability Partnership (LLP) Act, 2008, an LLP must have at least two designated partners. If a partner retires or the number of partners falls below two, the LLP is required to appoint another designated partner to comply with the statutory requirements. The LLP must make the necessary appointment within six months from the date the number of designated partners falls below the required threshold to continue its legal operations.

**2. According to the Limited Liability Partnership Act, 2008, choose the correct statement in relation to who must be a resident in India among the designated partners?**

- (a) At least one individual designated partner shall be resident in India
- (b) All designated partners shall only be resident in India
- (c) It is mandatory for only corporate partners to be resident in India
- (d) At least four designated partners shall be resident in India

**Ans:** (a)

**Reason:**

Under the Limited Liability Partnership (LLP) Act, 2008, it is mandatory that at least one individual designated partner of the LLP must be a resident in India. A resident in India is defined as someone who has stayed in India for at least 182 days during the preceding one year. There is no requirement for all designated partners to be residents in India, nor does it apply to corporate partners. Therefore, only one individual designated partner needs to meet the residency requirement.

**3. In the given case scenario suppose Riverview Limited also leaves the LLP and the LLP continues business for more than six months with only one partner, who is personally liable for the obligations incurred during that period?**

- (a) Apeksha
- (b) Both Apeksha and Riverview Limited
- (c) Riverview Limited
- (d) Apeksha, Rajesh and Riverview Limited

**Ans: (a)**

**Reason:**

According to the Limited Liability Partnership (LLP) Act, 2008, an LLP must have at least two designated partners. If the LLP continues to operate with only one partner for more than six months, it violates the legal requirements, as an LLP cannot function with fewer than two designated partners. In such a case, the sole remaining partner, Apeksha, will be personally liable for any obligations incurred during this period. This is because the LLP is no longer in compliance with the statutory requirement, making the remaining partner fully responsible for any liabilities incurred after the period of non-compliance.

### **Descriptive Question**

#### **Question 13**

ABC 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. Raj, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

**(MTP 1 Jan 2025)**

**Answer: 13**

Under section 102(2)(b) of the Companies Act, 2013, in the case of any general 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:

(1) 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);

(2) 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.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

## **Topic 6 Resolutions by Circulation – Applicability and Procedure**

### **Case Scenario 14**

**ABC Limited, was incorporated on 1st January, 2023. It operates in the manufacturing sector and aims to expand its business model to include e-commerce operations. ABC Limited's first financial year ended on 31st March, 2024, and the board is preparing for its**

first Annual General Meeting (AGM) to present the financial statements and discuss the new business model. ABC Limited's current board consists of five directors, including two independent directors appointed in line with best corporate governance practices.

The company has a wholly owned subsidiary, XYZ Limited, which is primarily involved in research and development for new products. XYZ Limited's financial year also ended on 31st March, 2024. Additionally, ABC Limited has a 30% stake in an associate company, MNO Limited, which provides logistics and distribution services. The board is assessing if it is required to prepare consolidated financial statements (CFS) that combine the financials of ABC Limited, XYZ Limited, and MNO Limited, considering the exemptions available under the Companies Act, 2013.

The AGM agenda includes:

1. Approval of the financial statements for the financial year 2023-24.
2. Discussion of a special resolution to adopt a new e-commerce business model, which requires a threefold majority approval.
3. Approval of consolidated financial statements, if required.
4. Appointment of auditors and other general meeting proceedings.

The board has provided notice to all members about the AGM agenda, including the proposal for the special item requiring special resolution. This notice was sent by email and registered post to ensure compliance with statutory notice requirements. All shareholders, including minority stakeholders, received this notice with proof of delivery available with the company.

(RTP Sep 2025)

Multiple choice question (MCQs)

1. Given that ABC Limited's first financial year ended on 31st March, 2024, and it was incorporated on 1st January, 2023, what is the latest date by which ABC Limited must hold its first AGM?

(a) 30th September, 2024.

(b) 31st December, 2024.

(c) 31st March, 2025.

(d) 30th June, 2025.

**Ans: (b)**

**Reason:**

As per Section 96 of the Companies Act, 2013, a company is required to hold its first Annual General Meeting (AGM) within 9 months from the end of its first financial year. Since ABC Limited's first financial year ended on 31st March, 2024, the latest date by which it must hold its first AGM is 31st December, 2024, which is 9 months after the end of its first financial year.

**2. Suppose ABC Limited holds its first AGM on 15th December, 2024. By when must it hold its subsequent AGM to remain compliant?**

(a) 15th December, 2025.

(b) 30th September, 2025.

(c) 30th June, 2025.

(d) 31st March, 2025.

**Ans: (b)**

**Reason:**

As per Section 96 of the Companies Act, 2013, a company is required to hold its AGM within 6 months from the end of each financial year. The first AGM of ABC Limited is held on 15th December, 2024, which means the company's financial year will end on 31st March, 2025.

The subsequent AGM must be held within 6 months from the end of the financial year (i.e., by 30th September, 2025) to remain compliant with the Companies Act.

**3. Under the Companies Act, 2013, does ABC Limited need to prepare consolidated financial statements (CFS) to present at the AGM?**

(a) Yes, because it has one wholly owned subsidiary and an associate company.

(b) No, because it qualifies for exemption as a wholly owned subsidiary.

(c) Yes, only if XYZ Limited and MNO Limited are listed companies.

(d) No, if shareholders provide written consent exempting it from CFS preparation.

**Ans: (a)**

**Reason:**

Under Section 129(3) of the Companies Act, 2013, every company, which is a holding company, is required to prepare consolidated financial statements (CFS) in addition to its individual financial statements, if it has any subsidiary or associate company. Since ABC Limited has a wholly owned subsidiary and an associate company, it must prepare and present the consolidated financial statements (CFS) at the AGM, as per the legal requirements. The exemption provided for certain wholly owned subsidiaries does not apply in this case.

**4. What must ABC Limited ensure to pass the special resolution approving the adoption of a new e-commerce business model at the AGM?**

(a) The resolution must have more than 50% of votes in favor.

(b) The resolution must be stated as special in the notice, and votes in favor must be three times the votes against.



(c) The resolution can be passed if votes in favor exceed votes against without being stated as special.

(d) The resolution must have unanimous support from the board of directors.

**Ans: (b)**

**Reason:**

As per Section 114 of the Companies Act, 2013, a special resolution must be passed by a supermajority of at least three-fourths (75%) of the members voting in favor. Additionally, the special resolution must be specifically stated as such in the notice of the AGM. This ensures that the members are aware that it is a special resolution, which requires a higher threshold for approval than an ordinary resolution. Therefore, in this case, the resolution must have votes in favor that are three times the votes against, or 75% of the votes in favor to be valid.

**5. Under which conditions would ABC Limited be exempt from preparing consolidated financial statements?**

(a) If ABC Limited is a wholly owned subsidiary, all members agree in writing to the exemption, and proof of delivery of this intimation is available.

(b) If XYZ Limited's shareholders unanimously agree to waive CFS requirements.

(c) If MNO Limited's financials are not significant to ABC Limited's overall financial position.

(d) If ABC Limited's board decides to skip CFS preparation with a simple majority vote.

**Ans: (a)**

**Reason:**

Under Section 129(3) of the Companies Act, 2013, a wholly owned subsidiary is exempt from preparing consolidated financial statements (CFS) if the parent company provides a

written undertaking to the Registrar of Companies (RoC) and there is no other subsidiary or associate company. In addition, the exemption requires that the parent company's members agree in writing to the exemption. Thus, if ABC Limited is a wholly owned subsidiary, it can be exempt from preparing CFS if these conditions are met.

## **Descriptive Question**

### **Question 15**

**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 1 Jan 2025)**

### **Answer: 15**

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:-

(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

(ii) 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.

In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.

### **Topic 7 Committees of the Board – Audit Committee, etc.**

#### **MCQ**

##### **Question 16**

ABC Private Limited is a project engineering, procurement and construction company. The company has bagged a contract from the Government of State of Kerala for construction of Water Dam. The company has involved a project consultancy firm situated in Australia for preparing techno-economic feasibility report to enable it to start construction work of dam. The company had paid USD 7,000,000 to vendor of Australia.

The company also availed the services of Software Company situated in Denmark for the migration of its accounting software from SAP to Oracle for which the company had paid USD 2,000,000 to the software company.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned statement is correct:

- (a) The company can make payment of USD 7,000,000 and USD 2,000,000 without any approval.
- (b) The company can make payment of USD 7,000,000 without any approval and USD 2,000,000 after obtaining prior approval of the Reserve Bank of India (RBI).

(c) The company can make payment of USD 7,000,000 and USD 2,000,000 after obtaining prior approval of RBI.

(d) The company can make payment of USD 7,000,000 after obtaining prior approval of RBI and USD 2,000,000 without any approval.

**(MTP 1 Jan 2025)**

**Ans: (b)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, payments for certain types of transactions with foreign entities are allowed without RBI approval, while others require prior approval.

1. Payment of USD 7,000,000 to an Australian consultancy firm for a techno-economic feasibility report relates to a permissible current account transaction. According to FEMA, payments for services such as consultancy are generally allowed without prior approval, provided the transaction is in line with the provisions of FEMA and the associated rules.

2. Payment of USD 2,000,000 to a Danish software company for migration of accounting software is likely considered a payment for capital goods or services that require RBI approval. Specifically, large payments related to technology transfer or capital expenditure might fall under transactions requiring prior approval from the RBI.

Thus, the company can make the payment for consultancy services without approval but needs RBI's prior approval for the payment related to the software migration.

## **Descriptive Question**

### **Question 17**

Analyse the below mentioned situation in the light of the provisions of the Foreign Exchange Management Act, 1999.

(i) Mr. New has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in Singapore.

(ii) Mr. Manoj requires US Dollar 5,000 for remittance towards hiring charges of transponders.

(MTP 1 May 2025)

#### Answer 17

According to section 5 of the Foreign Exchange Management Act, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. New wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in Singapore. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. New cannot withdraw foreign exchange for this purpose.

(ii) In the given situation, it is a current account transaction, where Mr. Manoj is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

## Topic 8 Key Managerial Personnel (KMP) – Definition and Compliance

### MCQ

#### Question 18

Mr. Narain Srinivas had enrolled himself for management course of three years with IOL, Mumbai. Out of three years, two years of educational course would be provided at the campus of IOL, Mumbai and one year of educational course would be provided at University of Auckland under student exchange program. Mr. Narain Srinivas is required to pay tuition fee of Rs10 lakh directly to IOL, Mumbai for two years course and USD 200,000 to University of Auckland.

Mr. Narain had left India on 20th August 2022 to complete his degree from University of Auckland. In the last month of final year of the course, he got an offer from one of the reputed company situated in Auckland and had accepted the offer and he decided to work there. On 1st September 2023, Mr. Narain had visited India for 30 days to meet his family and on 1st October 2023 had left India to carry on his employment.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned options correctly determined the residential status of Mr. Narain Srinivas:

- (a) Mr. Narain Srinivas to be treated as resident in India for Financial Year (FY) 2023-2024 and FY 2024-2025.
- (b) Mr. Narain Srinivas to be treated as resident in India for FY 2022-2023 and FY 2023-2024.
- (c) Mr. Narain Srinivas to be treated as non-resident for FY 2023-2024 and FY 2024-2025 as he left India for higher studies.

(d) Mr. Narain Srinivas to be treated as resident in India for FY 2023-2024 since he stays in India for more than 182 days and non-resident for FY 2024-2025.

**(MTP 1 Jan 2025)**

**Ans: (c)**

**Reason:**

As per the provisions of the Foreign Exchange Management Act (FEMA), 1999, an individual's residential status is determined based on the number of days spent in India during a particular financial year (April to March).

Mr. Narain Srinivas left India on 20th August 2022 to pursue his education at the University of Auckland. He stayed in India for less than 182 days in FY 2022-2023 and spent less than 182 days in India during FY 2023-2024 as well (since he only visited for 30 days in September 2023).

In the year 2024, he continues to work and reside in New Zealand. Based on this information, he is considered a non-resident in both FY 2023-2024 and FY 2024-2025, as he does not meet the conditions for being a resident under FEMA, which require staying in India for 182 days or more during the relevant financial year.

## **Topic 9 Register of Members and Place of Keeping Records**

### **MCQ**

#### **Question 19**

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?

- (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.

(MTP 1 Jan 2025)

**Ans:** (d)

**Reason:**

According to Section 71 of the Companies Act, 2013 and the relevant rules regarding the appointment of a debenture trustee, the following conditions must be met:

1. A debenture trustee must not have any conflict of interest with the issuer company.
2. A debenture trustee must be an independent entity or individual, not having any financial or personal interest that could compromise their ability to act impartially.

**In the given case:**

Mr. Sharma is an investor in the company, and while owning shares in the company doesn't automatically disqualify him, it could be seen as a conflict of interest.

Ms. Kapoor is a lender to the company, which creates a conflict of interest as she has a financial stake in the company's debt obligations.

Mr. Verma has provided a personal guarantee, which directly ties him to the company's debt obligations and creates a clear conflict of interest.

Therefore, none of these individuals meet the necessary criteria to be appointed as a debenture trustee, as they all have financial interests or guarantees related to the company's financial obligations.

### **Descriptive Question**

#### **Question 20**

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 2 Jan 2025)**

#### **Answer 20**

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 21**

**Blue Leaf Limited, an Indian company with a total paid-up share capital of Rs 50 crore, has a wide base of shareholders, including a large number residing in the Middle East. Out of its total capital, Rs 15 crore worth of shares are held by members residing in Kuwait.**

**To facilitate better maintenance of records and communication with its overseas shareholders, the company decides to open a foreign register in Kuwait containing the names and particulars of those members and other security holders residing there. The foreign register is formally opened on November 1, 2024.**

**Which of the following actions is Blue Leaf Limited required to take in this context?**

(a) File a resolution passed by the Board approving the foreign register with the Registrar of Companies within 60 days from November 1, 2024.

(b) Send an intimation to the Ministry of External Affairs within 15 days of opening the foreign register.

(c) File with the Registrar of Companies a notice of the situation of the Kuwait office within 30 days from November 1, 2024, along with the prescribed fee.

(d) Apply to the Reserve Bank of India for approval to maintain a foreign register outside India.

(RTP Sep 2025)

Ans: (c)

### Topic 10 Registers and Returns to be maintained at Registered Office

#### MCQ

##### Question 22

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 registration is completed.

**(MTP 1 Jan 2025)**

**Ans: (c)**

**Reason:**

Under the Companies Act, 2013, when there is a modification of an existing charge, it is mandatory to register the modification with the Registrar of Companies (RoC) within 30 days of the modification. Failure to register such modifications can lead to non-compliance with the provisions of the Act.

In this case, Best Limited failed to register the modification to the charge with LKJ Bank. The company must correct this by filing an application for rectification with the Central Government under Section 142 of the Companies Act, 2013, as this error affects the records of the company's charge. This ensures that the charge and its modification are accurately reflected in the company's records and complies with legal requirements.

Simply re-registering or ignoring the oversight is insufficient, and withdrawing the enhanced facility is not a practical solution. Therefore, filing an application for rectification with the Central Government is the correct course of action.

## **Descriptive Question**

### **Question 23**

**Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for Payment of commission of U.S. \$ 20,000 on exports made**

towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.

(MTP 2 Jan 2025)

### Answer 23

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

Accordingly, Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies, is a transactions for which drawal of foreign exchange is prohibited.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

### Topic 11 Annual General Meeting – Time, Place, Adjournment

### MCQ

#### Question 24

Rahul, a resident of India and an avid horse-racing enthusiast, earns ₹ 5 lakh as prize money from an international horse-racing event held in Dubai. He wants to remit this amount to his personal foreign bank account for future international race entries and

training. He consults his banker to confirm if this transaction is permissible under the Foreign Exchange Management Act (FEMA), 1999.

**Can Rahul remit his income from the international horse-racing event to his foreign bank account under FEMA, 1999?**

- (a) Yes, as it is his earned income.
- (b) No, as remittance of income from racing, riding, or any other hobby is prohibited.
- (c) Yes, but only with prior approval from the Reserve Bank of India (RBI).
- (d) No, unless it is for charitable purposes.

(MTP 2 JAN 2025)

**Ans: (b)**

**Reason:**

Under the Foreign Exchange Management Act (FEMA), 1999, there are specific restrictions on the remittance of income derived from certain activities. According to Schedule III of FEMA, income from activities such as horse-racing, gambling, or other similar hobbies cannot be remitted abroad. This restriction applies even if the income is legally earned, as such earnings are considered part of a restricted category under the Act.

Therefore, Rahul is not permitted to remit his prize money from the international horse-racing event to his foreign bank account under FEMA without violating the regulations.

#### **Question 25**

**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 1 Jan 2025)



**Answer: 25**

Audit of accounts of foreign company

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

(i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

(ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

**Question 26**

**Samyak Solutions Limited held it's Annual General Meeting (AGM) on 20th September, 2024 to adopt the financial statements for the financial year ending 31st March, 2024. However, due to lack of quorum, the meeting was adjourned and was finally held on 27th September, 2024.**

**What is the last date for filing the Annual Return with the Registrar of Companies under the Companies Act, 2013.**

- (a) 60 days from 31st March, 2024
- (b) 60 days from 20th September, 2024
- (c) 60 days from 27th September, 2024
- (d) 60 days from 30th September, 2024

**(RTP Sep 2025)**

**Ans: (c)**

## Topic 12 Managerial Remuneration – Limits and Approval Requirements

### MCQ

#### Question 27

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 Rs 1 lakh. Which of the following statements is correct regarding M/s Amit & Co. eligibility to continue as the auditor of Grey Limited?

- (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 held by 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 acquisition of shares by a relative leads to automatic disqualification.

(RTP Sep 2025)

Ans: (c)

Reason:

According to the Companies (Audit and Auditors) Rules, 2014, an auditor or his relative (including a spouse) is disqualified from being appointed or continuing as an auditor if they hold shares exceeding the prescribed limit. The limit for holding shares is not exceeding 1% of the paid-up share capital of the company. Since Mrs. Anita holds shares worth Rs 1 lakh,

which is typically well below the limit set for disqualification, M/s Amit & Co. can continue as the auditor of Grey Limited without any issue.

## **Descriptive Question**

### **Question 28**

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 2 Jan 2025)

### **Answer 28**

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.

#### **Question 29**

**Stridewalk Limited, a listed company engaged in the manufacturing and export of premium shoes and accessories, has been undergoing financial restructuring over the past few years. After several years of operational losses and sluggish growth, the Board recently appointed a new Production Manager, Mr. Arjun Mehra, whose strategic improvements have helped to revive the company's margins and production efficiency.**

**In light of the improved performance and renewed investors' confidence, the Board of Directors, at its meeting held on 20th April, 2025, resolved to recommend a final dividend of Rs50 lakh to its equity shareholders — a notable development as this would be the first dividend declaration in eight years.**

**The financial data available is as follows:**

- **Current year profit (after providing for depreciation and necessary reserves): Rs 16 lakh**
- **Accumulated profits /free reserves over the past eight years: Rs 170 lakh**
- **Paid-up share capital of the company: Rs 680 lakh**

- The proposed dividend of Rs 50 lakh is intended to be funded partly from the current year's profit and partly from the accumulated profits of previous years.

As the current year's profits alone are not sufficient to meet the proposed dividend payout, the company plans to draw from free reserves as permitted under the Companies Act, 2013.

With reference to the provisions of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014, examine whether the proposed dividend declaration by Stridewalk Limited complies with the legal conditions applicable in the case of inadequate profits.

(RTP Sep 2025)

**Answer: 29**

According to second provision 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 Stridewalk Limited current year profits of Rs 16 lakh are insufficient to meet the dividend requirement of Rs 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

| Particulars                                           | Amount (in Rs) |
|-------------------------------------------------------|----------------|
| 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       |
| paid up share capital of the company                  | 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 =<br>850 lakh (C) | Met |
|     | 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)<br>= (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 Stridewalk Limited has validly declared dividend.

### Topic 13 Bonus Shares – Eligibility and Conditions

#### MCQ

##### Question 30

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?**

- (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.

**(RTP Sep 2025)**

**Ans: (b)**

**Reason:**

As per the Companies Act, 2013, when a government company or any other company in which the government holds not less than 51% of the share capital is involved, the Comptroller and Auditor General (CAG) of India has the authority to appoint the auditor. This is a mandatory provision to ensure transparency and accountability in the financial auditing of government-held entities. Therefore, in the case of XYZ Limited, where the State Government of Maharashtra holds 51% of the shares, the appointment of the auditor will be made by the CAG, not the board or shareholders.

## **Descriptive Question**

### **Question 31**

**When can the Preamble be used as an aid to interpretation of a statute?**

**(MTP 1 May 2025)**

### Answer 31

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

**Situation 1:** Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

**Situation 2:** Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

### Topic 14 Buy-back of Shares – Approval and Restrictions

### Question 32

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

(MTP 1 May 2025)

### Answer 32

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20(2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

### **Topic 15 Deposits in Companies – Eligibility and Compliance**

#### **Descriptive Question**

##### **Question 33**

Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is Rs 5,00,000. Mr. Romit paid to the company Rs 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 1 Jan 2025)

**Answer: 33**

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, Rs 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 Rs 5,00,000 under a contract of employment.

Accordingly, amount of Rs 5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of the Act, as the amount received from Mr. Romit is more than his annual salary of Rs 5,00,000.

## **Topic 16 Interpretation of Statutes – Literal Rule, Harmonious Construction, Ejusdem Generis**

### **Descriptive Question**

#### **Question 34**

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 1 Jan 2025)

**Answer: 34**

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.

#### **Question 35**

Energy Mills Ltd. has issued equity shares with a face value of Rs10 per share. Mr. Amit and Mr. Burman are both friends. Mr. Amit holds 1,000 fully paid-up shares (Rs10 per share paid), while Mr. Burman holds 1,000 partly paid-up shares (Rs5 per share paid). When the company declares a 10% dividend, a dispute arises and Mr. Burman expects the same dividend amount as paid to Mr. Amit. However, the company insists on paying dividends based on the actual amount paid-up on the shares as mentioned in AOA.

In the light of the given provisions under the Companies Act, 2013, elucidate the legal position in the following situation:

(I) whether the company's decision to distribute dividends based on the paid-up amount is legally valid? How does the Companies Act, 2013 regulate dividend distribution in such cases?

(II) What role does the Articles of Association play in determining this situation?

(MTP 2 May 2025)

**Answer 35**

The Companies Act, 2013, under Section 51, provides two possible ways for distributing dividends:

1. Equal Dividend on All Shares
2. Proportional Dividend Based on Paid-up Amount

According to the given scenario

i. Mr. Amit has 1,000 shares  $\times$  Rs 10 (fully paid) = Rs 10,000

10% of 10,000 = Rs 1000

ii. Mr. Burman has 1,000 shares  $\times$  Rs 5 (partially paid) = Rs 5,000

10% of 5000 = Rs 500

Hence Mr. Amit receives Rs 1,000 as he holds fully paid-up shares, whereas Mr. Burman receives Rs 500, as his shares are partly paid-up (Rs 5 per share instead of Rs 10).

Hence following shall be the answer to the questions:

(I) The decision of the company to distribute dividends in proportion to the paid-up amount on shares is legally valid, provided that its Articles of Association (AOA) explicitly permit such a practice. This is in accordance with Section 51 of the Companies Act, 2013. It states that the company if so authorised by article, may be permitted to 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. However, in the case of preference shares, dividend is always paid at a fixed rate.

(II) The Articles of Association play a crucial role in deciding how dividends are paid.

(a) If the AOA is silent on the matter, dividends must be paid equally on all shares of the same class.

(b) If the AOA expressly allows, dividends may be paid in proportion to the paid-up value of shares.

Proportional Dividend Based on Paid-up Amount: As in the given case, the AOA allows, dividends can be paid in proportion to the paid-up value of shares.

## **Topic 17 Foreign Exchange Management Act (FEMA) – Permissible Transactions and Regulations**

### **Descriptive Question**

#### **Question 36**

**Explain the following with reference to the provisions of the General Clauses Act, 1897:**

**(i) Movable Property**

**(ii) Oath**

**(MTP 1 Jan 2025)**

**Answer: 36**

**(i) Movable Property**

According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

**(ii) Oath**

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.



### Question 37

Namaste Limited, a foreign company having its Indian principal place of business at Ranchi, Jharkhand is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. State where should the said company deliver such documents.

### Answer 37

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

(MTP 1 May 2025)

**Topic 18 Registration of Charges – Time Limit, Certificate, Consequences of Non-registration**

### Descriptive Question

### Question 38

Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)?

**Answer: 38**

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.

