

Addendum Questions – May'25

This file covers Chapter-wise **EXTRA** questions of Jan'25 exams, RTP May'25, MTP 1 and 2 of May'25 along with answers which needs to be solved over and above The Ultimate Solution QB Edition 5.

Chapter 1 Preliminary

Question 1 – MTP 1 [Q4(a)] – 5 marks

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.

Answer

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

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

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

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

Chapter 2 Incorporation of Company

Question 1 - MTP 2 [Q3(b)] - 5 marks

Mr. Dan, an Indian citizen decides to start a software development company and opts for a One Person Company (OPC). He appoints his friend, Mr. Rohit as the nominee at the time of incorporation, following all legal requirements. After two years, Mr. Rohit wants to withdraw his nomination. Mr. Dan then nominates Mr. Akaram in his place and submits the necessary Forms to the Registrar of Companies (RoC).

Considering the legal provisions governing OPCs, analyze the following:

1. What legal process must be followed when a nominee withdraws his consent?
2. How does the change of nominee impact the Memorandum of Association (MoA) of the company?
3. Can Dan own another OPC while still being a member of Dan Technologies OPC Pvt. Ltd.?

Answer

A One Person Company (OPC) allows a single entrepreneur to establish a business with limited liability while ensuring continuity through the appointment of a nominee. The role of the nominee is crucial, as they automatically become the company's owner in case of the original member's death or incapacity.

1. Legal Process for Nominee Withdrawal

In case if a nominee wishes to withdraw his consent the following steps must be followed:

- a. The nominee must submit a **written notice** to both the sole member (Mr. Dan) and the company.
- b. Mr. Dan has **15 days to appoint a new nominee**.
- c. The new nominee, Mr. Akram, must provide **written consent in Form INC-4**.
- d. Mr. Akram must submit **Form INC-4 to the RoC** to update the company's records.

2. Impact on the Memorandum of Association (MoA)

A change in the nominee's name **does not alter the Memorandum of Association (MoA)**. The law ensures that nominee changes do not require formal amendments, simplifying administrative processes.

3. Membership Restriction on Multiple OPCs

As per Rule 3(2) of the Companies (Incorporation) Rules, 2014, an individual **cannot be a member of more than one OPC at any given time**. Therefore, Mr. Dan cannot start another OPC unless he exits his current one. Similarly, Mr. Akram **cannot be a nominee for multiple OPCs**.

Chapter 3 Prospectus

Question 1 – Jan'25 – 5 marks

1,00,000 Equity shares of ₹ 100 each were issued at a premium of ₹ 2 per share by PQR Limited after offer for the same was received from the shareholders in terms of the prospectus issued by the Company on 1st April, 2022. The prospectus specified that the amount received from the issue will be exclusively used for manufacturing and distributing some life-saving drugs. In August 2024, the Company after proper market survey found that there is ample demand for Artificial Intelligence based software and therefore decided to go forward for development of such type of software. They also wanted to divert a small amount for investment in the equity shares of a large successful company. Since there was surplus money from the above issue of equity shares, the Board of Directors passed two resolutions for the above purpose; the first for investing ₹ 60,00,000 for development of Artificial Intelligence based software and the second for investing ₹ 5,00,000 in the Equity Shares in X Limited, which is a listed company.

In order to avoid any unwarranted situation from the shareholders, the Directors called for an extra ordinary general meeting in which votes cast in favour of the proposal was in excess of the votes cast against it. Some shareholders objected to the above action of the Board on the following grounds:

- (i) that the resolution passed in the extra-ordinary general meeting was not proper since the required majority did not approve the same.
- (ii) that the prescribed details of the notice which was given to the shareholders should also have been published in newspapers (one in English and one in vernacular language) circulating in the city where the registered office of the Company is situated indicating clearly the justification for such variation in the use of the funds; and
- (iii) that the resolution passed for investing ₹ 5,00,000 in the Equity Shares in X Limited is illegal.

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contentions of the shareholders are tenable.

Answer

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

The first proviso to sub-section (1) requires that prescribed details of the notice which has been given to the shareholders are to be **published in newspapers** (one in English and one in vernacular language) circulating in the city where the registered office of the company is situated indicating clearly the **justification for such variation**.

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

Section 27(2) of the Act provides that the **dissenting shareholders** (i.e. those who did not agree to the variation) are to be given an **exit offer by promoters or controlling shareholders** at such exit price and in such manner and conditions as may be specified by SEBI by making regulations for this purpose.

In the given question, PQR Limited has raised amount through issue of equity shares. It was specified that the amount so received will be used exclusively for **manufacturing and distributing** some life saving drugs. However, now the company wants to use the surplus money left from the mentioned issue of shares, for

development of Artificial Intelligence software and for investing in Equity Shares of X Limited (a listed company).

As per facts of the question and the provisions of the Act:

The company called an **extraordinary general meeting** for the above proposals of using the surplus amount. In this meeting, **votes cast in favor were in excess of votes cast against**.

Section 27(1) requires that a special resolution be passed in case of variation of terms of objects for which the prospectus has been issued can be varied.

In view of the above provisions, the contentions of the shareholders are discussed as below:

- (i) In terms of the provisions of sub-section (1) of section 27 stated above, the first contention of the shareholders **is tenable** since the resolution passed in the extra ordinary general meeting was **not proper** as it was **not passed by the required majority**.
- (ii) In terms of the first proviso to sub-section (1) of section 27 stated above, the second contention of the shareholders is also **tenable** since the **required publication was not made in the newspapers** as mentioned in the above referred proviso.
- (iii) In terms of the second proviso to sub-section (1) of section 27 stated above, the third contention of the shareholders is also **tenable** since the Act **prohibits** the company to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

In the given case, X Ltd., is a listed company, hence PQR Ltd., **cannot invest** in the equity shares of X Ltd. Hence, the resolution passed for investing ₹ 5,00,000 in the equity shares in X Limited is **not valid**.

Question 2 – RTP May'25

Grab Ltd., an unlisted company, intends to make a public offer of securities. However, they are not sure about the compliance requirements for issuing securities in dematerialised form. You being an expert, guide Grab Ltd, on the relevant provisions of the Companies Act, 2013 and whether Grab Ltd. is eligible to issue its securities?

Answer

The given issue is based on **section 29** of the Companies Act, 2013 read with the relevant 9A (Issue of securities in dematerialised form by unlisted public companies) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Section 29 deals with the **Public Offer of Securities to be in dematerialized form**. It provides that every company making a public offer and such other class or classes of companies as may be prescribed, have to issue their securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and regulations made under it.

Sub-section 1A provides that in case of prescribed class/classes of unlisted companies, the securities shall be held or transferred only in dematerialised form by complying with the **provisions of the Depositories Act, 1996** and regulations made under it.

Accordingly, in the given case, Grab Ltd., an unlisted company, if it falls in the prescribed classes of companies, have to comply with the **provisions given under section 29(1A) and the relevant Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014**. Grab Ltd. must ensure that its securities are issued and transferred in dematerialised form in compliance with the Depositories Act, 1996.

Chapter 4 Share Capital and Debentures

Question 1 – MTP 2 [Q1(a)] – 5 marks

Vardha Ltd., a textile company, had issued 5 lakh preference shares of ₹ 100 each in 2015, which are now due for redemption in 2025. The company has retained earnings of ₹3 crore & free reserves of ₹2 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?

Answer

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 ₹ 3 crore and free reserves of ₹ 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, there 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 ₹ 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 ₹5 crore to CRR and secondly if it issues fresh equity shares, it does not need to create CRR**.

Question 2 – MTP 2 [Q5(a)] – 5 marks

Energy Mills Ltd. has issued equity shares with a face value of ₹10 per share. Mr. Amit and Mr. Burman are both friends. Mr. Amit holds 1,000 fully paid-up shares (₹10 per share paid), while Mr. Burman holds 1,000 partly paid-up shares (₹5 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?

Answer

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 × ₹ 10 (fully paid) = ₹ 10,000
10% of 10,000 = ₹ 1000
- ii. Mr. Burman has 1,000 shares × ₹ 5 (partially paid) = ₹ 5,000
10% of 5000 = ₹ 500

Hence Mr. Amit receives ₹ 1,000 as he holds fully paid-up shares, whereas Mr. Burman receives ₹ 500, as his shares are partly paid-up (₹ 5 per share instead of ₹ 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.

Question 3 – MTP 2 [Q3(a)] – 5 marks

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

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 3 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.

Chapter 6 Registration of Charges

Question 1 - MTP 2 [Q5(b)] - 5 marks

Adhar Ltd. and Mittal Ltd. both took loans from different banks and provided security against them. Adhar Ltd. mortgaged its factory building and machinery, while Mittal Ltd. pledged its stock-in-trade, raw materials, and accounts receivable.

Specify the type of charges created in both cases. Justify your answer in light with the relevant provisions under the Companies Act, 2013. Also, analyze what would happen if both companies fail to repay their loans.

Answer

A charge may be either fixed or floating. A '**Fixed Charge**' is a charge on specific assets of the borrowing company. These assets are of **permanent nature** like land and building, machinery, office premises, etc. Further, these assets are **identified at the time of creation of charge**. A fixed charge is usually created by way of **mortgage or by deposit of title deeds**.

When a charge is created on such assets, the charge remains 'fixed' and the borrowing company is not permitted to sell such assets during the period of charge though it may use them.

Assets under fixed charge can be sold only with the **permission or consent of the charge-holder**.

Floating Charge

A 'Floating Charge' is created on assets or a class of assets which are of **fluctuating or changing in nature**-like raw material, stock-in-trade, debtors, etc. It is a charge upon assets both present and future. The assets under floating charge keep on changing because the borrowing company is permitted to use them for **trading or producing final goods for sale**.

In the given scenario, following nature of charges are created w.r.t the following companies:

Fixed Charge (Adhar Ltd.):

The company mortgaged its factory building and machinery, which are **permanent, identifiable assets**. Since these **assets do not change frequently**, the bank created a fixed charge over them. The company **cannot sell these assets without the bank's approval** during the loan tenure. In case the **company fails to** repay the loan, the bank can take **possession of the factory and machinery to recover its dues**.

Floating Charge (Mittal Ltd.):

The company pledged stock-in-trade, raw materials, and accounts receivable, which are changing in nature. The bank created a floating charge, allowing Mittal Ltd. to use, sell, and replenish these assets in the **normal course of business**. In case if the company repays the loan, the floating charge automatically ceases.

However, if the company fails to repay, the **floating charge crystallizes**, meaning:

- The bank **converts** the floating charge into a fixed charge.
- Mittal Ltd. **loses control over its assets**.
- The bank **can seize and sell the assets to recover its loan amount**.

Hence in the above case, Adhar Ltd., loan is secured by a fixed charge, limiting its ability to dispose of the secured assets where as in the case of Mittal Ltd., loan is secured by a floating charge, allowing normal business operations unless a default occurs. If both companies default, the bank can take control of the respective assets and sell them to recover the loans.

Chapter 7 Management and Administration

Question 1 - Jan'25 - 5 marks

Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming world-class cricketers. The foundation selects young boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently, it is having 1200 members. The Annual General Meeting of the company is usually held at the club cum registered office of the company at Jaipur.

The members in one of the general meetings have strongly suggested that the next Annual General Meeting of the company be held at a hotel in the vicinity of the Registered Office at Jaipur instead of the Club as the same has a congested sitting area.

It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with the facility of only physical voting and no E-Voting to be provided to the members.

Referring to the relevant rules and provisions of the Companies Act, 2013, decide on the following:

- (i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?
- (ii) Whether a 15 days' prior notice is valid and as per the law?
- (iii) Whether the decision to provide the facility of only physical voting and not E-Voting is valid?

Answer

- (i) In the case of **section 8 company**, in pursuance of the second proviso to **section 96(2)** of the Companies Act, 2013, the time, date and place of each Annual General Meeting is required to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. [Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs on the 5th June, 2015].

Hence, the directors are bound to consider the directions regarding shifting of venue for the next Annual General Meeting.

Alternate Answer to Part (i)

As per the facts of the question, the members, in one of the general meetings, have strongly suggested that the next AGM of the company be held near the vicinity of the Registered Office at Jaipur instead of the club as the same has congested sitting area.

Since **only suggestions** have been given in one of the general meetings, the same **cannot be construed as a compulsion on the part of the Board to act thereon**. A mere suggestion will not tantamount to be a **binding direction**. In other words, a suggestion is just an idea or an opinion that someone proposes which need be compulsorily acted upon, while a **direction** is a set of instructions for where to go or what to do. So, the suggestion by the shareholders is **non-binding on the Board**.

- (ii) Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs dated 5th June, 2015 provides that section 8 company can hold a meeting with minimum of **14 days' notice as against 21 days' notice** otherwise applicable under section 101 (1) of the Companies Act, 2013.

Hence, the director can **validly issue** a 15 days' notice being greater than 14 days as provided in the notification and the notice is as per the law.

- (iii) Yes, as per the provision of **section 108** of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, section 8 company, having a number of members of 1000 or more, is required to provide **e- voting facility** to its members at a general meeting. Hence, the decision of the foundation, to provide the facility of only physical voting and not E-voting, is **not valid** as section 8 Company is having 1200 members.

Question 2 – MTP 2 [Q6(a)] – 5 marks

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?

Answer

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**.

Chapter 8 Dividend

Question 1 – MTP 2 [Q1(b)] – 5 marks

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.

Answer

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 don't 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 & 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 can't force the company to declare dividends.**

A company can declare dividends only out of:

- Current year's profits after providing for depreciation.
- Previous years profits transferred to reserves.
- 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.

Question 2 – MTP 2 [Q6(b)] – 5 marks

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?
- (ii) How is the IEPF utilized?
- (iii) What steps should Mr. Victor, the shareholder take to reclaim his dividend?

Answer

- (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.

- (ii) IEPF is utilized in the following manner:

- The IEPF safeguards investor interests by **holding unclaimed dividends, matured deposits, and debentures.**
- It allows investors to **reclaim their money** after proper verification.
- The fund is also used for **investor education, awareness programs, and legal reimbursements for class action suits.**
- It prevents companies from **misusing unclaimed funds and ensures they remain accessible to rightful owners.**

- (iii) Mr. Victor can recover his unclaimed dividend by following the proper procedure.

Mr. Victor must visit the IEPF portal and download **Form IEPF-5**. He should fill in all the required details in the Form. After submission, the company will verify and forwards the claim to the IEPF Authority. Upon successful verification the IEPF Authority will process the refund, and Mr. Victor will receive his unclaimed dividend.

Chapter 9 Accounts of Company

Question 1 - Jan'25 - 5 marks

Quick Money Limited attracts the provisions of Section 135 of the Companies Act, 2013, and it has a minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ₹ 15 crores during each of the preceding five years. In this connection, the Board of Directors of the company needs your expert views on the following matters:

- (i) What is the meaning of "impact assessment"?
- (ii) Whether impact assessment is required to be taken by all the companies?
- (iii) Who can conduct impact assessment?

Answer

Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 provides the class of companies that are required conduct an impact assessment.

Every company having **average CSR obligation of ten crore rupees or more** in pursuance of section 135(5) of the Companies Act, 2013, in the **three immediately preceding financial years**, shall undertake impact assessment, through an **independent agency**, of their CSR projects having **outlays of one crore rupees** or more, and which have been **completed not less than one year** before undertaking the impact study.

The above-mentioned companies may undertake impact assessment, through an independent agency.

Alternate Answer**(i) Meaning of Impact Assessment:**

The impact assessment is an exercise to **assess the social, economic and environmental** impact of a particular CSR project. Impact assessment intends to evaluate "social, economic and environmental return on investment". It is the exercise of taking a **retroactive view** of the Corporate Social Responsibility (CSR) activities completed by the entity and assess the effects of these activities on various stakeholders like employees, customers, communities and the environment.

Impact assessment is seemingly another step to encourage companies to make considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall **not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.**

(ii) Whether the impact assessment is to be taken by all Companies?

Since impact assessment is **cost-intensive and time consuming**, the idea is to obligate only certain classes of companies which have large amount of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires the following class of companies to conduct an impact assessment:

Every company having average CSR obligation of ₹ 10 crore or more in the three immediately preceding financial years of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking impact assessment.

(iii) Who can conduct an impact assessment?

The impact assessment shall be conducted by an **independent agency**.

Question 2 – RTP May'25

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 matter, if Madan Pvt. Ltd. had securities listed on a recognized stock exchange?

Answer

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.

Chapter 10 Audit and Auditors

Question 1 - MTP 1 [Q5(b)] - 5 marks

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.

Answer

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

Chapter 12 General Clauses Act, 1897

Question 1 - Jan'25 - 4 marks

Define the term 'person' as per the General Clauses Act, 1897. Discuss which of the following will be treated as a person:

- (i) An idol
- (ii) A public body
- (iii) A company

Answer

Definition of the term "Person"

As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

- any company, or
- an association, or
- body of individuals, whether incorporated or not.

From the above definition, we can conclude:

- (i) An Idol: An idol is a **juristic person**. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an idol **is a person**.
- (ii) A Public Body: A public body to be a person **need not always be set-up by the statute**. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and **is treated as a "person."**
- (iii) A Company: The definition of person includes a company. Thus, a **company is a person**.

Question 2 - RTP May'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?

Answer

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 behaviour, the court may decide to **impose rigorous imprisonment**.

Chapter 13 Interpretation of Statutes

Question 1 - MTP 2 [Q3(c)] - 4 marks

"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.

Answer

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 2 - MTP 2 [Q4(c)] - 4 marks

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?

Answer

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.

Chapter 14 Foreign Exchange Management Act, 1999

Question 1 - Jan'25 - 4 marks

Murari Lal, a person resident outside India, has invested in four residential immovable properties under construction in Kolkata. Each property is negotiated at ₹ 2 crore, with the companies owned by builders. This amount is to be paid in two instalments as 60% on immediate basis on booking and the balance on possession of the properties.

The above transaction is done by the companies owned by builders through two brokers from USA on commission basis. Mr. Murari Lal as per the terms and conditions remitted 60% of the amount of all four immovable properties directly to the company.

Answer the following explaining the provisions of the FEMA, 1999:

- (i) Whether investment by Mr. Murari Lal & payment of commission on this transaction is permissible?
- (ii) How much maximum amount of commission can be paid to each broker without RBI approval? (Ignore the USD - Rupee Exchange Rate)

Answer

The investment in immovable properties in India by Mr. Murari Lal, a resident outside India, is a Capital Account Transaction which is **permissible** as per **Schedule II** of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 which **permits Acquisition and Transfer of Immovable Property in India by a Person Resident Outside India**.

According to **Schedule III** to Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances by persons other than individuals shall require **prior approval of the Reserve Bank of India** if Commission, per transaction, to agents abroad for **sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more**.

As per the facts of the question and mentioned provisions, the following are the answers to the questions asked:

- (i) Yes, the investment by Mr. Murari Lal and payment of commission on this transaction is **permissible**.
- (ii) Calculation of maximum commission that can be paid without the approval of RBI.

The maximum amount of commission that can be paid to each broker for each transaction, without RBI approval is, **more of- USD 25,000 or ₹ 6 lakh** [i.e. 5% of (60% of 2 crore)].

Thus, ₹ 6,00,000 can be paid to each broker as commission **without taking any prior approval of the RBI**.

Question 2 - MTP 1 [Q6(c)] - 4 marks

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.

Answer

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 PRI 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 PRI 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 3 - MTP 2 [Q1(c)] - 4 marks

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.

Answer

- (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.

Chapter 15 Limited Liability Partnership Act, 2008

Question 1 - Jan'25 - 5 marks

NS & Associates LLP was formed in the year 2020 and it was engaged in the business of manufacturing of plastic parts for automobiles. It constituted of Mr. Naveen and Mr. Suresh as designated partners who were responsible for obtaining contracts from various automobile manufacturers across the country for supply of spare parts for vehicles.

In the year 2021, an investigation was ordered by the Tribunal against the LLP in connection with a financial fraud worth ₹ 50,25,000. Mr. J, one of the Accounts Managers and an employee of the LLP, was accused by the complainant as one of the perpetrators of the fraud.

The Tribunal levied a penalty of ₹ 1,25,000 to be paid by Mr. J on his conviction. Mr. J approached the Tribunal and provided vital information about the other black sheep involved in the fraud, thus aiding in the investigation process. The Tribunal is considering providing some relief in the penal action taken against him, while the LLP is planning to suspend Mr. J from service for this act.

Considering the provisions of the Limited Liability Partnership Act, 2008:

- (i) Decide whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?
- (ii) Can the LLP suspend Mr. J from service for commission of the act of revealing the name of the other accused involved in the fraud?

Answer

Section 31(1) of the Limited Liability Partnership Act, 2008 provides that:

The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided **useful information during investigation** of such LLP; or when any information given by any partner, or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP **being convicted** under this Act or any other Act.

On the basis of the above provisions, the question can be answered as under:

- (i) **Yes**, the Tribunal has the power to waive or reduce the penalty of ₹ 1,25,000 being imposed on Mr. J as he has provided **useful information that is helpful towards investigations** in the case of fraud by the LLP.
- (ii) **Section 31(2)** of the LLP Act, 2008 further provides that:
No partner or employee of any limited liability partnership may be **discharged, demoted, suspended, threatened, harassed** or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). Hence, Mr. J **cannot be suspended** from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

Question 2 - MTP 1 [Q4(b)] - 5 marks

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 Jan, 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.

Answer

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 3 - MTP 2 [Q4(b)] - 5 marks

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?

Answer

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 plead of the ignorance and cannot avoid the liability.