CORPORATE LAW SUMMARY MATERIAL
(Rocket/ Summar/ GenZ Notes)

CA INTERMEDIATE – JAN/MAY/ SEP 2025

Contents within this section

VERY IMPORTANT NOTE FOR USERS OF THIS BOOK

(Every user of this book apart from the Material should access the following playlists on CA CS Karthik Manikonda youtube channel for better learning of the subject)

A. CA Inter Law Marathon for Respective attempt

B. CA Inter Law feedback on Presentation Playlist

C. CA Inter Law Section numbers Capsule

Matters requiring Ordinary Resolution as per Companies Act 2013

S. No	Section	Matters
1	**Sec 4 (5) (ii)**	If the name reservation obtained by Company, is found to be obtained by furnishing wrong or incorrect information after incorporation, then the **Registrar may direct the incorporated company to change its name within three months, after passing an ordinary resolution.** ***(Alteration of Name clause)***
2	**Sec 16 –** Rectification of name of company	Where, in the opinion of the **Central Government (CG)**, that reserved name of an incorporated company is **identical with or too nearly resembles** the name of an existing company or existing Registered Trademark under the Trademark Act 1999, then **CG may direct the company to change its name within 3 months for Change of name and 3 months for Trademark from the date of issue of such direction, after passing ordinary resolution.** ***(Rectification of name)***
3	**Sec 43 –** Shares with differential voting rights	the issue of shares with differential voting rights is authorized by an ordinary resolution passed at a general meeting of the shareholders:
4	**Sec 61** – Power of Limited company to alter its share capital	If Articles of Association of the company authorize, company may alter its Memorandum of Association in its General Meeting with Ordinary resolution, to give effect to the following: ➢ Increase its Authorized Share Capital of the company ➢ Consolidated and Divide Share Capital, either partly or wholly. ➢ Conversion of Fully paid-up shares into stock; Reconversion of such stock into fully paid-up shares of any denomination. ➢ Sub-division of the Share capital of the company ➢ Cancellation of shares.
5	**Sec 63 –** Issue of Bonus Shares	If Articles of Association of the company authorize and other conditions laid in section 63 satisfied, **Company may proceed to issue bonus shares** out of free reserves, Share Premium Account Balances or Capital Redemption reserves Account, **by passing ordinary Resolution in its General Meeting.**
6	**Sec 73** – Prohibition on acceptance of deposits from Public.	**A Company may** by passing Ordinary Resolution in General Meeting and subject to other conditions prescribed in this section and Rules, **accept deposits** from **its members**. ***(Any company deposits from members)***
7	**Sec 76** – Acceptance of Deposits from Public by Certain Companies	A Public Company whose **net worth is not less than 100 Crores rupees** or whose **Turnover is not less than 500 Crores Rupees**, **may accept deposits from Public** by passing Ordinary Resolution and, upon satisfying further conditions prescribed in Section 76.
8	**Sec 102** – Statement to be Annexed to Notice	Following business in Annual General Meeting are Ordinary Business and shall be passed through Ordinary Resolution at **AGM**: ➢ Consideration of Financial Statement and the reports of Board of Directors and Auditor; ➢ The declaration of any dividend; ➢ Appointment of Director in the place of retiring Director; ➢ the appointment of, and the fixing of the remuneration of, the auditors;
9	**Sec 113 –** Representation of Corporations at Meeting of Companies and Creditors	A body corporate being a member or Creditor of another Company, may authorise its **member to act its representative** at any meeting of the Company, by way of passing Ordinary Resolutions.

Matters requiring Special Resolution as per Companies Act 2013

S. No	Section	Matters
1	**Sec 5** - Articles of the company	Alteration of **Entrenchment Provisions** of Articles of Association of a **Public Company.** Note: In case of **Private Company,** Consent of all the member is required to alter Entrenchment Provision.
2	**Sec 12** – Registered Office of the Company	If the Registered Office of the Company is changed outside the local limits of City, Town or Village.
3	**Sec 13** – Alteration of Memorandum	**Any Alternation to the Memorandum** of the Company, shall be passed by Special Resolution and complying with the other Provisions of this Section, subject to **section 61 & Section 64 of the Act**. ***(i.e., alteration of all clauses except capital clause needs SR)***
4	**Sec 14** – Alteration of Articles	**Any Alternation to the Articles** including conversion of a private company into a public company and vice versa, shall be given effect by passing Special Resolution and complying with the other Provisions of this Section.
5	**Sec 27** – Variation in Terms of Contract or Objects in Prospectus	Company **shall not vary the terms of a contract referred to in the prospectus** or objects for which the prospectus was issued, expect subject to an authority given by the company in **General Meeting by way of Special Resolution**.
6	**Sec 41** – Global Depository Receipt	A company may, **after passing a special resolution** in its general meeting, issue **depository receipts in any foreign country** in such manner, and subject to such conditions, as may be prescribed. ***(NOT IN SYLLABUS)***
7	**Sec 42 –** Private Placement	Pass SR in Gm to issue shares under private placement
8	**Sec 48** – Variation of Shareholder's Right	**Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class** may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or **by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class**, subject to such other conditions prescribed in the section.
9	**Sec 54 –** Issue of Sweat Equity Shares	For issuing sweat equity shares of a class of shares already issued, the company should have **authorized to such issue**, **by way of Special Resolution** and shall comply with other prescribed conditions of the section.
10	**Sec 55 –** Issue of preference shares	A company can issue preference shares by passing SR.
11	**Sec 62 –** Further issue of Share Capital	➢ Further Issue of Shares to Employees under **Employees Stock Option.** ➢ Further **issue of Shares to any person**, if the price of such shares is determined by the **Valuation Report.** *Note: Right's issue does not require any resolution*
12	**Sec 66** – Reduction of Share Capital	Subject to confirmation by Tribunal on an application by the company, a company by way of Special Resolution, **reduce the share Capital** in any manners or in particulars, prescribed in the section.
13	**Sec 67 –** Restriction on issue of loans	A company can give loans to its employees for the purchase of its own shares subject to passing of a special resolution
14	**Sec 68 –** Power of Company to purchase its own Securities	A company may **purchase/buy back its own shares or specified securities**, by way of passing the Special Resolution if the BB percentage needed is 25%

15	**Sec 71** - Debentures	A company shall **issue debentures with an option to convert such debentures into shares, either wholly or partly**, provided such issue shall be authorised by the company, by way of Special Resolution in its general Meeting. ***(Conversion of debentures into shares)***
16	**Sec 88 –** Register of members	SR needed to keep the ROM in any other place other than the city, town or village where RO is situated
17	**Sec 140** - Removal, resignation of auditor and giving of special notice	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. **Note:** Auditor should have given reasonable opportunity of being heard.

Various Limits Under the Companies Act

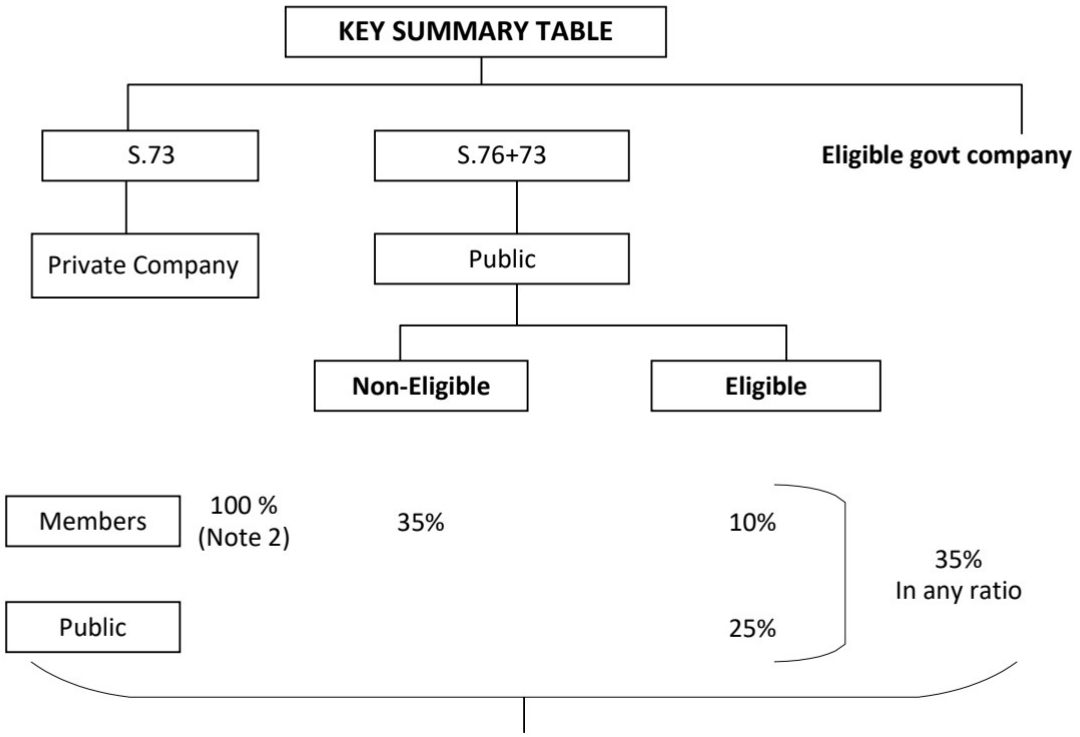
S. No	Compliance	Applicability
1	**Sec 139(2)** - Rotation of Auditor	Following companies shall not appoint or re-appoint an **Individual Auditor** for more than **one term of Five consecutive Years** [In case of **Audit Firm**, Companies shall not appoint or reappoint for more than **two terms of five consecutive Years**]: ➢ Listed Companies; (or) ➢ All **unlisted public** companies having paid up share capital **>= 10 Crores**; (or) ➢ all **private limited** companies having paid up share capital **>= 50 Crores**; (or) ➢ all companies not covered as per above conditions, but having public borrowings from financial institutions, banks or public deposits **>= 50 Crores**. Note: One Person Company and Small Company need not comply with section 139(2), irrespective of conditions specified above.
2	**Sec 138** – Appointment of Internal Auditor	Following class of Companies are required to appoint Internal Auditor, ➢ **Every Listed Companies** ➢ Every **Unlisted Public Companies** having- ✓ paid up share capital of **50 Crores or more** during the preceding financial year; or ✓ turnover of **200 Crores or more** during the preceding financial year; or ✓ outstanding loans or borrowings from banks or public financial institutions exceeding **100 Crores or more at any point of time** during the preceding financial year; or ✓ outstanding deposits of **25 Crores or more at any point of time** during the preceding financial year; ➢ Every **private company** having- ✓ turnover of **200 Crores or more** during the preceding financial year; or ✓ outstanding loans or borrowings from banks or public financial institutions **>= 100 Crores** at any point of time during the preceding financial year.
3	**Sec 135** - Corporate Social Responsibility	Every Company having ➢ **Net Worth** ≥ Rs. 500 Crores, or ➢ **Turnover** ≥ Rs. 1,000 Crores, or ➢ **Net Profit** ≥ Rs. 5 Crores during immediately preceding financial year shall constitute a CSR Committee and CSR Policy shall indicate the activities to be undertaken by the Company in areas or subject as specified in Schedule VII. Spend – 2% of average NP of last 3 years.
4	**Sec 148** – Cost Audit	Every Company which is required to maintain cost records as per section 148(1), shall get its cost records Audited by a Cost Accountant, if the following conditions satisfies: ➢ In case of **Regulated Sectors**, if the overall annual turnover of the company from all its products and services during the immediately preceding financial year **>= 50 Crores** and the aggregate turnover of the individual product or products or services for which cost records are required to be maintained under section 148(1) is **>= 25 Crores** ➢ In case of **Un-regulated Sectors**, if the overall annual turnover of the company from all its products and services during the immediately preceding financial year **>= 100 Crores** and the aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under section 148(1) **>=35 Crores.** Note: Description on Regulated Sectors and Non-regulated sectors are given in ***Rule-3*** of '***The Companies (Cost Records and Audit) Rules, 2014***'

		Cost Audit is not applicable in the following cases: ➢ Revenue from Exports, in Foreign Exchange, **≥75%** of the Total Revenue ➢ Company operating from a Special Economic Zone **(SEZ)** ➢ Company engaged in the generation of electricity for captive consumption through captive generating Plant.
5	**CARO 2020 Applicability**	CARO applies to all Companies except: ➢ One Person Company ➢ Small Companies as per Sec 2 (85) [**Paid up share capital < *10 crores* and Turnover as per preceding Financial Year < *100 crores***] ➢ Banking Companies ➢ Companies registered for Charitable Purposes ➢ Insurance Companies ➢ Private Companies: ✓ Whose **gross receipts or revenue** (including revenue from discontinuing operations) **<= 10 Crores** in the financial year, ✓ Whose **paid-up share capital** plus reserves is **<= 1 Crore** as on the balance sheet date (i.e., usually at the end of the FY), ✓ Not a holding or subsidiary of a public company, and ✓ Whose **borrowings <= 1 Crore,** at any time during the FY.
6	**Applicability of Annual General Meeting**	➢ **All Companies** whether Public or Private, having a Share Capital or not, Limited or Unlimited, must hold AGM. ➢ However, One Person Company (**OPC)** is **not** required to hold an AGM. ➢ Central Government is empowered to **exempt** any class of Companies from holding of AGM.
7	**Sec 141 –** Disqualifications of Auditors	**Only limits** **A.** Auditor in Shares of Company / Holding / Subsidiary / Associate / Co subsidiary – Nil **B.** Relative can Hold up to 1 lakh FV in the company only **C.** Partner or relative of partner indebted in Company / Holding / Subsidiary / Associate / Co subsidiary – 5 Lakhs **D.** Partner or relative of partner guarantee/security to loans of Company / Holding / Subsidiary / Associate / Co subsidiary – 1 Lakh
8	**Sec 137 –** Financial Statement to be filed in XBRL [**E-Form AOC-4**]	**Companies to whom E-Form AOC-4 [XBRL] mandatory:** (a) All **public companies listed in the stock exchange** in India and their Indian subsidiaries. (b) All companies with a **turnover >= 100 Crores**. (c) All companies with a **paid-up capital >= 5 Crores**. (d) All IND AS applicable Companies.
9	**Sec 100 Who can call an EGM?**	**A. Company having share capital** Members holding >= 1/10th of **paid up share capital** **B. Company NOT having share capital** Members holding >= 1/10th of **total voting power** having right to Vote.
10	**Sec 103 – Quorum**	**A. In case of a Public company** 1. Up to 1000 -> 5 members **personally** present 2. More than 1000 up to 5000 -> 15 members **personally** present 3. More than 5000 -> 30 members **personally** present **B. In case of a private company** 2 Members **personally** present or Number Specified in AOA, **Whichever is Higher**.

11	**Sec 105 Proxy Limits**	**1.** A proxy can act as proxy on behalf of **maximum 50 members** **AND** **One proxy can maximum** vote up to 10% of Voting power *(i.e., can hold in aggregate a total of 10% of the share capital of the company carrying voting rights)* 2. A **single member holding more than 10% of share capital** of the company can appoint only **ONE PROXY AND** such proxy cannot act as proxy for any other member.
12	**Sec 108 -** Voting Though Electronic Means	**Following Companies shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means:** ➢ Every company which has listed its equity shares on a recognised stock exchange ➢ Every company having **>= 1000 Members.**
13	**Sec 109 Who can demand for Poll?**	A. In case of Company **having share capital** -**Any member** (Present in person or proxy) having 1/10th of **total voting power (OR)** - Paid up share capital of not less than Rs 5,00,000 or such higher amount as may be prescribed. B. **Any other company** Any member (Present in person or proxy) having 1/10th of total voting power
14	**Sec 111 – Circulation of Members Resolution**	**A. Company having share capital** Members Holding >= 1/10th of paid-up equity share capital **B. Company having no share capital** Members Holding >= 1/10th of total voting power.
15	**Sec 115 – Who can demand a special Notice?**	a. Members Holding not less than 1% of total voting power (or) b. Members Holding shares on which such sum not less than Rs 5,00,000 has been paid up.
16	**Sec 92 –** Annual Return	Annual Return of the following Companies shall be Certified by the Practicing Company Secretary in **FORM MGT-8**: ➢ Listed Companies ➢ company having paid-up share capital **>= 10 Crores** ➢ Turnover **>= 50 Crores**
17	**Sec 90 –** Significant Beneficial Owners in a Company	Following persons are considered as Significant Beneficial Owners (SBO) of the Company and Company shall maintain the SBO register in **FORM BEN-3.** An individual who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely: ➢ holds indirectly, or together with any direct holdings, **>= 10%, of the shares (or)** ➢ holds indirectly, or together with any direct holdings, **>=10%, of the voting rights in the shares (or)** ➢ has right to receive or participate in**>=10%**, of the **total distributable dividend, or any other distribution**, in a financial year through indirect holdings alone, or together with any direct holdings **(or)** ➢ has **right to exercise, or actually exercises, significant influence or control**, in any manner other than through direct-holdings alone.
18	**Sec 2 (85) –** Small Company	"small company'' means a company, other than a public company, — ➢ Paid-up share capital **<= 4 Crores** (and) such higher amount as prescribed **not exceeding 10 Crores** ➢ Turnover **<= 40 Crores (**and) such higher amount as prescribed **not exceeding 100 Crores**

19	**Sec 67 Loan to employees**	**Loan** given by Company to employees **other than directors and KMP** for them to purchase fully paid-up shares of the Company (or) holding Company. -> Loan should not exceed the salary or wages period of 6 months.
20	**Section 67 – Exemption to Private companies**	S. 67 is NOT applicable to a private company if the following conditions are satisfied; a) No other body corporate **has invested money** in the share capital of such Company. **b)** The **borrowing** of such private Company from **bank** or **financial institution** or any other body corporate is **less than twice its paid-up share capital (or) 50 Cr w.e lower** c) A private Company has **not defaulted in repayment of such borrowings**, subsisting at the time of making any transaction. d) A private Company has not defaulted to file financial statement (U/s 127) (or) annual return (U/s 92)
21	**Sec 68 – Buy back**	1. BR in BM – Not more than 10% of aggregate paid up equity capital + Free reserves 2. SR in GM – Not more than 25% of PSC + FR 3. D/E Ratio post BB shall not exceed 2:1 4. Free reserves for this section includes securities premium **Note:** Total BB in any FY shall not exceed 25% of Paid-up equity share capital
22	**Section 123 + Rules for declaration of dividend**	Rule 1: Rate shall not exceed average of last 3 years. Rule 2: The **total amount to be drawn** from such accumulated profits **shall not exceed 10% of its (paid-up share capital and free reserves)** **Note: The amount** so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared. Rule 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid-up Share capital as appearing in the latest audited financial statements.
23	**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 other company having such influence and **includes a joint venture**. **->Significant influence means** control of **at least 20% of the total Voting Power** (Equity share capital & convertible preference share capital) or of **business decision** under an agreement.
24	**Government Company**	**Means** a company in which **not less than 51%** of the paid-up share capital is held by the central government or state government or combination of central and state government. Subsidiary of a government company is also a government company.
25	**Foreign Company**	**Section 379 Where 51% of the paid up share capital (ESC+PSC) of a foreign company is held by an Indian company registered in India or People in India, then such company becomes a company as if it is incorporated in India**

Eligible Deposits Limits as per Section 73 and Section 76



The **Amount of Deposit** together with the amount of Deposit already outstanding **SHOULD NOT** Exceed ***the above %*** of [PSC+ FR+SP] as the case may be.

Note 1: (Common Note)

Time limit of issue of deposit:	**For S.73 + S.76**
Min: 6 months **Max:** 36 Months **and** such deposits shall not be repayable on demand	
Exception: Short term requirements	
Period: ≥3 Months ≤ 6 Months	
Limit: 10% Agg [PSC+FR+SP]	

Note 2: In case of private company: certain class of company can issue deposits without any limits (Any amount they can issue, more than 100%].

a) A s**tart-up private** company for 10 years from the date of commencement (or)
b) Company shall fulfil all the conditions below:
   - Such **company is not** an **associate** or **subsidiary** of any other company **and**
   - **Borrowings** of such company from banks (or) any other body corporate is less than twice of its paid-up share capital (or) 50 crores whichever is less **and**
   - Company has **not defaulted** in repaying borrowings subsisting at the time of accepting the deposits and
   - Company has not defaulted in filing annual return and financial statements and has to file details of money collected to registrar.

Note 3 what is an Eligible company?

1. It is a public company **+**
2. Company should have **net worth** ≥ 100 crores **or** turnover ≥ 500 crores. +
3. The Company has obtained from the members consent by passion a resolution, in the form of SR or OR case may be and filed the same with the registrar before making such invitation of deposits.

List of Provisions whose non-compliance shall be considered as fraud and punishable under section 447

Sl.no	Sections	Provisions
1	**Sec 7 (5)** – Incorporation of Company	If any person furnishes any **false or incorrect particulars** of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.
2	**Sec 7(6)** - Incorporation of Company	Where, at any time **after the incorporation of a company**, it is proved that the company has been got incorporated **by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed** or made for incorporating such company, or by any fraudulent action, the **promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of sub-section(1**) shall each be liable for action under section 447.
3	**Sec 8** - Formation of companies with charitable objects, etc.	If a company makes any default in complying with any of the requirements laid down in this section and such default is proved that the **affairs of the company were conducted fraudulently**, every officer in default shall be liable for action under section 447.
4	**Sec 34** – Criminal Liability for misstatements in Prospectus.	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.
5	**Sec 36** - Punishment for fraudulently inducing persons to invest money	Any person who, either **knowingly or recklessly makes any statement, promise, or forecast** which is **false, deceptive or misleading, or deliberately conceals any material facts**, to induce another person to enter into, or to offer to enter into: **a)** any agreement for, or with a view to, **acquiring, disposing of, subscribing for, or underwriting securities**; **or** **b)** any agreement, the purpose or the pretended purpose of which is **to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities**; **or** c) any agreement for, or with a view **to obtaining credit facilities from any bank or financial institution**, shall be liable for action under section 447.
6	**Sec 38** - Punishment for personation for acquisition, etc., of securities	Any person who- a) makes or abets **making of an application in a fictitious name** to a company **for acquiring, or subscribing for, its securities**; or b) makes or abets making **of multiple applications** to a company in different names or in different combinations of his name or surname **for acquiring or subscribing** for its securities; or c) otherwise induces **directly or indirectly a company to allot**, or register any transfer of, securities to him, or to any other person in **a fictitious name**, shall be liable for action under section 447.
7	**Sec 46** – Certificate of Shares	If a company with intent to **defraud issues a duplicate certificate of shares**, the company shall be punishable with fine which shall not be less than **five times the face value** of the shares involved in the issue of the duplicate certificate but which **may extend to ten times the face value of**

		such shares or rupees ten crores whichever is higher and **every officer of the company who is in default** shall be liable for action under section 447.
8	**Sec 56** - Transfer and transmission of securities	where **any depository or depository participant**, with an intention to defraud a person, in relation to transfer and transmission of securities, has **transferred shares**, it shall be liable under section 447.
9	**Sec 66** - Reduction of share capital	If any officer of the company- a) knowingly conceals the name of any creditor entitled to object to the reduction; b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.
10	**Sec 76A -** Punishment for contravention of section 73 or section 76	Where the **officer of the Company, knowingly or wilfully** with the intention for action under section 447, **contravenes the provisions of Sec 73 or Sec 76**, he shall be liable for action under section 447.
11	**Sec 90** - Register of significant beneficial owners in a company	If any person **wilfully furnishes any false or incorrect information or suppresses any material information,** of which he is aware in the declaration made under this section, he shall be liable to action under section 447.
12	**Sec 140** - Removal, resignation of auditor and giving of special notice	**An auditor**, whether individual or firm, who **acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers**, against whom **final order has been passed by the Tribunal** under this section shall not be eligible to be appointed as an auditor of any company for a period of **five years** from the date of passing of the order and **the auditor shall also be liable for action** under section 447.

All provisions where Unanimous Resolution is Required

1) Sec 5 - In case of Private Company, Consent of all the member is required to alter **Entrenchment Provision**.

2) Sec 96 - 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.

3) Sec 101 – **Shorter Notice** -> where **not less than 95% of members entitled to vote** give their consent in writing or in electronic mode.

4) Section 123(3) – Interim Dividend once declared can be revoked with the consent of all shareholders

5) Section 129 – Financial Statements – Consolidation is not required where the holding company intimates the members of subsidiary and they provide their consent for the same.

Relevant forms to be filed by companies with MCA along with time limits *(Optional to remember)*

FORM	DESCRIPTION	DUE DATE OF FILING
FORM ADT 4	Fraud reporting by Auditor to Ministry of corporate affairs in this form U/s 143(12) where fraud $\geq$ 1 Crore	Intimate CG within 15 days from the date of reply of BOD
FORM ADT-1	Information to the Registrar by Company for appointment of Auditor	**Within 15 days** of the Annual General Meeting in which the Auditor was appointed or reappointed
FORM ADT-2	Application for removal of auditor(s) from his/their office before expiry of term	Within 30 Days from the date of passing Resolution
FORM ADT-3	Notice of Resignation by the Auditor	**Within 30 days** from the date of resignation
FORM AOC-4	Form for filing financial statement and other documents with the Registrar	**Within 30 days** from the date of holding Annual General Meeting
FORM AOC-5	Notice of address at which books of account are maintained	**Within seven days** of passing the Resolution of the Board
FORM BEN 1	SBO to file details of interest with reporting company	**within 90 days of commencement of the rules *(Transitional)***
FORM BEN 2	Reporting company to file details of SBO with registrar	within 30 days of receiving such declaration
FORM CHG 2	Charge registration or modification shall be issued by registrar in this form	NA
FORM CHG 5	Certificate of registration for satisfaction of charge	NA
FORM CHG-1	Application for registration of creation, modification of charge (other than those related to debentures) and also for extension of time limits for filing by company	Within 30 days from the date of creation/modification of charge.

FORM CHG-4	Particulars for satisfaction of charge thereof	**Within 30 days** of full satisfaction of the charge.
FORM CHG-8	Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge	Beyond 300 days from the date of creation or modification.
FORM CHG-9	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures	**Within 30 days** from the date of creation/modification for Debentures
FORM CRA-2	Form of intimation of appointment of cost auditor by the company to Central Government.	Within a period of 30 days from the board meeting or within 180 days of the commencement of the financial year, whichever is earlier.
FORM CRA-4	Form for filing Cost Audit Report with the Central Government	**Within 30 days** from the date of receipt of the copy of the cost audit report by the company
FORM CSR 1	Form to register CSR activities with CG	NA
FORM DIR-11	Notice of resignation of a director to the Registrar	**Within 30 days** from the date of resignation.
FORM DIR-12	Particulars of appointment of Directors and the key managerial personnel and the changes among them	**within 30 days** from the date of resignation of the director
FORM DPT 3	Filing of audited return of deposits	**Before 30th June of every financial year**
FORM DPT-3	Return of deposits	30th June of Every Year
FORM INC 11	Certificate of Incorporation issues by ROC	NA
FORM INC 32	SPICe form for incorporation of a Company	**NA**
FORM INC-12	Application for grant of License under section 8	NA
FORM INC-20A	Declaration for commencement of business **(S.10A)**	**Within 180 days** from the date of incorporation of the company
FORM INC-23	Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	Within 30 days from the date of relocation
FORM INC-24	Application for approval of Central Government for change of name	**Within 30 days** from the date of the general meeting to obtain approval for change.
FORM INC-27	Conversion of public company into private company or private company into public company	NA
FORM INC-6	One Person Company- Application for Conversion	**Within 6 months** from the effective date on which prescribed threshold limit was exceeded.
FORM MGT 1	Maintaining details of **Register of members** U/s 88	**NA**
FORM MGT 3	File with registrar details of any foreign register	**Within 30 days of opening any foreign register**

FORM MGT 4	Registered owner of shares to inform company regarding details of the beneficial owner	**Within 30 days of acquiring beneficial interest**
FORM MGT 5	Beneficial owner to intimate company within of beneficial interest	**Within 30 days of acquiring beneficial interest**
FORM MGT 8	Filing of Annual return U/s 92	**Within 60 days from date of AGM**
FORM MGT-14	Filing of Resolutions and agreements to the Registrar	**Within 30 days** from the resolution being passed or the agreement being entered into
FORM MGT-15	Form for filing Report on Annual General Meeting U/s 121	**Within 30 days** of the conclusion of the Annual General Meeting.
FORM MGT-7	Form for filing annual return by a company.	**Within 60 days** from the date of holding Annual General Meeting
FORM PAS 2	Filing of Information memorandum in case of Shelf prospectus	**NA**
FORM PAS 3	To be filed with registrar in case of Allotment of shares U/s 39	**Within 30 days from date of allotment**
FORM PAS 4 AND PAS 5	In case of private placement, identified persons get the offer in OAS 4 AND company to maintain a record of the same in PAS 5	**Maintain PAS 4 within 30 days of recording name and maintain details in PAS 5 within 30 days from date of making the offer.**
FORM SH 11	File details of buy back to registrar	**within 3 days of completion of Buy back**
FORM SH-11	Return in respect of buy-back of securities	**Within 30 days** of completion of buy back
FORM SH3	Register of sweat equity shares	**NA**
FORM SH-7	Notice to Registrar of any alteration of share capital	**Within 30 days** of passing the respective resolution
FROM DPT 3	Deposit return by auditor	File before **30th June** for that year details of deposits on **31st March of that year**
Form FC-1	Documents to be filed by Foreign company with Registrar	File within 30 days of establishment of business
Form FC -2	Documents to be filed by Foreign company with Registrar IN CASE of any alteration of data in FC-1	File within 30 days of such Alteration
Form FC – 3	Filing of FS and related documents with Registrar	File within 6 months from the end of the financial year
Form FC-4	Annual return of a foreign company	File within 60 days from the end of FY
CSR – 1	First time registration of CSR with the ROC, companies undertaking CSR projects to file this with certification by CA/CS/CMA.	Mandatory for all companies U/s 135
CSR – 2	To be filed every year along with AOC 4 u/s 137	Within 30 days from the end of AGM

Relevant forms to be filed by companies with MCA along with time limits

1. The Following sections in our syllabus has exceptions for Nidhi Companies
   (Only reference is given here, detailed points read from material or check youtube video on CA CS Karthik Manikonda channel for Nidhi Companies)

(Section 20 – Serving of Documents
Section 47 – Voting Rights
Section 62(4) – Rights Issue
Section 67 – Exemption
Section 127 – Dividend
Section 136 – Circulation of Financial Statements

Summary of Interest Rates

12 % Interest Rate	15% Interest Rate	18% Interest Rate
Section 53 – Issuing shares at a discount	Section 39 – Allotment of Securities	Section 73/76 – Delay in Repayment of deposits
Section 124 – Unpaid Dividend Account		Section 127 – Failure to pay dividend within 30 days
Section 42 – Private Placement		

Cases where Section 92 or 137 compliance is needed

(Only reference is given here, detailed points read from material)

1. Section 43 Rule 4 – DVRs (3 Years)
2. Section 62 – Exemption for Private Company to pass OR instead of SR
3. Dormant company definition (2 years)
4. Section 73 – Deposits chapter exception for a private company to issue deposits more than 100%
5. Exemption for a Private company U/s 67 (Non applicability of this section to private company)
6. Section 70 – Prohibition of Buy back
7. Section 8 company to convert to another company
8. Section 56 – Transfer and transmission for a Government company
9. Section 104 – Exceptions to chairman provision for a Private Company
10. Section 2(40) FS – Cash flow statement optional for a few companies if they meet with these sections

CA INTERMEDIATE

VIVITSU

NEW AND UPDATED

APPLICABLE FOR SEPTEMBER' 25 AND JANUARY' 26

CORPORATE & OTHER LAWS REVIEWER

2

Chapter-wise compilation RTP, MTP and PYP questions

KEY HIGHLIGHTS

- EASY TO HARD DIFFICULTY LEVEL
- CHAPTERS RANKED AS A, B AND C BY IMPORTANCE
- REFERENCE TO ALL QUESTIONS
- QUICK RECAP OF IMPORTANT CONCEPTS
- EXAM INSIGHTS
- LAST DAY REVISION QUESTIONS MARKED

CA CS Karthik Manikonda

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13	The General Clauses Act, 1897	13.8,13.10,13.11,13.18	A	Q 25, Q 28, Q 32, Q 51
14	Interpretation of Statutes	14.2,14.4,14.9,14.12	B	Q 1, Q 6, Q 21, Q 32
15	The Foreign Exchange Management Act, 1999	15.8,15.10,15.11,15.16	A	Q 10, Q 16, Q 19, Q 30
16	Case Scenarios	16.20,16.23,16.32,16.35	A	Q 18, Q 20, Q 29, Q 33

ABC Analysis

A Very Important, Read on priority

B Moderately Important

C Less critical but still essential

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

VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 1: PRELIMINARY

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

Question & Answers

Sec 2(68)- Private Company

Question 7 LDR

ABC Limited is a registered public company having the following:

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

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

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

ii. Whether existing number of members need to be reduced for the proposed conversion into a private company? (MTP 5 Marks July'24) (SM)

Answer 7

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

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

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

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

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

Accordingly, total Number of members in ABC Limited are:

(i)	Directors and their relatives	20
(ii)	Joint shareholders (10x2)	10
(iii)	Other Members	150
	Total	180

(i) ABC Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 180 which is within the prescribed maximum limit of 200, so ABC Limited can be converted into a private company.

(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 180 which does not exceed maximum limit of 200.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

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

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

(2) The turnover is ₹ 2,00,00,000.

It is further understood that Yellow Private Limited, which is a public limited company is holding 2,00,000 equity shares, fully paid-up, of Resolution Private Limited. Resolution Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2023-24. The ROC has issued a notice to Resolution Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

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

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

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

Answer 13

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

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

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

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

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

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

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

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

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

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

(c) cash flow statement for the financial year;

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

(e) any explanatory note annexed to, or forming part of, any document referred to in points to (d):

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

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

CHAPTER 2 : INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 3- Formation of Company	• Sec 4- Memorandum of Association	Q 4
• Rule 3 & 4- One Person Company	• Sec 13- Alteration of Memorandum	Q 12
• Sec 7- Incorporation of Company	• Sec 16- Rectification of Name of Company	Q 26
• Sec 8- Formation of Co's with Charitable Object	• Sec 12- Registered Office of Company	
• Sec 9- Effect of Registration	• Sec 10A- Commencement of Business	
• Sec 5- Articles of Association	• Sec 19- Subsidiary cannot hold shares in Holding Co	
• Doctrine of Indoor Management & Constructive Notice	• Sec 20- Service of Documents	
• Sec 6- Acts to Override Memorandum & Articles	• Sec 22- Execution of Bills of Exchange etc.	

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question & Answers

Question 4 LDR

Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

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

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

Answer 4

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

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

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

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

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

Question 12 LDR

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

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

Answer 12

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

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

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

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

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

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

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

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

Question 26 LDR

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

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

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

Answer 26

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

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

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

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

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

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

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

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

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

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

Here, in the instant case, ABC Limited issued 10,000 equity shares on 1st April, 2023 whereby XYZ Limited & PQR Limited holds 3,500 & 2,500 shares respectively in ABC Limited. Considering 1 share = 1 vote, XYZ Limited and PQR Limited together holds 60% of the total voting power [i.e. more than one-half (50%)].

Further, MNP Limited controls the composition of Board of Directors of XYZ Limited and PQR Limited from 01.07.2023. In the light of section 2(87), MNP Limited is a holding company of XYZ Limited and PQR Limited (Subsidiary companies).

Following are the answers to the questions:

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

(ii) The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore:

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

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

CHAPTER 3: PROSPECTUS AND ALLOTMENT OF SECURITIES

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

Question & Answers

Question 9 LDR

Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. ***(PYP 5 Marks Nov '22, RTP May '20, SM)***

Answer 9

Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage. In the present case, Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might sustained from the purchase of shares, which has not been mentioned in the given case. Hence, Mr. Alok will have no remedy against the company.

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

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

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

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

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

Bheem Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further
reveals that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Bheem Ltd. received an amount of ₹20,00,000 on share application. Bheem Ltd., then proceeded for allotment of shares.
Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013. ***(MTP 6 Marks April '23 & Sep '23, PYP 6 Marks Jan '21)***

Answer 12

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

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

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

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

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

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

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

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

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

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

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

Answer 18

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

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

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

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

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

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

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

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

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

CHAPTER 4: SHARE CAPITAL AND DEBENTURES

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 46- Certificate of Shares	• Sec 63- Issue of Bonus Shares	Q 9
• Sec 48- Variation in Shareholder's Rights	• Sec 67- Restriction on Purchase by Company	Q 22
• Sec 52- Issue of Shares at a Premium or Discount	• Sec 68- Buyback of Own Securities	Q 26
• Sec 54- Issue of Sweat Equity Shares	• Sec 71- Debentures	Q 31
• Sec 55- Issue & Redemption of Preference Shares	• Sec 49 to 51- Calls on Shares	
• Sec 56- Transfer of Securities	Sec 62- Rights Issue	
• Sec 58- Refusal to Transfer Shares	• Sec 47- Voting Rights	
• Sec 61- Power of Limited Companies to alter its Share Capital	• Rule 4- Issue of shares with Differential Rights	

VIVITSU

Question & Answers

Question 9 LDR

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

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

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

Answer 9

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

a. Share of that class must be already issued
b. Issue is authorised by a special resolution passed by the company;
c. Resolution specifies the details regarding the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

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

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

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

The issuance of sweat equity shares (cumulative, including all previous issues, if any) shall not exceed 25%

of the paid-up equity capital of the company at any time.

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

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

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

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

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

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 22 LDR

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

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

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

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

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

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

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

VIDYA VITSU STRIVING TOWARDS KNOWLEDGE

Answer 22

Issue of Bonus Shares

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

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

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

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

(B)

Particulars	Amount
Amount of bonus shares to be issued	90,000 shares x ¼ = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	22,500 x ₹ 10 per share = ₹ 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+ 25,000+ 2,00,000 = ₹ 3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	₹ 2,25,000

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

Question 26 LDR

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

Answer 26

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

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

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

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

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

VIVITSU
GROWING TOWARDS KNOWLEDGE

Question 31 LDR

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

(i) A shareholder who has no beneficial interest.

(ii) A creditor whom the company owes Rs. 499 only.

(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company?

(SM) (RTP Nov'22, PYP 4 Marks Dec '21) (MTP 4 Marks Oct '23)

Answer 31

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

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

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

(i) Beneficially holds shares in the company;

(ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

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

(v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

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

(i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.

(ii) A creditor whom company owes ₹ 499 cannot be appointed as a debenture trustee. The amount owed is immaterial.

(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Exam Insights: Performance of the examinees was Good. Majority of the examinees have answered all the parts correctly with reference to the appointment of Debenture Trustee under the Companies Act,2013.

VIVITSU
LEARNING TOWARDS KNOWLEDGE

CHAPTER 5: ACCEPTANCE OF DEPOSITS BY COMPANIES

CONCEPTS OF THIS CHAPTER	
• Rule 2- Amounts not considered as Deposit • Acceptance of Deposits from Members • Sec 73- Prohibited Provisions & Exempted Companies	• Sec 76- Acceptance of deposits from Eligible Companies • Sec 74- Repayment of Deposit

LDR Questions
Q 11 Q 22
11 MCQ

Questions & Answers

Question 11 LDR

Rashmika Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.

The share application money of ₹ 5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act 2013. ***(MTP 4 Marks Oct'22, 5 Marks Sep '23 & Oct '23 PYP 5 Marks Jan'21)***

Answer 11

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

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

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

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

In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit. Further, on 30.07.2021 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Kumar (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

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

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2023.

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

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 22 LDR

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

Land & Building	₹ 60 crores
Plant & machinery	₹ 20 crores
Factory Shed	₹ 20 crores
Trademark	₹ 20 crores
Goodwill	₹ 25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014. ***(PYP 4 Marks Nov '22) (RTP Nov '23)***

Answer 22

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

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

The other notable points are:

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

In the given question,

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

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

EXAM INSIGHTS: Majority of the examinees have answered this question in a generalized manner and have not answered precisely, the provisions of Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, which states that the company accepting secured deposits shall create security by way of charge on its tangible assets only and the total value of security should not be less than the amount of deposits accepted and interest payable thereon. They could not arrive at the value of the securities (value of assets on which the charge can be created) and also the total deposits accepted and the interests payable thereon. Because of non arrival at calculations, eventually, most of the examinees could not conclude the correct answer.

11. Every company shall pay a penal rate of interest of per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid: (MTP 1 Mark Sep'22, Apr'23, Oct'22 & Oct '23, SM)

(a) 9%
(b) 14%
(c) 18%
(d) 24%

Ans: (c)

VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 6: REGISTRATION OF CHARGES

CONCEPTS OF THIS CHAPTER		
• Sec 2(16)- Definition of Charge	• Sec 83- Power to make entries for Satisfaction & Release in absence of Intimation	 **LDR Questions** Q 1 Q 7 Q 14
• Sec 77- Duty to Register Charges	• Sec 85- Register of Charges to be kept by the Company	
• Sec 78- Application of Registration of Charge-by-Charge Holder	• Sec 86- Punishment for Contravention	
• Sec 80- Deemed Notice of Charge	• Sec 87- Rectification by Central Govt in Register of Charges	
• Sec 82- Company to Report Satisfaction of Charge	• Sec 81-Register of Charges kept by the Registrar	

Question & Answers

Sec 2(16)- Definition of Charge

Question 1 LDR

What is 'Floating Charge'? When does it get crystallized?
(MTP 5 Marks Mar'24, New SM, MTP 5 Marks July'24)

Answer 1

A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge.

Crystallization of a Floating Charge In the following events, a floating charge will get crystallised or fixed:

(i) When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company ceases to continue its business.

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid

Question 7 LDR

PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.

After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.

Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013. ***(RTP Jan'25)***

Answer 7

The provisions of section 77 relating to registration of charges shall, sofar as may be, apply to:

a. a company acquiring any property subject to a charge within the meaning of that section; or
b. any modification in the terms or conditions or the extent or operation of any charge registered under that section.

According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with section 77.

According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge asits own. This means that PQR Limited must create a fresh charge overthe acquired property and register it with the Registrar of Companies(RoC) as per section 77.

Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge. Hence, the contention of directors of PQR Limitedthat since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.

VIDYATSU
STRIVING TOWARDS KNOWLEDGE

Question 14 LDR

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor paramid Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013. *(MTP 4 Marks Oct 20, MTP 5 Marks Sep'22, RTP Nov 20, SM, MTP 5 Marks Aug'24, Dec'24)*

Answer 14

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties*:* The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5. Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

VMTSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 7: MANAGEMENT & ADMINISTRATION

CONCEPTS OF THIS CHAPTER

- Sec 88- Register of Members
- Sec 90- Register of Significant Beneficial Owner
- Sec 92- Annual Return
- Sec 94- Place of Keeping & Inspection of Registers & Returns
- Sec 96- Annual General Meeting
- Sec 100- Extraordinary General Meeting
- Sec 101- Notice of a Meeting
- Sec 102- Explanatory Statement to be annexed to Notice
- Sec 103- Quorum for Meetings
- Sec 105- Proxies
- Sec 106- Restriction on Voting Rights
- Sec 109- Demand for Poll
- Sec 111- Circulation of Members Resolution
- Sec 118- Minutes
- Sec 119- Inspection of Minutes Book of General Meeting
- Sec 121- Report on Annual General Meeting
- Sec 91- Power to close Register of Members
- Sec 108- Voting through Electronic Means
- Sec 114- Ordinary & Special Resolution

LDR Questions
Q 7
Q 14
Q 22
Q 24
Q 30

VMTSU STRIVING TOWARDS KNOWLEDGE

Question & Answers

Question 7 LDR

Wills Private Limited convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face? ***(PYP 4 Marks Nov'23) (RTP Nov '21) (MTP 4 Marks Oct 20, SM , PYP May '18 , 4 Marks)***

Answer 7

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

In the instant case, the idea of the directors that since the Annual General Meeting (AGM) was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

Section 92(5) states that if any company fails to file its annual return under sub- section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each

day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.
In the given situation, Wills Private Limited has contravened the provisions of section 92(4). Thus, the company and its every officer in default may face the penalties as specified in section 92(5) of the Act.

Exam insights: Majority of the examinees have referred to the provisions relating to filing of annual return but failed to answer the quantum of penalty in case of default under the provisions of the Companies Act, 2013.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 14 LDR

Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022- 23 as under:

(i) **The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.**

(ii) **The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.**

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013. ***(PYP 4 Marks Nov'23) (MTP 5 Marks July'24, Dec'24)***

Answer 14

Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the ci ty, town or village in which the registered office of the company is situated.

However, AGM of an unlisted company may be held at any place in India if consent i s given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, 'National Holiday' means and includes a day declared as National Holiday by the Central Government.

In the instant case,

(i) Sunshine Limited, an unlisted company, can hold its AGM on 28th September, 2023 which happens to be a holiday declared by U.P. Government because this is not a national holiday.

(ii) Sunshine Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 38 members out of 40 has given their consent for conducting the meeting in Lonavala.

EXAM INSIGHTS: Majority of the examinees have provided the correct provision and conclusion under Part-(i) and Part-(ii) of the question relating to holding of an annual general meeting on a public holiday (not a national holiday), and at a place other than the State in which the registered office of the company is situated, as per the provisions of the Companies Act, 2013.

STRIVING TOWARDS KNOWLEDGE

Question 22 LDR

With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ` 30 crores divided into 3 crores shares of ` 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss the possibility of calling a general meeting by giving shorter notice. ***(MTP 6 Marks March '23, SM)***

Answer 22

Normally, general meetings are to be called by giving at least 21 clear days' notice as required by section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of section 101, if consent, in writing or by electronic mode, is accorded thereto— in the case of any other general meeting (i.e. other than annual general meeting), by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

Second proviso to section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.Thus, if the meeting is called after obtaining the consent from members holding at least ninety- five per cent of the paid-up share capital of the company, the meeting can be validly called at shorter notice.

STRIVING TOWARDS KNOWLEDGE

Question 24 LDR

Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

1. Resolution to increase the authorised share capital of the company.

2. Appointment and fixation of the remuneration of Mr. Pramod as the statutory auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

(RTP Sep'24)(SM)

OR

Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? (*MTP 5 Marks Aug'24, Nov'24)*

Answer 24

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:-

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
   (i) every director and the manager, if any;
   (ii) every other key managerial personnel; and
   (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Pramod as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 30 LDR

The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Karnataka.
(ii) B and C, shareholders of preference shares,
(iii) D, representing Green Limited and Blue Limited
(iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting? ***(MTP 6 Marks Sep'22)(Same concept fewer adjustments MTP 5 Marks Aug'18, RTP May '20, SM)***

Answer 30

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies Green Limited and Blue Limited. E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

CHAPTER 8: DECLARATION AND PAYMENT OF DIVIDEND TRANSFER TO RESERVES

CONCEPTS OF THIS CHAPTER		
• Sec 123(1) proviso 2- Declaration of Dividend when there is Inadequacy or Absence of Profits • Prohibition on Declaration of Dividend • Sec 123(3)- Interim Dividend • Transfer to Reserves	• Sec 124- Unpaid Dividend Account • Sec 127- Punishment for failure to distribute Dividend • Sec 125- Investor Education & Protection Fund • Payment of Dividend	LDR **LDR Questions** Q 4 Q 12 Q 10 Q 22

Question & Answers

Question 4 LDR

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

Answer 4

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

Conditions of Rule 3:

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

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

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

Calculations For Each Condition

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

preceding financial year.

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

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

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

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

10% thereof = ₹ 17.5 Lakh

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

Condition 3:

Here, Free Reserves = ₹ 75 Lakh

Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh

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

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

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

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

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 10 LDR

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

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

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

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

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

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend? Justify your answer with reference to provisions of the Companies Act, 2013. ***(PYP 6 Marks, May '23,MTP 5 Marks July'24)***

Answer 10

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

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

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

Accordingly, following shall be the answers:

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

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

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

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

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

Question 12 LDR

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

Answer 12

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

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

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

(i) Since, declared dividend has not been paid within 30 days from the date ofthe declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

(ii) The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

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

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee one thousand for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Question 22 LDR

The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	Dividend Declaration Date	Dividend Amount (₹)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value ₹ 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

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

(a) **What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?**

(b) **Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22? *(RTP Nov '23)***

Answer 22

According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:

In case the dividend payable to a member is ₹ 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (₹)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (₹)
800	25.08.2022	800×18%×29/365	11

(ii) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was ₹ 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

CHAPTER 9: ACCOUNTS OF COMPANIES

CONCEPTS OF THIS CHAPTER

- Sec 128- Books of Accounts to be kept by Company
- Sec 129- Financial Statement
- Sec 129A- Periodic Financial Results
- Sec 130- Re-opening of Accounts on Court or Tribunal's Order
- Sec 131- Voluntary Revision of Financial Statements or Boards Report
- Sec 134- Approval of Financial Statements, Board Report etc
- Sec 135- Corporate Social Responsibility
- Sec 137- Copy of Financial Statements to be filed with Registrar
- Sec 138- Internal Audit

LDR Questions
Q 5
Q 11
Q 17
Q 23
Q 28

Question & Answers

Question 5 LDR

(i) Ravi Limited maintained its books of accounts under Single Entry System ofAccounting. Is it permitted under the provisions of the Companies Act, 2013?

(ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.

(iii) Whether a Company can keep books of Accounts in electronic mode accessible only outside India?

(MTP 3 Marks March 21, Oct'21, Oct'20 RTP Nov '22) (MTP 4 Marks March 21) (PYP Nov'19,2 Marks, SM, RTP Sep'24)

Answer 5

(i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account shouldgive a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accountingby Ravi Limited is not permitted.

(ii) Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:
   (a) Managing Director,
   (b) Whole-Time Director, in charge of finance
   (c) Chief Financial Officer
   (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

(iii) A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,
   (a) The books of account and other relevant books and papers maintained 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.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 11 LDR

The Income Tax Authorities in the current financial year 2023-24 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2012-13 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2012-13. Examine the validity of the application filed by the Income Tax Authorities to NCLT. ***(MTP 6 Marks April '23, MTP 6 Marks Nov 21, MTP 5 Marks Oct 20, Old & New SM, PYP May'19 3 Marks, RTP May 21)***

Answer 11

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Sun Ltd. for the financial year 2012-13 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2023-2024, is invalid.

(1) ords in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(2) the directors had prepared the annual accounts on a going concern basis; and

(3) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(4) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

EXAM INSIGHTS: Performance of the examinees was Good. Most of them were able to give the necessary points regarding Director Responsibility Statement under the Companies Act,2013.

VIVITSU

Question 17 LDR

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorized share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was ₹ 200 crore divided into 20 crore equity shares of ₹ 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures–

Particulars	Amount (₹) crore
Free reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during the financial year 2022-23 was ₹ 700 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013, with other adjustments as per CSR Rules was ₹ 4 crore. The Board of Directors of the company consists of the following directors: 'CA. R.C Goel' as the Managing Director 'Rudra Mittal' and 'Pragya' as independent directors 'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013 , and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of the following members:

'CA. R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility. The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

(I) The CSR projects for the benefit of employees of the company and their families only.

(II) A contribution of ₹ 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.

(III) A contribution to the PM CARES Fund during Covid pandemic.

(IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein answer the following questions:

(i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only ₹ 700 crore?

(ii) Advise the company, how many members are eligible to be part of the Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules,2014?

(iii) Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? *(PYP 6 Marks Nov'23)*

Answer 17

(i) According to section 135 of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director:

"Net worth" [As per section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Particulars	Amount (₹ in crore)
Paid up share capital	200
Free Reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Miscellaneous expenditure not written off	(20)
Net Worth	**510**

As the Net worth of the company is more than ₹ 510 crore (i.e more than ₹ 500 crore), hence the company has attracted the provisions of section 135 of the Companies Act, 2013.

(ii) The CSR Committee is constituted of CA. R. C. Goel (Managing Director), Varun (director), Prabodh (director) and Vineet (Chief Compliance Officer). The composition of the committee is not in compliance with section 135 of the Companies Act, 2013, as no independent director is the part of the committee. Further, Chief Compliance Officer has also been included which is not the requirement of the Act.

(iii)

List of activities	Whether the activities are in accordance with the provisions of the Act
(I) The CSR projects for the benefit of employees of the company and their family only	No
(II) A contribution of ₹ 50,000 to a political party	No
(III) Contribution to PM CARES Fund during Covid pandemic	Yes
(IV) Local activities like promotion of child and women education	Yes

EXAM INSIGHTS: Majority of the examinees have provided the correct provisions and answer to Part-(i) and Part-(ii) of the question regarding the applicability of the provisions of Section 135 of the Companies Act, 2013 and the validity of the CSR Committee. Most of the examinees have correctly classified one or more activities to be the CSR activity or otherwise under Part-(iii) of the question.

STRIVING TOWARDS KNOWLEDGE

Question 23 LDR

The Government of India is holding 51% of the paid-up equity share capital of Viwit Su Ltd. The Audited financial statements of Viwit Su Ltd. for the financial year 2023-24 were placed at its annual general meeting held on 1st August, 2024. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 29th September, 2024 whereat the accounts were adopted. Thereafter, Viwit Su Ltd. filed its financial statements relevant to the financial year 2023-24 with the Registrar of Companies on 20th October, 2024. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Viwit Su Ltd. has complied with the statutory requirement regarding filing of accounts (unadopted and adopted) with the Registrar? ***(MTP 5 Marks Aug'24, RTP May '24 SM, PYP 5 Marks Nov'22, PYP 4 Marks May'19)***

Answer 23

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Viwit Su Ltd. were adopted at the adjourned AGM held on 29th September, 2024 and filing of financial statements with Registrar was done on 20th October, 2024 i.e. within 30 days of the date of adjourned AGM.

Hence, Viwit Su Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 28 LDR

PQR Private Limited operates as a manufacturing company, generating a turnover of ₹ 150 crore and holds an outstanding loan of ₹ 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of ₹ 110 crore, but ₹ 35 crore were repaid during the same year). The company's Board has delegated the authority to Chief Executive Officer (CEO) to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyze the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Mr. Nagendra (an ex-employee who is a qualified Chartered Accountant) as an internal auditor? ***(RTP May '24) (MTP 6 Marks March '22 & 5 Marks Sep '23) (PYP 3 Marks Jan 21)***

Answer 28

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having—

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The internal auditor may or may not be an employee of the company.

Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded 100 crore (irrespective of the fact that the outstanding loan during the year is 75 crore rupees).

Hence, the advice of CEO is not correct.

Internal Auditor may be any professional as decided by the Board and may be even an employee of the company. Hence, the Board of Directors may appoint Mr. Nagendra, an ex- employee who is a qualified Chartered Accountant, as an internal auditor.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 10: AUDIT & AUDITORS

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 139(1)- Appointment of Auditor	• Sec 141(3)- Disqualification of an Auditor	Q 10 Q 16 Q 22 Q 32
• Sec 139(2)- Term of Auditor	• Sec 142- Remuneration of Auditor	
• Sec 139(6)- Appointment of First Auditors	• Sec 144- Auditor not to render certain Services	
• Sec 139(7)- Appointment of First Auditor of Govt Company	• Sec 145- Signing of Audit Reports	
• Sec 139(8)- Casual Vacancy	• Sec 147(5)- Contravention by Audit Firm	
• Sec 140- Removal, Resignation of Auditor & Giving of Special Notice		

Question & Answers

Question 10 LDR

The Board of Directors of Mines Limited, a listed company appointed Mr. Guru, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Guru was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) **Appointment of Mr. Guru by the Board of Directors.**

(ii) **Re-appointment of Mr. Guru at the first AGM in the above situation.** ***(MTP 5 Marks March '22, MTP 6 Marks March '23, RTP Nov '21, PYP 6 Marks Nov '20)***

Answer 10

As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting. Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM. As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

(i) Appointment of Mr. Guru (as first auditor) by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

Question 16 LDR

Stallworth Ltd., a listed company having a paid up share capital of ₹ 11 crore with a turnover of ₹ 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.

Discuss in the light of the Companies Act, 2013:

(i) The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?

(ii) The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company? *(PYP 5 Marks May'24)*

Answer 16

According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors. Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Question 22 LDR

L Ltd. having 2,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ₹ 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.

When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co? ***(PYP 4 Marks, May '23)***

Answer 22

i) Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of ₹1 crore, and it received a notice from its 50 members holding paid-up capital of ₹ 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[Note: In the given question 50 members are holding paid-up share capital of ₹ 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is ₹ 1 crore.

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.

However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

EXAM INSIGHTS: Most of the examinees answered correctly both the parts of the question by applying the provisions of Section 455 of the Companies Act, 2013 read with Rule 3 of the Companies (Miscellaneous) Rules, 2014. However, some of the examinees answered the question in a generalized manner which has impacted on the marks.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 32 LDR

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co.

With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh.

(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹ 1,50,000.

(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)*(PYP 6 Marks Nov '22)*

Answer 32

(i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.
Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹ 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lakh. such person cannot be appointed as auditor of the company.
In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹ 1 Lakh i.e. of an amount worth ₹ 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.

(iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh, shall not be appointed as an auditor. Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹ 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹ 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

CHAPTER 11: COMPANIES INCORPORATED OUTSIDE INDIA

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 2(42)- Foreign Company	• Sec 387- Dating of Prospectus & Particulars to be contained therein	Q 4 Q 5 Q 10 Q 14
• Sec 379- Application of Act to Foreign Companies	• Sec 389- Registration of Prospectus	
• Sec 380- Documents to be delivered to Registrar by Foreign Companies	• Sec 392- Punishment for Contravention	
• Sec 381- Accounts of Foreign Company	• Sec 393- Co's failure to comply with provisions to not affect validity of contracts	
• Sec 382- Display of Name etc. of Foreign Company		

Question & Answers

Question 4 LDR

(Includes concepts of Sec 380 Documents to be delivered to Registrar by Foreign Companies)

I. Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013. *(3 Marks April '23)*

II. Arica is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:

(1) Whether branch office will be considered as a company incorporated outside India.

(2) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.*(MTP 5 Marks April '23, SM)*

Answer 4

(i) Yes, as per 2(42) of the Companies Act, 2013, any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner shall be considered as a foreign company.

Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

(ii) (1) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for

conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

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

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company.

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing their respective details as per the rules.

(d) the name/s and address/s of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company / the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

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

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 5 LDR

Based on the applicable provisions of the Companies Act, 2013, define the term "foreign company" and identify which among the following companies can be categorized as a foreign company: (PYP Jan'25)

S.No.	Place of Incorporation	Registered	Additional information
1	Singapore	Singapore	Developed patient's database for a hospital in Mumbai, India, server in Singapore.
2	UAE	UAE	No place of business in India but employs agents in India.
3	Cape Town	Cape Town	Board Meeting held in Leh, India.
4	Germany	Germany	49% of the shares held by an Indian company.

Answer 5

As per section 2(42) of the Companies Act, 2013 (the Act), "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.

So, as per the definition, we can conclude:

Case 1: Place of Incorporation – Singapore. Developed patient's database for a Hospital in Mumbai – Server at Singapore.

It is a Foreign Company.

Though incorporated outside India, it is involved in transacting business in India and having place of business through electronic mode. Hence, it is a foreign company.

Case 2: Place of Incorporation – UAE. No place of business in India, but employs agents in India.

It is not a foreign company.

Since the company, though employed agents in India, but has no place of business in India. Hence, it is not a foreign company.

Case 3: Place of Incorporation and Registered Office – Cape Town; Board Meeting held in Leh, India.

It is not a foreign company.

Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence, it is not a foreign company.

Case 4: Place of Incorporation and Registered Office – Germany; 49% shares are held by an Indian Company.

As per the question, the company is registered in Germany and no information is available about any business(es) being carried on by the company in India which is a basic condition to be fulfilled for being called a foreign company. Under the circumstances, it is just a company incorporated outside India and shall not be considered as a foreign company.

Alternate Answer

Applying the provisions of section 379 (2) of the Companies Act, 2013, if not less than 50% of the shareholding of a foreign company is held by an Indian Company; it is treated as an Indian Company, on which provisions of Chapter XXII of the Companies Act, 2013 applies. Here, only 49 % is held by Indian Company. Hence it is a foreign company.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

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

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

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

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

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

(i) Whether RFC Limited is a foreign company?

(ii) Whether service of notice by the Registrar of companies valid? *(PYP 4 Marks May '22)*

Answer 10

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

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

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

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

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

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

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

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

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

Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .

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

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

Question 14 LDR

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

Answer 14

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

(a) a **certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) the full **address of the registered or principal office** of the company;

(c) a **list of the directors and secretary** of the company containing such particulars as prescribed under the Companies (Registration of Foreign Companies) Rules,2014,

(1) personal name and surname in full;
(2) any former name or names and surname or surnames in full;
(3) father's name or mother's name and spouse's name;
(4) date of birth;
(5) residential address;
(6) nationality;
(7) if the present nationality is not the nationality of origin, his nationality of origin;
(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
(9) income-tax permanent account number (PAN), if applicable;
(10) occupation, if any;
(11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
(12) other directorship or directorships held by him;
(13) Membership Number (for Secretary only); and
(14) e-mail ID.

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

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

YIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 12: THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

CONCEPTS OF THIS CHAPTER		
• LLP- Meaning & Concept	• Sec 37- Penalty for False Statement	
• Characteristics of LLP	• Sec 25- Registration of changes in Partners	**LDR Questions**
• Sec 5- Partners	• Sec 63- Winding up & Dissolution	Q 10
• Sec 6- Minimum number of Members	• Sec 42- Partner's Transferable Interest	Q 12
• Sec 7- Designated Partners	• Sec 15- Name of LLP	Q 14
• Sec 17- Rectification of Name of LLP	• Sec 16- Reservation of Name of LLP	Q 15
• Sec 24- Cessation of Partnership Interest	• Sec 27- Extent of Liability of LLP	
• Sec 31- Whistleblowing	• Sec 28- Extent of Liability of Partner	

Question & Answers

Question 10 LDR

Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ₹ 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP. ***(MTP 5 Marks Mar'24)***

Answer 10

According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are non- resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.

Sec 17- Rectification of Name of LLP

Question 12 LDR

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? *(SM, MTP 5 Marks Aug'24)*

Answer 12

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.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 14 LDR

Priya, Smita, Shilpa, and Shefali were partners in Sharma & Associates LLP. Shilpa resigned from the firm effective 7th May 2024. However, neither Sharma & Associates LLP nor Shilpa informed the Registrar of Companies about her resignation. Is Shilpa still liable for any losses incurred by the firm from transactions entered into after 7th May 2024? Analyze this situation with reference to the provisions of the Limited Liability Partnership Act, 2008. ***(5 Marks) (MTP 5 Marks July'24 & Nov'24, SM)***

Answer 14

(a) According to section 24(3) of the Limited Liability Partnership Act, 2008, 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 Registrar of Companies, Shilpa will still be liable for the loss of firm of the transactions entered after 7th May 2024.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Sec 25- Registration of changes in Partners

Question 15 LDR

Amit and Priya are partners in XYZ LLP, a consulting firm. Recently, Priya moved to a new address but forgot to notify the LLP within the required period. A month later, Amit's cousin,Ramesh, expressed interest in joining XYZ LLP as a partner, and after a few discussions, he was accepted as a new partner.

However, XYZ LLP did not immediately update the Registrar of Companies (RoC) regarding Priya's address change or Ramesh's admission as a partner. Two months after Ramesh joined, the LLP filed a notice with the RoC about these changes.

Advise the LLP about the default on part of LLP about the non compliance in respect to not informing the ROC about:

(i) Priya's address change.

(ii) Ramesh's admission as a partner. ***(RTP Jan'25)***

Answer 15

According to section 25 of the Limited Liability Partnership Act, 2008,

(1) Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.

(2) A LLP shall—

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.

(3) A notice filed with the Registrar under sub-section (2)—

(a) shall be in such form and accompanied by such fees as maybe prescribed;

(b) shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and

(c) if it relates to an incoming partner, shall contain a statementby such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

(i) Priya's Address Change: Under the provision, Priya was required to inform XYZ LLP of her address change within 15 days of themove. Following that, XYZ LLP was required to file a notice withthe RoC within 30 days of being notified of Priya's new address. As Priya did not inform the LLP about change of address and consequently LLP did not file a notice regarding the change in address of Priya with the Registrar, XYZ LLP is not in compliancewith the required timeline.

(ii) Ramesh's Admission as a Partner: For new partners, XYZ LLP must file a notice with the RoC within 30 days of a person becoming a partner. This notice should include Ramesh's consent statement, signed by him and authenticated as prescribed. The delay in filing means XYZ LLP did not meet the 30-day requirement.

CHAPTER 13: THE GENERAL CLAUSES ACT, 1897

CONCEPTS OF THIS CHAPTER		LDR Questions
• Basic Understanding of Legislation	• Sec 8- Construction of references to repealed enactments	Q 25
• Sec 3(13)-Commencement	• Sec 9- Commencement and termination of time	Q 28
• Sec 3(21)- Financial Year	• Sec 10- Computation of Time	Q 32
• Sec 3(22)- Good Faith	• Sec 11- Measurement of Distances	Q 51
• Sec 3(23)- Government	• Sec 12- Duty to be taken pro rata in enactments	
• Sec 3(26)- Immoveable Property	• Sec 13- Gender & Number	
• Sec 3(36)- Moveable Property	• Sec 16- Power to appoint to include power to suspend or dismiss	
• Sec 3(39)- Official Gazette	• Sec 19- Official Chiefs & Subordinates	
• Sec 3(42)- Person	• Sec 23- Making of Rules or Bye-laws after previous Publications	
• Sec 3(51)- Rule	• Sec 26- Offence punishable under two or more enactments	
• Sec 3(37)- Oath	• Sec 27- Meaning of Service by Post	
• Sec 5- Coming into operation of enactment	• Sec 3(18)- Document	
• Sec 6- Effect of Repeal	• Sec 3(66)- Calendar Year	

VIDYARTHI MITSU STRIVING TOWARDS KNOWLEDGE

Question & Answers

Question 25 LDR

"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 4 Marks, May '23, PYP May'18,4 Marks, PYP 3 Marks May'22)*

Answer 25

"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. Hendra 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.

EXAM INSIGHTS : Majority of the examinees have correctly mentioned one or more effect of repeal with proper explanation under the General Clauses Act, 1897. There are many examinees who have not attempted the part of the question.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 28 LDR

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 30.10.2021, 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?
(MTP 3 Marks Nov 21, SM, PYP May '19 ,2 Marks, SM)

Answer 28

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 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 32 LDR

Mr. Sohan has issued a promissory note of `1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20 th 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 19 th August 2021 or 21st August 2021? *(RTP Nov '21)*

Answer 32

Section 10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of `1000 was issued by Mr. 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.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 51 LDR

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable? *(PYP 4 Marks Nov '22)*

Answer 51

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 affected 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.

VIDYATSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 14: INTERPRETATION OF STATUTES

CONCEPTS OF THIS CHAPTER	LDR Questions
• Introduction to various terms • Classification of Interpretation • Primary Rules of Construction • Secondary Rules of Construction • Internal Aids for Interpretation • External Aids for Interpretation • Construction of Deeds & Documents	Q 1 Q 21 Q 6 Q 32

Question & Answers

Introduction to various Terms

Question 1 LDR

Differentiate between interpretation and construction. *(MTP 4 Marks, March 21, March 18, PYP 4 Marks May'24)*

Answer 1

'Construction' as applied to a written statute or document means to determine from its known elements its true meaning or the intention of its framers. Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

Difference between Interpretation and Construction:

It would also be worthwhile to note, at this stage itself, the difference between the terms **'Interpretation' and Construction**. While more often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. *[Bhagwati Prasad Kedia v. C.I.T, (2001)]*

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. *(State of Madras v. Gannon Dunkerly Co. AIR 1958)*

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 6 LDR

Vivit, a director of the company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He res trains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Vivit is correct? ***(MTP 3 Marks March '23 & Sep '23, PYP 3 Marks Jan '21)***

Answer 6

Rule of Literal Construction

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Vivit (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Question 21 LDR

When can the Preamble be used as an aid to interpretation of a statute? *(MTP 3 Marks April '23, RTP Nov '20, PYP May '19 ,3 Marks, SM, RTP May '22, RTP May '23)*

Answer 21

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus….." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [*GullipoliSowria Raj v. BandaruPavani, (2009)1 SCC714].*

VIVITSU
STRIVING TOWARDS KNOWLEDGE

External Aid- Usage

Question 32 LDR

At the time of interpreting statutes what will be the effect of 'Usage' or 'Practice'? *(MTP 3 Marks Oct 20, PYP Nov '19 ,3 Marks, SM, RTP May 21 & RTP Nov 21 PYP 3 Marks Nov'23) (RTP Jan'25)*

Answer 32

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 interpresest consuetude' (the custom is the best interpreter of the law); and

(ii) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea exposition* to interpret not only ancient but even recent statutes in India.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 15: THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

CONCEPTS OF THIS CHAPTER		LDR Questions
• Sec 2(h)- Currency	• Sec 2(n)- Foreign Exchange	Q 10 Q 19
• Sec 2(v)- Person Resident in India	• Sec 3- Dealing in Foreign Exchange	Q 16 Q 30
• Current Account Transactions- Schedule I Transactions for which withdrawal of foreign exchange is prohibited		
• Current Account Transactions- Schedule II Transactions which require Govt of India Approval		
• Current Account Transactions-Schedule III Transactions which require RBI Approval		
• Sec 6- Capital Account Transactions	• Capital Account Transactions- Prohibited Transactions	

Question & Answers

Question 10 LDR

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:- (Partially deleted as out of syllabus)

(i) **How much excess amount, if any, has been remitted by Mr. Ashok to his family in USA?** ***(MTP 3 Marks, March'22)***

Answer 10

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 up to 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).

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 16 LDR

Mr. A, 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? *(MTP 4 Marks Aug'24) (RTP May '24, SM)*

Answer 16

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawl 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) such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. A cannot 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 Mr. A 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.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

Question 19 LDR

(Includes concepts of Schedule III)

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 same was remitted through the RFC Account and EEFC Account, respectively, for which no approval was required.
Siphonic Ltd.	Made remittance of $ 1,10,000 to BMT Inc., a US company, without taking requisite approval, as reimbursement of pre- incorporation expenses incurred for setting up the company by bringing investment of ₹ 18 crore into India. (1 USD = ₹ 75)	Such remittance does not exceed the limit as specified, so, no approval was required.

In the context of aforesaid case-scenario, examine in the lights of the provisions of the FEMA Act, 1999 and its rules & regulations, the validity of the contentions made by the aforesaid persons? *(MTP 6 Marks Oct 21)*

Answer 19

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 ₹ 82.5 lakhs (1 USD = ₹ 75) to BMT Inc., a US company, as reimbursement of pre-incorporation expenses for bringing investment of ₹ 18 crore into India. So, the amount remitted comes to approximately 4.58% (₹ 82.5 lakhs / ₹ 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.

VIVITSU STRIVING TOWARDS KNOWLEDGE

Question 30 LDR

Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather, who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets. ***(RTP Sep'24)***

Answer 30

Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), Mr. Arjun, being a resident in India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.

Clarifications under section 6(4) of FEMA

1. **Foreign Currency Accounts**
   - Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.
2. **Income and Investments**
   - Income earned through employment, business, or vocation outside India while Mr. Arjun was a non-resident.
   - Investments made abroad during his non-resident status.
   - Gifts or inheritance received from a non-resident Indian.
3. **Foreign Exchange and Income therefrom**
   - Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.
4. **Utilization of Assets After Return to India**
   - Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.
   - He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.

VIVITSU
STRIVING TOWARDS KNOWLEDGE

CHAPTER 16: CASE SCENARIOS

LDR Questions
Q 18 Q 29
Q 20 Q 33

Question & Answers

CS 18 (MTP 14 Marks Mar'24) LDR

Silver Private Limited was incorporated in 2016 having its registered office at Gurugram, Haryana. It is registered with an authorized share capital of ₹ 10 crore divided into 1 crore equity shares of ₹ 10/- each. The paid-up share capital of the company is ₹ 50 lakh divided into 5 lakh equity shares of ₹ 10/- each. The company is in manufacturing of rubber parts to be used in manufacturing of parts of passenger vehicles.

Mr. Raj and Mr. Pawan are directors of the company. Mr. Siddharth (son of Mr. Raj) on January 8, 2022 had advanced a loan of ₹ 50 lakh at an interest rate of 8% p.a. and the loan is expected to be repaid after a period of thirty-six months.

Silver Private Limited intends to accept deposits of ₹ 60 lakh from its members for the purpose of expansion of its business. The financial particulars of the company are as below mentioned: -

S. No.	Particulars	Amount (₹)
1	Paid-up share capital	50 lakh
2	Free Reserves	20 lakh
3	Security premium	10 lakh
4	Borrowings from banks	65 lakh
5	Turnover	200 lakh

As on the date of acceptance of deposits, the company has not defaulted in repayment of borrowings along with interest thereon.

The Company Secretary of the company informed Board of Directors of the company that they need to appoint an internal auditor for audit of the company. The Board stated that statutory auditor is already performing audit function and there is no need to appoint internal auditor as it causes additional burden on the company.

The company require funds for the purpose of meeting working capital requirements. The company has approached the bank for meeting working capital requirements and has availed a loan of ₹ 65 lakh from bank. The loan is secured by the personal guarantee of the directors of the company.

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 Multiple Choice Questions (MCQs 1-5) given herein under: -

1. **With respect to loan advances by Mr. Siddharth to Silver Private Limited, whether the same can be classified as deposit or not? (Chapter 5 Acceptance of Deposits by Companies)**
   (a) It will be treated as deposit as the loan is advanced by Mr. Siddharth who is neither director nor shareholder of the company.
   (b) It will be treated as deposit as the loan is given by relative of the director.
   (c) It will not be treated as deposit as Mr. Siddharth has given loan to the company at an interest rate of 8%

p.a.

(d) It will not be treated as deposit if Mr. Siddharth gives a written declaration to the effect that loan is advanced by him from his own source of funds, not from borrowings or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's Report.

Ans: (d)

2. With respect to acceptance of deposits from members, which of the below mentioned statement is correct: (Chapter 5 Acceptance of Deposits by Companies)

(a) Silver Private Limited cannot accept deposits of more than paid-up share capital which is ₹ 50 lakh.

(b) Silver Private Limited can accept deposits of ₹ 60 lakh from members, as it is less than twice of its paid-up share capital or ₹ 50 crore, whichever is less.

(c) Silver Private Limited cannot accept deposits of more than higher of aggregate of paid-up share capital and free reserves which is ₹ 70 lakh and borrowings which is ₹ 65 lakh.

(d) Silver Private Limited cannot accept deposits of more than aggregate of paid-up share capital and free reserves, which is ₹ 70 lakh.

Ans: (b)

3. Is Silver Private Limited required to appoint internal auditor in accordance with the provisions of the Companies Act, 2013? (Chapter 9 Accounts of Companies)

(a) Silver Private Limited is not required to appoint internal auditor as private companies are not required to appoint internal auditor.

(b) Silver Private Limited is required to appoint internal auditor as borrowings is below prescribed limited.

(c) Silver Private Limited is required to appoint internal auditor as aggregate of paid-up share, free reserves and security premium is more than prescribed limited.

(d) Silver Private Limited is not required to appoint internal auditor as turnover is less than prescribed limited.

Ans:(d)

4. Which of the following statement is correct in respect of loan of ₹ 65 lakh availed by the company? (Chapter 6 Registration of Charges)

(a) Silver Private Limited needs to create and register charge within 30 days from the date of sanction of loan.

(b) Silver Private Limited is not required to create and register charge as the loan is against the personal guarantee of directors.

(c) Silver Private Limited needs to create and register charge within 15 days from the date of sanction of loan.

(d) Silver Private Limited needs to create and register charge within 60 days from the date of sanction of loan.

Ans:(b)

5. The management of Silver Private Limited for ease of doing business and reduce compliance burden, proposed, it to be registered as a small company. Within the provided information and the legal requirements under the Companies Act, 2013, recommend on the validity of the said proposal: (Chapter 1 Preliminary)

(a) Proposal is valid, as any private limited company can apply for the status of small company.

(b) Proposal is invalid, as the Silver Private Limited is not fulfilling the requirement of turnover of ₹ 400 crore.

(c) Proposal is valid, as the Silver Private Limited is fulfilling the requirement of paid up share capital and turnover which is within the prescribed limits.

(d) Proposal is invalid, as Silver Private Limited is fulfilling the requirement of paid up share capital.

Ans:(c)

6. The financial particulars of ABC Limited in respect of immediately preceding financial year are as under:

S. No.	Particulars	Amount in ₹ crore
1	Net worth	280
2	Turnover	550
3	Net Profit	5.50

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4	Borrowings	60

Choose the correct option in terms that whether the provisions of Corporate Social Responsibility are applicable to ABC Limited. (Chapter 9 Accounts of Companies)

(a) No, as ABC Limited is having net worth of more than ₹ 250 crore in the immediately preceding financial year.

(b) Yes, as ABC Limited is having turnover of more than ₹ 500 crore but less than ₹ 800 crore in the immediately preceding financial year.

(c) Yes, as ABC Limited is having net profit of more than ₹ 5 crore in the immediately preceding financial year.

(d) Yes, as ABC Limited is having loans and borrowings of more than ₹ 50 crore in the immediately preceding financial year.

Ans:(c)

7. Under what circumstances is the requirement for constituting a Corporate Social Responsibility (CSR) Committee waived, and who is responsible for discharging the functions of the CSR Committee in such cases(Chapter 9 Accounts of Companies)

(a) When the amount to be spent by a company does not exceed fifty lakh rupees; the Board of Directors assumes the responsibility of the CSR Committee's functions.

(b) When the amount to be spent by a company exceeds fifty lakh rupees; the Board of Directors assumes the responsibility of the CSR Committee's functions.

(c) When the amount to be spent by a company does not exceed fifty lakh rupees; the shareholders assume the responsibility of the CSR Committee's functions.

(d) When the amount to be spent by a company exceeds fifty lakh rupees; the shareholders assume the responsibility of the CSR Committee's functions.

Ans:(a)

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Sudeep and Ankit are very fast friend since long. They decided to run a service unit which will provide "Financial and Investment Consultancy Services". For this purpose they formed a limited liability partnership under the name M/s Etharkkum Advisors LLP on 17th April 2020. For this purpose, they prepared a Limited Liability Partnership Deed of which one of the clauses provides that a new partner may be admitted in the LLP with capital contribution which may be in kind or cash. Further new partner is also required to deposit the agreed amount of capital contribution within six months from the date of his admission.

After some time, office of the firm was destroyed due to an earthquake and the LLP was in urgent need of an office premises and some funds for some renovation work.

It is also informed that M/s Etharkkum Advisors LLP approached Manoj on 1st January 2023 to join the firm as third partner. Manoj was out of India for the period from 1st September 2021 to 23rd December 2022. He agreed to join the LLP and also agreed to contribute his office premises at Sanjay Place, Palwal and funds of ₹ 5,00,000 as Capital Contribution in the firm. Manoj joined the firm on 25th January 2023 as limited liability partner. The above said office premises was purchased by Manoj five years ago for ₹ 25,00,000 but the fair market value of this office on 25th January 2023 was ₹ 32,25,000 and on 1st January 2023 was ₹ 30,00,000. Manoj has provided his office to the firm with effect from his admission and promised to deposit the agreed amount of ₹ 5,00,000 within six months as provided in the partnership deed. Before Manoj could deposit the amount with the firm, it was dissolved. Manoj denied to deposit the amount of ₹ 5,00,000 with the contention that he is liable only upto the amount contributed in the firm on the date of dissolution. A creditor of the firm sued Manoj to deposit the said amount so that the firm may pay off his liability.

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: -

1. **Whether Manoj could be considered as resident or not as per the Limited Liability Act, 2008? (Chapter 12 The Limited Liability Partnership Act, 2008)**
   (a) Manoj could not be considered resident in India as he was not in India for 182 days in preceding one year
   (b) Manoj could not be considered resident in India as he was not in India for 120 days in preceding one year i.e. only for 33 days from 24th December 2022 to 25th January 2023
   (c) Manoj could not be considered as he was not in India for 182 days during the financial year
   (d) Manoj will be considered as resident in India as he was in India for 120 days during the financial year (2021- 2022)

Ans: (d)

2. **What would be the worth of Capital Contribution by Manoj? (Chapter 12 The Limited Liability Partnership Act, 2008)**
   (a) ₹ 25,00,000
   (b) ₹ 32,25,000
   (c) ₹ 37,25,000
   (d) ₹ 35,00,000

Ans: (c)

3. **Whether Manoj will be liable to contribute ₹ 5,00,000 after dissolution of the firm? (Chapter 12 The Limited Liability Partnership Act, 2008)**
   (a) Yes, because a partner is personally liable for the deficiency arising at the time of dissolution of LLP.
   (b) No, because a partner is never personally liable for the deficiency arose at the time of dissolution of LLP.
   (c) Yes, the partner is under obligation to contribute money also to LLP as per the agreement.
   (d) No, because a partner is personally liable only upto the amount contributed to the LLP on the date of dissolution of LLP.

Ans: (c)

4. **Finload Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 57 persons, of which six are qualified institutional buyers and remaining are individuals.**
Choose the correct statement as per the provisions of the Companies Act, 2013: (Chapter 3 Prospectus and Allotment of Securities)

(a) Finload Limited company is a public limited company hence it can not issue shares through private placement.

(b) Since, Finload Limited has made 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.

(c) Finload Limited has made an offer or invitation to less than the prescribed number of persons as qualified institutional buyers are not counted to calculate the prescribed limit.

(d) Finload Limited cannot issue shares to qualified institutional buyers, as under private placement shares cannot be issued to qualified institutional buyers.

Ans: (b)

5. **Company X, a leading automobile manufacturer, has invested in Company Y, a start-up specializing in electric vehicle technology. Company X holds a 25% stake in Company Y and actively participates in its strategic decisions. Based on the provisions of the Companies Act 2013 regarding associate companies, which of the following statements is correct? (Chapter 1 Preliminary)**

(a) Company X's investment in Company Y does not qualify as an associate company because Company X does not have control of at least 50% of the total voting power.

(b) Company Y qualifies as an associate company of Company X since Company X holds a 25% stake in Company Y and actively participates in its strategic decisions.

(c) Company Y cannot be considered an associate company of Company X because it is a start-up and does not meet the minimum criteria for significant influence.

(d) Company X's investment in Company Y falls under the category of joint venture and does not qualify as an associate company according to the Companies Act 2013.

Ans: (b)

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Tech Inspiration Private Limited was incorporated on 30.06.2018. The main object of the company was to provide guidance classes for engineering aspirants. For this purpose, they opened a coaching center at Freedom Plaza, Near Bhagwan Talkies, Bye Pass Road, Agra. The premise was owned by the company. The company also made a "Employee Appointment Committee" for the systematic selection and appointment of employees including faculties for teaching. In the first slab, committee appointed nine teachers, 3 clerical staff and one peon. For the purpose of expansion of business, company decided to open a branch of the company at nearby city of Agra. After the due research, the company decided to open its branch at city "Bharatpur" which was just 50 kilometers far from Agra. The company approached Mr. Raghuram Meena owner of land at Bharatpur suitable for company. Mr. Raghuram Meena leased his land for ten years to Tech Inspiration Private Limited. The land had a small temple of lord Ganpati at its centre. The company constructed the classrooms on the land and many students joined the coaching classes. Besides it, the temple generated some income in the form of "Chadhava" (donation). Mr. Raghuram Meena claimed the income of temple with the contention that he had leased only the land and not the temple.

Further one more problem arose in the company. "Employee Appointment Committee" found that one of the faculties, Mr. Nitesh Gupta was not performing well. He was not justifying his duties. Therefore, "Employee Appointment Committee" decided to terminate him with effect from 31.01.2024 and send him notice of termination by properly addressing and by registered post to Mr. Nitesh Gupta. Mr. Nitesh Gupta refused to accept the notice and returned back it to the postman. After two months, on 01.04.2024, Mr. Nitesh Gupta filed a suit against the company for claiming the salary for the period from 01.01.2024 to 31.03.2024 with the view that his appointment cannot be terminated because of two reasons:

(i) "Employee Appointment Committee" was established just to appoint the employees. They are not authorised for their termination.

(ii) Mr. Nitesh Gupta's refused to accept the notice of termination with the contention that it was not properly served to him.

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 MCQs given herein under: -

1. Whether Mr. Raghuram Meena is correct in his claim? Whether he may claim the income of temple:

(a) Yes, Mr. Raghuram Meena was correct in his views as he leased only land not the temple, situated on such land.

(b) Yes, as temple is a constructed building, not land.

(c) No. 'Immovable Property' in terms of the General Clauses Act, 1897 includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. So, benefits attached to land and income from temple will be of Tech Inspiration Private Limited.

(d) No. It is the right of Tech Inspiration Private Limited to decide that who will claim the income of temple.

Ans: (c)

2. Whether "Employee Appointment Committee" may terminate Mr. Nitesh Gupta even the authority letter given to "Employee Appointment Committee" has no specific clause authorizing it for termination of employees?

(a) No, as "Employee Appointment Committee" was authorized only for appointment and not for termination of employees.

(b) Yes, because section 16 of the General Clauses Act, 1897, provides that unless a different intention appears, power to appoint to include power to suspend or dismiss.

(c) No, because section 16 of the General Clauses Act, 1897, provides that power to appoint does not include power to suspend or dismiss.

(d) No, It's only board of directors of Tech Inspiration Private Limited who has the right to terminate its employees in board meeting.

Ans:(b)

3. **Whether the refusal to accept the notice sent by post, by Mr. Nitesh Gupta would be termed as not serving of notice of termination?**

(a) Yes, as Mr. Nitesh Gupta had not accepted the notice.

(b) Yes, refusal to accept the post will always be considered as not served.

(c) No, because as per section 27 of the General Clauses Act, 1897 the service by post shall be deemed to be effected by properly addressing, pre-paying, and posting by registered post.

(d) No, Mr. Nitesh Gupta had the information of sending of notice.

Ans:(c)

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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.

Solve the MCQs (1-5) on the basis of the Companies Act, 2013.

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? (Chapter 7: Management & Administration)**
   (a) 30th September, 2024.
   (b) 31st December, 2024.
   (c) 31st March, 2025.
   (d) 30th June, 2025.

Ans: (b)

2. **Suppose ABC Limited holds its first AGM on 15th December, 2024. By when must it hold its subsequent AGM to remain compliant? (Chapter 7: Management & Administration)**
   (a) 15th December, 2025.
   (b) 30th September, 2025.
   (c) 30th June, 2025.
   (d) 31st March, 2025.

Ans: (b)

3. **Under the Companies Act, 2013, does ABC Limited need to prepare consolidated financial statements (CFS) to present at the AGM? (Chapter 9: Accounts of Companies)**
   (a) Yes, because it has one wholly owned subsidiary and an associatecompany.
   (b) No, because it qualifies for exemption as a wholly ownedsubsidiary.
   (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)

4. **What must ABC Limited ensure to pass the special resolution approving the adoption of a new e-commerce business model at the AGM? (Chapter 7: Management & Administration)**
   (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 ofdirectors.

Ans: (b)

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5. **Under which conditions would ABC Limited be exempt from preparing consolidated financial statements? (Chapter 9: Accounts of Companies)**

(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)

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