Company Formation and Conversion

Class Questions

1. MS. SUCHANDA has entered into a transaction with GLAMOUR LTD for a contract value of Rs. 40 lacs. The Articles of Association enjoin that contracts above Rs. 10 lacs should be approved in Board Meeting. Mr. Dhruv, an officer of the company, produces forged documents to her, which show a resolution having been passed in a Board Meeting approving the contract. Later, the forgery comes to light. MS. Suchanda pleads that she is protected by the Doctrine of Indoor Management.- Discuss.

Answer:
Doctrine of Indoor Management:
The Doctrine of Constructive Notice protects a company from outsiders. There is one limitation to that doctrine. The Doctrine of Indoor Management is an exception to the Doctrine of Constructive Notice.

The Doctrine of Constructive Notice provides that an outsider must read the Memorandum and Articles of a company. But he is not expected to do more. As far as internal procedures are concerned, an outsider is entitled to presume that every thing has been done according the procedures laid down and there is no irregularity. An outsider cannot find out what is going inside the doors as the doors of the management are closed to an outsider. Therefore protection to such an outsider becomes necessary.

Thus while the Doctrine of Constructive Notice is a protection to the company against an outsider, the Doctrine of Indoor Management is protection to the outsiders against the company. In certain exceptional situations, the doctrine of indoor management is not applicable. The doctrine of indoor management is not applicable where a person relies upon a document that turns out to be a forged since nothing validate forgery.

A company cannot be held liable for forgeries committed by its officers. Thus MS SUCHANDA will not succeed in her Pleading.

2. Explain the below mentioned statements:-
   a) A company doesn't get affected by the death of any or all of its members.
   b) Common seal is optional.
   c) Limited liability of a company

Answer: An incorporated company never dies except when it is wound up as per law. A company, being a separate legal entity is unaffected by death or departure of any

member or the change of members. "Members may change or die, but the company goes on forever".

Common seal is the official signature of a company. The requirement of having a common seal has been made optional.

Liability of members of a company is limited either by shares or by guarantee. Company limited by shares means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up

---

3. ABC ltd is a company incorporated under the Companies Act 2013. The Paid up capital of the company is held as under-

Government of India- 20%
Government of Andhra Pradesh- 20%
Government of Uttar Pradesh- 10%
Government of Gujarat- 10%
State whether the said company can be called as a Government Company?

Answer: According to section 2(45) of the Companies Act, 2013, a Government Company means any company in which not less than 51% of the paid up share capital is held by-
Central Government
State Government
Partly by Central Government and partly by one or more State Government

In the given problem, 60% of the paid up capital of ABC ltd is held by CG and SG jointly and hence it is a Government Company.

---

4. XYZ Limited was incorporated by furnishing false information. As per the Companies Act, 2013, state the power of the Tribunal in this regard.

Answer: According to section 7(7) of the Companies Act, 2013:
Incorporation by furnishing of incorrect information: Without prejudice to the provisions of sub-section (6), where a company has 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 Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or
(d) pass an order for the winding up of the company; or
(e) pass such other orders as it may deem fit:

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

5. Only a natural person who is an Indian Citizen shall be eligible to incorporate a one-person Company. Comment whether True/False.

Answer: The above statement is True. Only a natural person who is an Indian Citizen whether resident in India or not shall be eligible to incorporate a One Person Company.

6. You, an individual shareholder found that the Directors representing the majority of shareholders perform an illegal or ultra vires act for the company. What is the action you may take to restrain such an act?

Answer: The majority of shareholders have no right to confirm an illegal or ultravires transactions of the company. In such case an individual shareholder has right to restrain the company by an order or injunction of the court from carrying out an ultravires acts.

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

Ans. According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change

the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations. Company will have to

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

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

Ans. According to section 3A of the Companies Act, 2013, If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor

Self Practice Questions

1. ABC Ltd. was incorporated on 1.1.1912 under the Indian Companies Act, 1882. Will Companies Act, 2013 be applicable on ABC Ltd?

Ans. Yes, Companies Act, 2013 will also be applicable on ABC Ltd as it is also a Company according to section 1 of the Act, The provisions of Companies Act 2013 shall apply to companies incorporated under this Act or under any previous company law.

2. What is the Minimum Paid up Capital for a Company.

Ans. Nothing has been prescribed so far. Thus, there is no minimum paid up share capital to form a private or a Public company.

3. A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to private companies.

Ans. In this case since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

4. X ltd, a sec 8 company is planning to declare dividend at 10% in the Annual General Meeting for the Financial Year ended 31.3.2020. State whether Company can do so?

Ans. Section 8 companies are formed for Charitable Purposes and therefore they enjoy a lot benefits as conferred under Companies Act 2013. They are therefore restricted from payment of dividends to its members,

In view of above prohibition, the action and Planning of Company is incorrect.

---

5. State whether Company is a citizen. Does the Company have any Residential Status?

Ans. As the Company is an Artificial Person which is created by Law, it can't hold citizenship of any Country. As per the Citizenship Act, 1955 of India only a 'Natural Person' can be a Citizen. Although a company can't be a citizen yet it has a domicile and residential status of its own which helps in determining whether the Company is Indian or a foreign Company.

---

6. Nakul is 16 years old and wants to start his own OPC for rendering promotional services. Advice

Ans. A minor cannot be a member or nominee in OPC.

---

7. Delicious Ltd was incorporated on 19.4.2019 with the Equity Share Capital of Rs. 70 Lakhs. The Company received the Certificate of Incorporation on 20th May. The Company intends to commence its operations. Advice the Company stating the conditions to be fulfilled for commencement of Business under the Companies Act

Ans. A company **incorporated** after the commencement of the Companies (Amendment) Act, 2019 ie. After 2.11.2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—
a **declaration** (Form 20A) is filed by a director within a period of 180 days of the date of **incorporation** of the company in such form and verified by CA/CS/Cost Accountant in practice with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
The company has filed with the Registrar a verification of its registered office as provided in section 12.

Since Delicious ltd is **incorporated** after 2.11.2018 and has share capital, it can't commence business immediately on receiving the certificate of **Incorporation** unless above two conditions are also complied with.

---

8. X, a chemical manufacturing company distributed Rs. 20 lakhs to scientific institutions for further enhancement of scientific education and research. Referring

to the provisions of Companies Act, decide whether the said distribution of money was Ultra Vires the Company?

Ans. A chemical Company may distribute money to scientific institutions for the furtherance of scientific education and research. It is not ultra Vires.

Multiple Choice Questions

1. Provisions of Companies Act, 2013 are applicable to-

a. Private Company only	b. Public Company only
c. Government Company only	d. All Companies

2. A private company shall have a minimum of ------- members and a maximum of ----- members.

a. 1;100	b. 2;200
c. 2;100	d. 7;50

3. Which of the following is a special feature of Company?

a. Artificial Person	b. Separate legal Entity
c. Limited Liability	d. All of the above

4. In Salomon v Salomon & Co. ltd, it was held that-

a. Company is at Law a different person from its promoters	b. Company is at Law a different person from its directors
c. Company is at Law a different person from its Members	d. All of the above

5. Private Company means a Company which by------ prohibits any invitation to------- to subscribe for any securities of the Company

a. Its Articles; Any person	b. Its Articles; Public
c. Its Memorandum; the Public	d. Its Memorandum; Any person

6. Company is not a citizen but it has---------

a. Nationality	b. Domicile
c. Residential Status	d. All of the above

7. Corporate Veil can be lifted -------

a. As per Companies Act	b. As per Judgement of Court
c. Both of the above	d. None of the above

8. Company which is created by Special Act of Parliament is known as-------

a. Chartered Company	b. Statutory Company
c. Special Company	d. Government Company

9. -------- in relation to another company means a company in which that other company has a significant influence & includes a joint venture Company

a. Associate Company	b. Subsidiary Company
c. Investing Company	d. None of these

10. A company shall be a small company only if its paid up share capital does not exceed --------- & its turnover does not exceed -------

a. 4 crores; 40 Crores	b. 10 crores; 100 Crores
c. 50 lakhs;2 Crores	d. 2 Crores; 20 Crores

11. I) A Public Company having a paid up share capital of Rs. 10 lakhs & a turnover of Rs. 40 lakhs is a small Company

II) A Private Company having a paid up share capital of Rs 10 lakhs & a turnover of Rs 40 lakhs is a small company even though it is a subsidiary of another private company.

a. Only (I) is correct	b. Only (II) is correct
c. Both are correct	d. None is correct

12. Company limited by Guarantee means a Company having the liability of its members limited by ------ to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

a. The Companies Act, 2013	b. The Articles
c. The Memorandum	d. The Rules

13. Government Company means any Company in which not less than 51% of paid up share Capital is held-

a. By the Central Government	b. By the State Government
c. Jointly by CG & SG	d. Any of these

14. Provisions of Companies Act, 2013 is applicable to-

a. Insurance Co. so far it is consistent with Insurance Act, 1938 & IRDA, 1999	b. Banking Co. so far it is consistent with Banking Regulation Act, 1949
c. Electricity Co. so far it is consistent with Electricity Act, 2003	d. All of the above

15. When Corporate veil may be lifted

a. Tax Evasion	b. Fraud
c. Both	d. None

16. RBI, LIC are examples of-

a. Chartered Company	b. Statutory Company
c. Special Company	d. Government Company

17. While calculating maximum no. of members in case of private company, which of the following will not be included?

a. Employees who are members	b. Former Employees who are members
c. Female members	d. Both a & b

18. What is liability of members, if company is limited by shares?

a. Unpaid value of shares	b. Guarantee Amount
c. Unlimited Liability	d. None of the above

19. Promoter means a Person-

a. Who is named in Prospectus as Promoter	b. Who is named in annual return as Promoter
c. Both of the above	d. None of the above

20. Promoters of Company are-

a. An agent of Company	b. A trustee
c. An employee	d. None of the above

21. A natural person------- a member of more than one OPC at any point of time and the said person-------a nominees of more than one OPC

a. Shall not be; shall not be	b. May be; May be
c. Shall not be; May be	d. May be; Shall not be

22. The term 'resident in India' means a person who has stayed in India for a period of not less than--------- during the immediately preceding financial year.

a. 180 days	b. 182 days
c. 183 days	d. 120 days

23. A Promoter can be--

a. An Individual	b. Firm
c. An association of Persons	d. All of the above

24. A person shall be eligible to incorporate OPC only if he is-----

a. A natural Person & an Indian Citizen	b. An Indian Citizen & Resident in India
c. A natural person & A resident in India	d. A Natural person & an Indian Citizen & Resident in India

25. Which of the following statement is correct?-

a. Certificate of Incorporation mean all objects of Company are legal	b. Certificate of Incorporation is conclusive evidence according to Companies Act, 1956
c. Both of the above	d. None of the above

26. The Central Government can revoke license granted to Section 8 Company if-

a. It contravenes any terms and conditions of license	b. Affairs of Company are conducted with fraudulent objective or prejudicial to Public Interest
c. Either (a) or (b)	d. Neither (a) nor (b)

27. Which of the following form shall be filed when nominee gives consent in case of OPC -

a. Form INC-1	b. Form INC-2
c. Form INC-3	d. Form INC-4

28. Certificate of Incorporation is issued by Registrar of Companies in-----

a. Form INC-12	b. Form INC-7
c. Form INC-11	d. Form INC-8

29. Which of the following form shall be filed when there is change in nominee in case of OPC-

a. Form INC-1	b. Form INC-2
c. Form INC-3	d. Form INC-4

30. To Convert section 8 Company into company of any other kind as per Rules of Companies(Incorporation) Rules, 2014, application shall be made by company to-

a. Registrar of Companies	b. Regional Director
c. Central Government	d. Chief Secretary of State

31. At the time of incorporation of Company, a declaration is given by --------

a. Subscriber of MOA	b. Subscriber of AOA
c. First Directors	d. All of the above

32. Which of the following form shall be filed when there is change in membership of OPC?

a. Form INC-1	b. Form INC-2
c. Form INC-3	d. Form INC-4

33. 1. An OPC can't have more than 1 director
2. An OPC is a private Company-

a. Only 1 is correct	b. Only 2 is correct
c. Both are correct	d. None is correct

34. Which of the following is correct about selection and application of name under Companies Act, 2013?

a. Name should be identical or should not too nearly resemble the name of another registered company	b. Name indicating any connection or patronage of Government can't be used without prior approval of CG
c. Name may include any word offensive to any section of people	d. All of the above

35. The Capital Clause of memorandum shall state-

a. The amount of the authorized share Capital	b. Number of Shares
c. Nominal Value of each Share	d. All of these

36. On revocation of license of section 8 company, Central Government may direct------

a. To convert its status and change its name	b. To wind up company if it is necessary in Public Interest
c. To amalgamate with section 8 Company having similar objects	d. Either (a), (b) or (c)

37. Section 8 Company cannot alter its Memorandum or Articles without approval of-----

a. All Directors	b. Central Government
c. State Government	d. NCLT

38. As per Section 12 of Companies Act, 2013------- shall be painted or affixed on the outside of every office or place in which business of Company is carried on.

a. Name of its Registered office	b. Address of its Registered Office
c. Name & Address of its Registered	d. Name & Address of Registered Office

Office	with Share Capital issued

39. The memorandum of OPC shall state the name of any other person who shall become the member of OPC in case of ------of the subscriber to memorandum.

a. Death	b. Incapacity to Contract
c. Death or Incapacity to Contract	d. Death or Insolvency

40. ------ cannot be a subscriber to Memorandum & Articles

a. A Company	b. Government
c. Minor	d. All of these

41. Every subscriber to memorandum shall make a declaration that he has not been found guilty of any fraud or misfeasance or breach of duty during the preceding-------

a. 1 year	b. 2 years
c. 3 years	d. 5 years

42. Notice of every change in situation of the registered office shall be given to the Registrar, within------ of such change.

a. 7 days	b. 14 days
c. 15 days	d. 30 days

43. A company may change its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same state by-------

a. Passing an ordinary resolution	b. Passing a special Resolution
c. Passing an ordinary resolution & obtaining confirmation of Regional Director	d. Passing a special resolution & obtaining the confirmation of the Regional Director

44. A company may change the place of its registered office from one state to another state by-

a. Passing an Ordinary Resolution	b. Passing a Special Resolution
c. Passing an ordinary resolution & obtaining approval of CG	d. Passing a special resolution & obtaining approval of CG

45. A firm may become a member of-

a. A private Company	b. A public Company
c. Both (a) & (b)	d. A Company licensed u/s 8

46. Alteration in situation clause of Memorandum takes place where -

a. Registered office is shifted within the local limits of the city, town or village	b. Registered office is shifted from one city to another within same ROC
c. Registered office is shifted from one state to another	d. All of these

47. Acts ultra vires the directors or articles-----

a. Are void	b. Cannot become valid by estoppel or ratification
c. Both (a) and (b)	d. May be ratified by the members

48. In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by an amendment of articles-------

a. Passing a Special Resolution	b. With the Consent of all the members
c. By passing a special Resolution and obtaining approval of the Central Government	d. With the consent of all the members and obtaining the approval of the Central Government

49. A company may alter its objects clause by------

a. Passing an Ordinary Resolution	b. Passing a Special Resolution
c. Passing an ordinary resolution & obtaining approval of CG	d. Passing a special resolution & obtaining approval of CG

50. Conversion of Public Company into Private Company requires-----

a. A special Resolution	b. A special Resolution and Approval of Tribunal
c. A special Resolution & Approval of Central Government	d. An ordinary Resolution

51. The proprietor of a registered trademark may make an application to the Central Government that the name of a company is identical with or nearly resembles the registered trade mark of which he is a proprietor. Such an application may be made by the proprietor of the registered trade mark within------ of registration of the company by such name

a. 1 year	b. 2 years
c. 3 years	d. 5 years

52. Every Company shall have its registered office within ------ of its incorporation and at all times thereafter

a. 15 days	b. 30 days
c. 45 days	d. 60 days

53. As per the doctrine of -------, outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly.

a. Ultra Vires	b. Constructive Notice
c. Indoor Management	d. None of these

54. As per section 13 of Companies Act, 2013, the approval of Central Government for change of name shall be filed with--------

a. Stock Exchange	b. ROC
c. Regional Director	d. Tribunal

55. As per Section 13 of Companies Act, 2013, name of Company can be changed by shareholders any time by----- and ------

a. Passing an Ordinary Resolution; getting approval of CG	b. Passing a Special Resolution; getting approval of CG
c. Passing Ordinary resolution; getting consent of Creditors	d. None of the above

56. If a Company by chance gets registered with a name which is identical or closely resembles the name of an existing Company, In such a case, Central Government can direct the Company to change its name within------from issue of such directions.

a. One Month	b. Two Months
c. Three Months	d. Reasonable Time

57. On receipt of an application from the proprietor of a registered trade mark, if the Central Government is of the opinion that the name of a company is identical with, or too nearly resembles the registered trade mark, then the Central Government may direct the Company to rectify its name. When such direction is given, the Company shall rectify its name within----

a. 1 Month	b. 2 Months
c. 6 Months	d. 3 Months

58. As per Rule 29 of Companies(Incorporation) Rules, 2014, change in name is not allowed, if company has defaulted in-------

a. Filing its Annual Returns or Financial Statements	b. Document due for filing with ROC
c. Repayment of due deposit or debenture or interest thereon	d. All of the above

59. Company which has unutilized money raised from Prospectus, Company cannot change object without giving exit offer to ---- in addition to compliance with above provisions.

a. Consenting Shareholders	b. Consenting Creditors
c. Dissenting Shareholders	d. Dissenting Creditors

60. The Doctrine of Ultra Vires was first applied in case of-

a. Ashbury Railway Carriage Co. vs Riche	b. Lee vs Lee Air Farming Ltd.
c. Jones vs Lipman	d. Kotla Venkata Swamy vs Ramamurthy

61. Any alteration to Articles of Association shall not be-------

a. Against Companies Act	b. Illegal
c. Against Public Policy	d. All of the above

62. Which Doctrine is an exception to Doctrine of Constructive Notice?

a. Doctrine of Indoor Management	b. Doctrine of Constructive Management
c. Both of the above	d. None of the above

63. Model forms of Articles have been specified in ------- of Companies Act, 2013

a. Schedule I	b. Schedule II
c. Schedule III	d. Schedule IV

64. SAV pvt ltd desires to include entrenchment provision by amending its Articles. It can be done, if

a. It is agreed by all members	b. It is agreed to by majority of members
c. It is agreed by 3/4th of Members	d. It is agreed by all directors

65. At the time of granting permission for shifting of registered office from one state to another, Central Government will consider interests of-

a. Members	b. Creditors
c. Company	d. All of the above

Answers:

1	(d)	21	(a)	41	(d)	61	(d)
2	(b)	22	(d)	42	(d)	62	(a)
3	(d)	23	(d)	43	(d)	63	(a)
4	(d)	24	(a)	44	(d)	64	(a)
5	(b)	25	(b)	45	(d)	65	(d)
6	(d)	26	(c)	46	(c)		
7	(c)	27	(c)	47	(d)		
8	(b)	28	(c)	48	(b)		
9	(a)	29	(d)	49	(b)		
10	(a)	30	(b)	50	(c)		
11	(d)	31	(d)	51	(c)		
12	(c)	32	(d)	52	(b)		
13	(d)	33	(b)	53	(c)		
14	(d)	34	(b)	54	(b)		
15	(c)	35	(d)	55	(b)		
16	(b)	36	(d)	56	(c)		
17	(d)	37	(b)	57	(d)		
18	(a)	38	(c)	58	(d)		
19	(c)	39	(c)	59	(c)		
20	(d)	40	(c)	60	(a)		

Investment and Loans

Class Questions

1. Sudha ltd has passed a resolution in its General Meeting regarding accepting deposits from its members. Can this company accept deposits from its members under Companies Act, 2013? If Yes, state the condition to be fulfilled regarding this

Answer:

Answer: Conditions for acceptance of Deposits from its Members

a) Passing of Resolution in General Meeting
b) Issuance of a circular: Issuance of a circular to its members including a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company.
c) Filing of Circular to ROC: The filing a copy of the circular along with such statement with the ROC within thirty days before the date of issue of the circular.
d) Creation of Deposit Repayment Reserve: The Company has to create a Deposit Repayment Reserve (DRR) by depositing not less than 20% of total deposits maturing during a financial year and the financial year next following, and be kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed
f) Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions
g) The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits.
h) Company can't accept deposits for a period of not less than 6 months and not more than 36 months. However, a company can accept deposits for a period of less than 6 months upto 10% of its paid up capital, free reserves and securities premium account but in any case it should not be less than 3 months.
i) Company cannot accept Demand Deposits.
j) The Company has no right to alter terms and conditions which is disadvantageous after circular is issued and deposits are accepted.
k) The Security shall be created in Favour of a trustee for the depositors on specific movable or immovable property of the company

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

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

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

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

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

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

Answer:

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

However, an 'eligible company', which is accepting deposits within the limits

specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

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

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'.

Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

4. State, with reasons, whether the following statements are 'True or False'?

(i) ABC Private Limited may accept deposits from its members to the extent of ₹ 50.00 lakhs, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 50.00 lakhs.

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

Answer:

(i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of ₹ 50.00 lakh is 'true'.

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

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

5. XYZ LTD. secures residential accomodation for the use of its Managing Director by entering into a license arrangement under which the company has to deposit a certain amount with the Landlord to secure compliance with the terms of the license agreement. Can it be considered as a loan to a Director? Discuss with reference to the Companies Act, 2013.

Answer:
According to section 185, No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

However, The above restriction does not apply in certain circumstances:
the giving of any loan to a managing or whole-time director:
(1) as a part of the conditions of service extended by the company to all its employees; or
(2) pursuant to any scheme approved by the members by a special resolution; or

Hence in the given case according to above stated provisions, It does not amount to a loan.

6. A Public Company is engaged in manufacture of fabrics. The Company has investments in shares of other Bodies Corporate including shares in X Ltd. and it has also advanced loans to other Bodies Corporate. The aggregate of all the investments made and loans granted by that Public Company exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, It has obtained a term loan from Industrial Development Bank of India and the same is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in X Ltd. by purchase of additional 10% shares from other existing shareholders. State the legal requirements to be complied with under the provisions of the Companies Act, 2013 to give effect to the above proposal. Will your answer be different if the Public company would have defaulted in payment of matured fixed deposits accepted by it from the public?

Answer:
According to Section 186(11) ,

The company can make new inter-corporate investments only by passing a special resolution.

If the company has defaulted in repayment of public deposits, the company cannot make any investments even if special resolution and resolution of Board is passed. The investments can be made only after the default has been made good.

Multiple Choice Questions

1. Under Section 2(31) of the Companies Act, 2013, "Deposit" includes any receipt of money by way of deposit or loan or in any form by a company, but does not include such categories of amount as may be prescribed in consultation with the --------.

a. Central Government	b. Reserve Bank of India
c. Board of Directors of the Company	d. Secretary, Ministry of Corporate Affairs

2. Company other than Eligible Company can accept deposits upto ------- of aggregate paid up capital, free reserve and securities premium account from member.

a. 10%	b. 15%
c. 25%	d. 35%

3. Circular to invite deposit is filed with ROC before ----- days from date of issue to member.

a. 15	b. 21
c. 30	d. 45

4. A company inviting deposits from public, advertise in Form DPT 1 in -------

a. English language	b. Regional language newspaper
c. Both of the above	d. None of the above

5. Which of the following amount (i.e. transactions) is not considered as deposit as per Companies Act, 2013?

a. Amount received from an employee of the company by way of security deposit and it is as per contract of employment and non-interest bearing.	b. Amount received from an employee of the company by way of security deposit and it is as per contract of employment and interest bearing.
c. Both of the above	d. None of the above

6. Return of deposits shall be filed with Registrar on or before ---- of every year stating position as on 31st March of that year.

a. 30th April	b. 30th May
c. 30th June	d. 30th September

7. Circular inviting deposit shall remain valid for a period of ----- months from the closure of the financial year in which it is issued or ------ is held, whichever is earlier.

a. 6; until date of AGM is held	b. 3; until date of AGM is held
c. 6; 6 months from date on which AGM is held	d. 3; 6 months from the date on which AGM is held

8. Return of deposits shall be certified by ------- of company.

a. Any two directors	b. Auditors of company
c. Any Chartered Accountant	d. Company Secretary in practice

9. Who among the following person cannot be appointed as deposit trustee?

a. Person who has pecuniary relationship with company	b. Person who has provided guarantee for company
c. Both of the above	d. None of the above

10. Deposit creates relationship of -------.

a. Principal and agent	b. Shareholder and company
c. Debtor and creditor	d. Customer and supplier

11. Details of deposit accepted shall be entered into Register of deposit within ------.

a. 7 days	b. 2 days
c. 5 days	d. 15 days

12. A Public company having net worth of ------- or turnover of ------ will be "eligible company" under section 76(1) of Companies Act, 2013 to invite deposits from the persons other than its members. Such company can invite public deposits.

a. Not more than Rs. 100 Crs; Not less than Rs. 500 Crs	b. Not less than Rs. 500 Crs; Not more than Rs. 500 Crs
c. Not less than Rs. 500 Crs; Not less than Rs. 500 Crs	d. Not less than Rs. 100 Crs; Not less than Rs. 500 Crs

13. A ------ can accept deposits from its members after passing resolution in general meeting as per the provisions of Section 73(2) of the Companies Act, 2013.

a. Public company only	b. Private company only
c. Public and private company	d. Public and foreign company

14. Secured or unsecured deposit can be accepted by a company under the provisions of Companies Act, 2013 for minimum period of -------- and maximum --------.

a. 1 month; 12 months	b. 3 months; 24 months
c. 6 months; 36 months	d. 12 months; 48 months

15. A certificate of the -------- of the company shall be attached in Form DPT-1.

a. Independent auditor	b. Statutory auditor
c. Secretarial auditor	d. Practicing Chartered Accountant

16. Bonds or debentures secured by first charge or *paripassu*charge on assets of the company (excluding intangible assets of the company) are not 'deposits' under the Companies Act, 2013, however, unsecured debentures or bonds where the security is illusory are 'deposits'.

a. True	b. False. Secured as well as unsecured, both types of bonds and debentures are deposits
c. False. Secured are deposits but unsecured are not deposits	d. False. Neither secured, nor unsecured, bonds and debentures are considered as deposits.

17. According to Section 70 of the Companies Act, 2013, if a company is in default in repayment of fixed deposits or interest thereon, it cannot engage in buy back of its own shares or securities, directly or indirectly.

a. True	b. False. Company can engage in buy back of its own shares or securities, directly or indirectly.
c. False. Company can engage in buy back of its own shares or securities directly but cannot indirectly.	d. False. Company can engage in buy back of its own shares or securities, indirectly but cannot directly.

18. ------ is required to be passed, if a company intends to accept deposits from its members.

a. An ordinary resolution	b. A special resolution
c. A unanimous resolution	d. Resolution by circulation

19. Where a company accepts deposits from its members, it shall deposit in a Scheduled bank in a separate bank account a sum equal to ---- of the amount of deposits maturing during the following financial year. Such amount shall be deposited on or before the ----- each year.

a. 10%; 31st day of March	b. 20%; 31st day of May
c. 20%; 30th day of April	d. 10%; 30th day of April

20. For the purposes of providing security, every company inviting secured deposits shall provide for security by way of a charge on its assets are referred to in -------- of the Act excluding ----- assets of the company for the due repayment of the amount of deposit and interest thereon.

a. Schedule II; intangible	b. Schedule II; tangible
c. Schedule III, intangible	d. Schedule III; tangible

21. A company shall be liable to pay a penal rate of interest of ------ per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

a. 12%	b. 15%
c. 18%	d. 24%

22. A company may make an application to -------- seeking extension of time for repayment of any deposit accepted before the commencement of the Companies Act, 2013.

a. The Tribunal	b. The Registrar
c. The Central Government	d. The Court

23. Every eligible company shall obtain ----- credit rating for deposits accepted by it and a copy of the credit rating shall be filed with the Registrar along with the return of deposits.

a. At the time of acceptance of deposits	b. At the time of renewal of deposits
c. Either (a) or (b) or both	d. At least once in a year

24. Who can file a suit, proceedings or take other legal action if he(they) had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon?

a. Any person	b. A group of persons
c. Any association of person	d. Any of the above

25. When a company accepts the deposit from its member or public, according to Rule 12 of the Companies (Acceptance of Deposits) Rules, 2014, a receipt of deposit must be issued to every deposit holder within ------ days from receipt of the money or realization of cheque or date of renewal.

a. Seven	b. Fourteen
c. Twenty-one	d. Thirty

Answer to MCQs

1	b	6	c	11	a	16	a	21	c
2	c	7	a	12	d	17	a	22	a
3	c	8	b	13	c	18	a	23	d
4	c	9	c	14	c	19	c	24	d
5	a	10	c	15	b	20	c	25	c

Dividend

1. Board of directors of M/S RPP ltd in its meeting held on 29th Jan 2016 declared an interim dividend payable on paid up equity share capital of the company. In the Board meeting scheduled for 10th March 2016, the Board wants to revoke the said declaration. You are required to state whether the Board of Directors can do so?

Answer: Dividend includes any Interim Dividend. Amount of Interim Dividend is to be compulsorily deposited in a separate Bank Account, within 5 days of passing the Board resolution declaring the Interim dividend. Also, Interim dividend must also be paid within 30 days of its declaration. Hence, Board cannot revoke any interim dividend.

2. A company has proposed a dividend @ 10% for the year 2019-20 out of the current year profits. The Company has earned a profit of Rs. 800 Crores during 2019-20. YZ ltd does not intend to transfer any amount to the General Reserve of the Company out of Current Year profits. Is YZ ltd allowed to do so? Comment.

Answer: According to section 123 of Companies Act, 2013, Transfer to reserves is not mandatory. YZ ltd is allowed to propose a dividend of 10% without transferring any profits to reserves since it is the discretion of the company whether to transfer any profits to reserves or not and irrespective of the rate of dividend proposed or dividend declared, the Companies Act, 2013 does not make it mandatory for the company to transfer any percentage of its profits to reserves.

3. The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

Answer: The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

(i) As per the facts given in the question, Mr. A is holding equity shares of face value of Rs. 10 Lakhs and has not paid an amount of Rs. 1 lakh towards call money on shares.

Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an amount of Rs. 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of Rs. 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

(ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

---

4. RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

Answer: As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

---

5. PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer: Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

---

6. State giving reasons whether the following are true or false under the provisions of the Companies Act, 2013? The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company.

Answer: False Section 129(2)

---

7. XYZ Ltd. wants to maintain its books of account on cash basis. Is it permitted as per Companies Act' 2013.

Answer: XYZ Ltd. cannot maintain its books of accounts on cash basis [section 128(1)]

Multiple Choice Questions

1. The dividend for any F.Y. can be declared or paid out of ------

a. Profits for that FY	b. Profits for any previous financial years and remaining undistributed
c. Both (a) and (b)	d. Both (a) and (b) and free reserves

2. A company shall not declare any dividend on ------, if it has failed to comply with the provisions of Section 73 or section 74.

a. Equity shares	b. Preference shares
c. Any shares, whether equity or preference	d. None of these

3. The dividend shall be paid within ------- days from the date of ------ of dividend

a. 30; declaration	b. 7; declaration
c. 30; recommendation	d. 7; recommendation

4. The rate of dividend proposed by the Board may be ------- by the members

a. Increased	b. Reduced
c. Both (a) and (b)	d. None of the above

5. Where a transfer deed has been delivered to the company for registration, but the transfer of shares has not yet been registered by the Company, the company shall-

a. Pay the dividend to the registered shareholder, if it is so authorized by the articles	b. Pay the dividend to the transferor, if the transferee has authorized the company to do so.
c. Transfer the dividend in relation to such shares to the IEPF	d. Transfer the dividend in relation to such shares to the Unpaid Dividend A/c

6. All such shares in respect of which dividend has not been paid or claimed for ------ shall be transferred by the Company in the name of IEPF

a. Any 7 years	b. 7 consecutive years
c. Any 5 years	d. 5 Consecutive years

7. If a Company fails to transfer the unpaid or unclaimed dividend to the Unpaid Dividend Account, the company shall be liable to pay interest @ ------- per annum

a. 9%	b. 12%
c. 15%	d. 18%

8. The amount of the dividend shall be deposited by the company in ---------- in a separate bank account within -------- of declaration of such dividend

a. A nationalized bank; 5 days	b. A scheduled Bank; 5 days
c. State Bank of India; 7 days	d. A nationalized Bank; 7 days

9. Dividend other than Interim Dividend is declared by-

a. The Board	b. Members
c. Either (a) or (b)	d. Both (a) and (b)

10. If a company has incurred loss upto ------- immediately preceding the date of declaration of interim dividend, then, the rate of interim dividend shall not be higher than the average rate of dividends declared by the company during immediately preceding ------ financial years

a. The end of the FY; 3	b. The end of the quarter; 3
c. The end of the FY; 5	d. The end of the quarter; 5

11. Dividend has to be paid by--------

a. Cash/cheque/Dividend/warrant/direct credit in Bank/Issuance of Bonus shares	b. Cash/Cheque/Direct credit in Bank/Issuance of Bonus shares
c. Cash/Cheque/Dividend Warrant/ Direct credit in Bank account	d. Cash/Cheque/ Direct credit in Bank account/ issuance of right shares

12. Regulation 80 of Model Articles of Association Table-F of Companies Act, 2013 provide that-

a. Dividend shall not be less than the amount declared by Board	b. Board of Directors cannot declare Dividend
c. Dividend must be declared out of past years' profits of the company by the Board	d. Dividend shall not exceed amount declared by Board

13. According to section 123 of Companies Act, 2013, the depreciation is required to be provided as per schedule------

a. II	b. III
c. VI	d. XIV

14. Free reserves means such reserves which as per the ------ balance sheet of a company are available for distribution as dividend

a. Latest audited	b. Average of last 3 years audited
c. Average of last 4 quarters	d. Average of last 5 years balance sheet

15. ABC ltd did not declare the dividend in its AGM. However, the Board of Directors of the company are keen to declare the dividend for the company. The company can declare the dividend in subsequent-------

a. Audit Committee Meeting	b. Annual General Meeting
c. Extraordinary General Meeting	d. Webcast on the website of Company

16. Interim dividend shall be declared by considering ------ generated during Financial year till the quarter preceding the date of declaration of interim dividend

a. Sales	b. Profits
c. Contribution	d. Expenses

17. In absence of specific provision in Articles of Association, dividend shall be ------ irrespective of the amount paid up on that share

a. Per share	b. As a fixed % of face value of the share
c. Fixed amount every year	d. All of the above

18. As soon as dividend is declared, the amount of dividend shall be deposited in a separate bank account within 5 days from the date of declaration of dividend. However this provision is not applicable to-

a. Government Company	b. 100% Government Company
c. Private Company	d. Both (a) and (c)

19. Liability of final dividend arises only when dividend is ------ which is in the ----meeting.

a. Proposed; board	b. Declared; general
c. Proposed; general	d. Declared; board

20. Accounts of IEPF shall be audited by -----

a. CAG	b. Auditor
c. Statutory Auditor	d. CG

Answer to MCQs

1	(d)	6	(b)	11	(c)	16	(b)
2	(a)	7	(b)	12	(d)	17	(a)
3	(a)	8	(b)	13	(a)	18	(b)
4	(b)	9	(b)	14	(a)	19	(b)
5	(d)	10	(b)	15	(b)	20	(a)

Accounts and Audit

1. S ltd a company incorporated abroad is a subsidiary of H ltd. The financial year of H ltd is from 1st April to 31st March whereas the financial year of S ltd is 1st july to 30th june every year. This is causing difficulty in consolidation and reporting. The Board of directors of H ltd decide to change the financial year or extend the same to bring in line ending on the same date. Advise the Company in this regard.

Answer: Financial Year according to section 2(41) for a company means period ending on 31st March every year in respect whereof financial statement of the company or Body corporate is made up.

A company or Body Corporate which is a holding company or a subsidiary company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India may be permitted by the Tribunal to have any period as its Financial Year, whether or not that period is a year.

So, H ltd may change accordingly.

---

2. XYZ ltd wants to maintain its books of accounts on cash basis. It has a branch office outside India and wants to maintain accounts over there. Advise.

Answer: According to Section 128, Only accrual basis is permitted for accounting. Hence XYZ can't maintain books on cash basis. Records of transactions relating to foreign branch may be maintained outside India and quarterly returns shall be sent to registered office.

---

3. A shareholder of a company wants to inspect books of accounts. Can he do so? Would your answer be different if he is acting as an agent of the Director of the Company?

Answer: No member has a right to inspect books unless authorized by Board, conferred by law or authorized in the General Meeting. Even if authorized, he has the right to exercise the same personally and not through any agent or proxy. However, Agent of director is permissible.

---

4. Super Real Estate ltd, a listed Company has made the following Éligible Profits under Companies Act, 2013.

Year	1	2	3	4	5
Amount in Crores	20	40	30	70	50

Calculate the amount that the Company has to spend towards CSR.

Will the Company suffer penalties if they fail to provide for or incur expenditure for CSR?

List two activities expressly prohibited from being considered as CSR Activities.

Answer: 2% of Average Net Profits of immediately preceding 3 financial years

= (50+70+30)*3

= 50*2% = 1 crore

No penalty specified u/s 135 but failure has to be reported and General Penalty u/s 450 (Cases of Punishment Where No Specific Penalty or Punishment is Provided) shall be attracted.

Activities undertaken outside India shall not amount to CSR Expenditure. The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities.

---

5. ABC ltd is a listed company with a net profit of Rs. 94 lakhs and turnover of 10.6 as on 31st March, 2020. The company wants to circulate the financial statements in electronic Mode. Referring to the provisions of the Companies Act, 2013, advise the company whether it can do so.

Answer: In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

(a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes

(b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and

(c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

---

6. The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

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

(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements

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

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

---

7. Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiary of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiary located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Answer: No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136.

---

8. Akash, a Member of the ICAI, does not hold a Certificate of Practice. Is his appointment valid?

Answer: Refer meaning of Chartered Accountant u/s 2(17) above. Aakash does not hold a COP and hence cannot be appointed as a Company Auditor. [Sec.141(3)(g) read with ICAI Code of Conduct]

---

9. Hum & Tum Associates, Cas, have been appointed as Auditors of SP Ltd. Mr. Tum, Junior Partner, holds 10 Shares of HP Ltd, which is a Holding Company of SP Ltd. Give your comments.

Answer: A person holding any Security in the Company or its holding/ subsidiary/ Co-subsidiary/ Associate Company is disqualified. Hence the appointment of Hum & Tum Associates is invalid.

---

10. Mr. Amar a Chartered Accountant bought a car Rs. 6,00,000 by Chaudhary Finance Ltd, which is a Holding Company of Charan Ltd, & Das Ltd. He has been the Statutory Auditor of Das Ltd, which he continues even after taking the loan. Comment.

Answer: A person who is indebted to the Company or its Holding Company for an amount exceeding Rs. 5,00,000 is disqualified u/s 143(3)(d). Therefore, Mr. Amar is not qualified to continue as Auditor of the Company.

---

11. Baiju owes Rs. 5,00,001 to C Ltd. of which he is an Auditor. Is his appointment valid? Will it make any difference, if it was taken as an advance to meet travelling expenses?

Answer: Since the amount owed exceeds Rs. 5,00,000, Baiju becomes disqualified to continue as Auditor of C Ltd. However, if the amount were taken as Travelling Advance, the said disqualification will not apply.

---

12. Mr. 'R', a practicing Chartered Accountant, is appointed as a "Tax Consultant" of MN Ltd, in which his father Mr. 'C' is the Managing Director. Comment.

Answer: 'Tax Consultant' is not the Statutory Auditor. So, the appointment is prima facie valid. Professional Ethics shall apply, while giving Consultancy to the Entity, in the capacity of Tax Consultant.

---

13. The Managing Director of PQR Ltd himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as a First Auditor of the Company. Comment on the proposed action of the Managing Director.

Answer: Sec.139(6) specifies that the Board of Directors can appoint the First Auditor(s) within 1 month from the date of Incorporation of the Company. If the Managing Director himself wants to appoint the First Auditor(s), without consulting the Board/ within the authority of the Board, such proposed appointment will be ineffectual and invalid in law

14. As a Branch Auditor would you insist on approval of final accounts by the Board of Directors before submitting your report, though the Board refuses to do so and informs you that an Authorised Official will approve them?

Answer: Under Sec.141(b) the Branch Auditor "shall have the same powers and duties in respect of the accounts of the Branch Office as the Company's Auditor has in respect of the same". Sec.134 states that the Balance Sheet and the Profit and Loss Account of the Company shall be approved by the Board of Directors before they are signed on behalf of the Board as laid down in that Section and before they are submitted to the Auditors for their report thereon. On a combined reading of the above, the approval of accounts of Branch Office by an Authorised Official should be considered as sufficiently good enough for acceptance of the accounts, by the Board.

15. XLW Ltd has a Branch Office in Malaysia. The Company has appointed Mr. X, who is qualified to audit accounts as per Malaysian Laws. Mr. Z, the Statutory Auditor objects to the same, contending that he alone can audit the Branch Office accounts. Discuss. Can Mr. Z visit the Branch?

Answer: Appointment of Mr. X as Branch Auditor is valid. Mr. Z cannot object the appointment. Yes, Mr. Z can visit the Branch.

16. Mr. A was appointed Auditor of AAS Ltd by the Board to fill the casual vacancy that arose due to death of the Auditor originally appointed in AGM. Subsequently, Mr. A also resigned on health grounds during the tenure of appointment. The Board filled this vacancy by appointing you through duly passed Board resolution. Comment.

Answer: Appointment by Board Resolution to fill the Casual Vacancy caused due to resignation is valid. But, the Appointment should be approved by the Company in a General Meeting, convened within 3 months of BOD recommendation. Recommendations of Audit Committee u/s 177 shall also be considered, if applicable to the Company.

17. ABC ltd appointed an individual firm, Sagar & Co. Chartered Accountants as Auditors of the Company of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Sara, wife of Mr. Sagar, invested in the equity shares face value of Rs. 1 lakh of ABC Limited on 15th October, 2019. But Sagar & Co. continues to function as statutory auditors of the company. Advice as per the provisions of the Companies Act, 2013

Answer: According to Section 141 of the Companies 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case given, Mr. Sagar, Chartered Accountants, did not hold any such security. But Mrs. Sara, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit. Further the Section provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor.

Since Sagar & Company is not attracted to any disqualification, it can continue to function as auditors of the Company even after 15th October 2019 i.e. after the investment made by his wife in the equity shares of ABC Limited.

---

18. Explain how the auditor will be appointed in the following cases:

(i) A Government Company within the meaning of section 394 of the Companies Act, 2013.

(ii) The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017.

Answer: The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

19. Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of ` 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd."?

Answer: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Subsection (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor

In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company

In the present case, Mr. Abhi. is holding security of Rs. 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

20. Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

Answer: Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

In view of the above, the Managing Director of PQR Ltd cannot appoint the first auditor of the company himself.

---

21. Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2016. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2016 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor.

Answer: In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

---

22. Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as auditor in his place. Comment.

Answer: The first auditor appointed by the Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013 only and hence the removal of the first auditor in this case is invalid. The company contravened the provision of the Act.

---

23. FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crores. During the year ended 31 March 2019, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Govt that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer: The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfil their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

---

24. Mr. A, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2016, in which he accepted the assignment. Subsequently, in January 2017 he offered B, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of A as a partner.

Answer: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, A is auditor of M/s Laxman Ltd and any employee of Laxman Ltd cannot become the Partner of the firm where A is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

Multiple Choice Questions

1. The internal Auditor shall be

a. A chartered Accountant	b. A cost Accountant
c. Any other professional declared by Board	d. Any of these

2. Every company shall allow ------ to inspect the financial statement and other documents at its registered office during business hours

a. Every member	b. Every debenture trustee
c. Both (a) and (b)	d. None of these

3. The provisions relating to Internal Audit shall apply t every Unlisted Public Company having outstanding deposits of ------ or more at any point of time during the preceding FY

a. 25 Crore	b. 50 Crore
c. 100 Crore	d. 200 Crore

4. The provisions relating to Internal Audit shall apply to every Unlisted Public Company having paid up share capital of ------ or more during preceding FY

a. 25 Crore	b. 50 Crore
c. 100 Crore	d. 200 Crore

5. The provisions relating to Internal Audit shall apply to ------

a. Unlisted Public Companies	b. Private Companies
c. All Companies	d. Prescribed Classes of Companies

6. The financial statements shall be filed together with Form No. - ----- and the consolidated Financial Statements if any shall be filed together with Form No. -----

a. AOC-3; AOC-3CFS	b. AOC-4; AOC-4CFS
c. AOC-5; AOC-5CFS	d. AOC-6; AOC-6CFS

7. The provisions relating to Internal Audit shall apply to every Unlisted Public Company having turnover of ----- or more during preceding FY

a. 25 Crore	b. 50 Crore
c. 100 Crore	d. 200 Crore

8. Where the Financial Statements are not adopted at the AGM, but are adopted in the adjourned AGM, the financial statements and other documents shall be filed with the Registrar within 30 days of--------

a. The date of Original AGM	b. The date of adjourned AGM
c. The last date upto which AGM should have been held	d. None of these

9. The Financial Statement, Consolidated Financial Statement, if any, auditor's report and all documents which are required to be annexed to Financial Statements shall be filed with the Registrar within ------ of the date of AGM

a. 7 days	b. 14 days
c. 21 days	d. 30 days

10. Adoption of financial statements is an item of ------ and requires -------

a. Ordinary Business; Ordinary Resolution	b. Special Business;Special Resolution
c. Ordinary Business; Special Resolution	d. Special Business; Ordinary Resolution

11. Who may direct to conduct Cost Audit in respect of Companies engaged in the production of such goods or providing such services and have a net worth or turnover as may be prescribed.

e. Central Government	f. MCA
g. NCLT	h. State Government

12. In case of Government Company, if there is casual vacancy, it is required to be filled by C&AG within ------- days.

e. 30	f. 60
g. 90	h. 120

13. Which of these statements is not correct with reference to Companies Act, 2013

a. All Companies must keep proper books of accounts while cost records are compulsory only for specified companies	b. Financial and Cost Audit are compulsory for every year for all companies
c. Both of the above	d. None of the above

14. Cost Auditor is required to submit his report to-----

a. Board of Directors	b. Members of Company
c. Central Government	d. Registrar of Companies

15. The Board of Directors shall submit full information and explanation to every reservation or qualification in Cost Audit Report within ------- in -------

a. 30 days;Form CRA 3	b. 30 days;Form CRA 4
c. 60 days;Form CRA 3	d. 60 days;Form CRA 4

16. The Cost Audit Report shall be submitted in ---

a. Form CRA 2	b. Form CRA 1
c. Form CRA 3	d. Form CRA 4

17. When Cost Audit Report is submitted by Cost Auditor?

e. Within 180 days from closure of FY	f. Within 120 days from closure of FY
g. Within 180 days from commencement of calendar year	h. Within 120 days from commencement of calendar year

18. Cost Audit can be done by a-----

e. Cost Accountant	f. Firm of Cost Accountants
g. Statutory Auditor	h. Either (a) or (b)

19. When Auditor resigns, he should file ------ to Registrar of Companies

e. Form ADT-1	f. Form ADT-2
g. Form ADT-3	h. Form ADT-4

20. NCLT can remove Auditor of Company

e. Suo Motu	f. On application from Central Government
g. On application from any person concerned	h. Either (a) or (b) or (c)

21. Auditor shall report fraud to Company to Central Government in ------- if amount involved in fraud is 1 crore or more

e. Form ADT-1	f. Form ADT-2
g. Form ADT-3	h. Form ADT-4

22. If the Company under Audit is holding company, the Auditor of holding company can access accounts of----

e. Subsidiary Company	f. Associate Company
g. Company under Audit	h. All of the above

23. If fraud is less than 1 crore, the Auditor shall report the fraud to Audit committee or Board within 2 days. Details of such fraud shall be disclosed in----

e. Board's Report	f. Corporate Governance Report
g. Auditor's Certificate	h. None of the above

24. In case of Government Companies, Auditor is appointed for---

e. One year	f. Two years
g. Three years	h. Not more than Two years

25. Remuneration of first Auditors shall be fixed by

a. Board of Directors	b. Committee of Directors
c. Central Government	d. ICAI

26. The word Firm for the purpose of Section 139 shall include-

a. An individual Auditor	b. A limited liability Partnership
c. An individual Auditor and LLP both	d. A company

27. ---------- the meeting in which the auditor is appointed u/s 139, the company shall inform the auditor concerned of his or its appointment

a. Within 7 days of	b. Within 15 days of
c. Within 30 days of	d. Before

28. At the ----------, every company shall appoint an individual or a firm as an auditor, who shall hold office till the conclusion of----------

a. 1st EGM; 6th EGM	b. 1st AGM; 6th AGM
c. 1st AGM; 1st AGM	d. 1st EGM; 6th AGM

29. The Audit committee of X ltd recommends to the Board, the name of Mr. A for the appointment as auditor from the conclusion of 1st AGM till the conclusion of 6th AGM. The Board disagrees with the recommendation of the Audit Committee. The Board shall------

a. Board shall recommend to the members in AGM, the name of Mr. A, for appointment as Auditor	b. Refer back recommendation of Mr. A to the Audit committee for reconsideration citing reasons for such disagreement
c. Send its own recommendation for consideration of members in AGM	d. Either of the above at discretion of Board

30. --------- his appointment as auditor u/s 139, the auditor shall furnish to the company his written consent

a. Within 7 days of	b. Within 15 days of
c. Within 30 days of	d. Before

Answer to MCQs

1	(d)	6	(b)	11	(a)	16	(c)	21	(d)	26	(b)
2	(c)	7	(d)	12	(a)	17	(a)	22	(d)	27	(b)
3	(a)	8	(b)	13	(b)	18	(d)	23	(a)	28	(b)
4	(b)	9	(d)	14	(a)	19	(c)	24	(a)	29	(b)
5	(d)	10	(a)	15	(b)	20	(d)	25	(a)	30	(d)

Appointment and Qualification of Directors

Class Questions

Maximum and Minimum Directors- Sec 149(1)

1. The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall not exceed 10. Presently, the company has 8 directors. Its Board of Directors desires to increase the number of directors from 8 to 16. Advise whether under the provisions of the Companies Act, 2013, the Board can do so?

   Answer:
   Under Section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company. The maximum number of directors shall be 15.
   The First Proviso to Section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

   From the provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public, private or a one person company, the maximum number of directors is same for all types of companies i.e. 15 directors.

   In the given case since the number of directors is proposed to be increased from 8 to 16, the company will be required to comply with the following provisions:
   (i) Alter its Articles of Association as per the provisions of Section 14 of the Act by passing a special resolution, so as to increase the number of directors in the Articles from 10 to 16;
   (ii) Also take approval for increasing the maximum number of directors from 8 to 16 by means of a special resolution passed by the members at a duly convened general meeting.

2. As per their Articles of Association, the maximum number of Directors of each of the following companies is 9: (i) Goodheart Company Limited. (ii) Frontline Trading Private Limited. (iii) Hindustan Zink limited (a Government company under section 2(45) of the Companies Act, 2013). The Board of Directors of the aforesaid companies proposes to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 2013, the Board of Directors can do so?

   Answer: Under section 149(1) of the Companies Act, 2013, every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company.
   The maximum number of directors shall be 15.

The proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

In the case of the first two companies in the question above, the maximum permissible limit is 15 directors. Hence, the Board of Directors of these two companies can increase the number by simply appointing the additional 6 directors at the general meetings of the company after following the prescribed procedure and conditions.
However, if the number of directors was proposed to have been increased beyond 15 directors, such authority must be obtained from the members through a special resolution and only after that approval, new directors could be appointed.

Further, the maximum number of directors being increased to 15 will require the Articles of Association to be altered. Hence, the special resolution of members will be required to alter the Articles of Association under section 14 of the Companies Act, 2013 and comply with other provisions in the said section.

In case of a Government company, the Ministry of Corporate Affairs has clarified vide Notification G.S.R. 463(E) the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to Government company. Thus, in the case of Hindustan Zink limited (a Government company under section 2(45) of the Companies Act, 2013), the Board of Directors can increase the number the directors.

Woman Director- [2nd Proviso to Sec 149(1)]

3. Sky limited, a listed company has been incorporated under the Companies Act, 2013. An intermittent vacancy of a woman director has arisen on 15th June, 2018. Advise the company to fill the vacancy as per the provisions of the companies Act, 2013. The board meeting was held on 14th August, 2018.

Answer:
According to second proviso to section 149(1) of the Companies Act, 2013, at least one woman director shall be on the Board of such class or classes of companies as may be prescribed.
Further, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

An intermittent vacancy of a woman director has arisen in Sky Limited on 15th June, 2016. The said vacancy shall be filled up by the Board at the earliest but not later than immediate next Board meeting (14th August, 2016) or 3 months from the date of such vacancy (14th September, 2016), whichever is later. Thus, the vacancy can be filled by 14th September, 2016.

4. Sleeping ltd is a listed company incorporated on 1st January, 2018. The Board of Directors of the Company decides to appoint in its Board 'Women Director' and the 'Resident Director'.

a) State whether it is mandatory for the company to appoint such directors in its board.
b) What would be your answer in case the company is a non-listed company and the Board of Directors decided not to have the women director in the company's Board?

c) What would be your answer in case the company in question is not listed at any of the Exchanges. The Paid-up share capital of the company is Rs. 50 crore and the turnover of the company is 200 crores. Decide whether the company is mandatorily required to appoint the woman director.

Answer:
In accordance with the provisions of the Companies Act, 2013 At least one woman director shall be on the Board of such class or classes or companies as may be prescribed. [second proviso to section 149(1)].
Rule 3 of The Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following classes of companies shall appoint at least one woman director:

(i) Every listed company
(ii) Every other public company having: (a) Paid up share capital of Rs. 100 crore or more; or (b) turnover of Rs. 300 crore or more.

And Every company shall have at least one director who stays in India for a total period of not less than 182 days in the Financial Year [Section 149(3)]

Thus, according to the above provisions:

a) In the first case, since the Royal Limited company is a listed company, it is required to comply with the above provisions and should appoint the women director and the Resident Director accordingly.
b) In the second case, since, the Royal Limited Company is a non listed company, it is not mandatory to have a woman director on the Board.
c) In the third case, since, the paid-up share capital of the company is Rs. 50 crore and the turnover of the company is Rs. 200 crore and the company is non listed company, it is not mandatory to have a woman director on the Board

Appointment of Directors Sec 152

5. Maya, an existing rotational director of M Company Ltd, whose term expired on the company's AGM held on 30th September 2021, was reappointed at the same meeting. He did not file the consent with ROC accepting the position of a director. Few members of the company objected to his continuation as a Director as he has not filed the consent with ROC. Decide

i) Whether the members' contention is correct?
ii) Would your answer be different in case Maya was named as a director in the Articles as first registered?

Answer:
A person appointed as a director shall not act as a director unless he gives his consent [DIR-2] to hold the office as director and such consent [DIR-2] has been filed with the Registrar in Form DIR-12 within 30 days of his appointment.
Filing of Consent letter by Director shall not apply to a "Not for Profit" company u/s 8 and Government Companies.

Other than this, there is no other exemption. Therefore, members' contention is correct.

The answer would remain same even if Maya was named as a director in the Articles as first registered

Rotation of Directors- Sec 152(6) and 152(7)

6. ADJ Limited has 10 directors on its Board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned till the same day in the next week, at the same time and place. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.
   Referring to the provisions of the Companies Act, 2013, decide:
   (i) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?
   (ii) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?
   (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?

   Answer: In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

   Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such director was put and lost or he has given a notice in writing addressed to the company or the Board of Directors expressing his desire not to be re-elected or he is disqualified.

   Therefore, in the given circumstances answers to the asked questions shall be as under:
   (i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
   (ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.
   (iii) Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM. Accordingly, the directors will retire as soon as the AGM is held on its due date. Further, as per Section 96 (dealing with Annual General Meeting), every company other than a One Person Company is required to hold an Annual General Meeting in each year. Hence, it is necessary for the company to hold the AGM, where the directors liable to retire by rotation shall retire.In case AGM is not held till the last date on which it should have been held, the term of retiring directors ends on this last date and it can not be extended till the new date when the AGM shall be held. As the calling of the AGM is the duty and responsibility of the directors, they by

omitting to call the AGM on its due date cannot take advantage of their own fault and by that means cannot extend their own continuance in the office for any period of their choice and as long as the holding of the next AGM does not take place.

7. The promoters of Bisibele Bath Ltd., a public company, propose to have the strength of the Board of directors as eleven. They also propose to make the managing director and whole directors as directors not liable to retire by rotation. They seek your advice on the following matters:
   (i) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.
   (ii) How many of the remaining directors will have to retire by rotation every year at the annual general meeting?

   Ans. As per Section 152(6), not less than 2/3rd of total number of directors shall be the directors whose period of office is liable to determination by retirement by rotation (any fraction contained in that 2/3rd shall be rounded off as 1). Such directors are referred to as rotational directors. However, the articles of a company may provide for greater number of rotational directors.
   In other words, in no case, the number of non-rotational directors shall exceed 1/3rd of total number of directors.
   As per Section 152(6), at the first annual general meeting and every subsequent annual general meeting, 1/3rd (or nearest to1/3rd) of directors liable to retire by rotation shall retire from the office.

   In the given case,
   (i) At least 8 directors shall be rotational directors (2/3rd of 11 is 7.33; taken as 8 since not less than 2/3rd of total directors shall be rotational directors). Accordingly, only 3 directors can be appointed by Bisibele Bath Ltd. as non-rotational directors. Therefore, it is permissible to appoint managing director and whole-time director as non-rotational directors.
   (ii) In case 3 directors are appointed as non-rotational directors, 1/3rd of rotational directors shall retire at the ensuing annual general meeting, i.e. 3 directors (1/3 of 8 is 2.67; nearest to 2.67 is 3). These 3 directors shall be eligible for reappointment.

New Candidature for Directorship- Section 160

8. Mr. D, proposes his candidature as a director in X Ltd. along with the deposit of 1 lac rupees. Later Mr. D failed to be appointed but received 30% of total votes. Mr. D asked X Ltd. to refund the deposit but the company denied to pay as he failed to be elected.

Answer: Where a person who is not a retiring director serves to the company a notice of his candidature proposing himself as a director, he is required to deposit a sum of Rs. 1 lakh with the company along with such notice.
The amount deposited with the company shall be refunded, if the person proposed as a director-

i. gets elected as a director (i.e. if an ordinary resolution is passed for his appointment); or
ii. gets more than 25% of the total valid votes cast (whether on a show of hands or on poll)

In the given case, Mr. D has deposited a sum of Rs. 1 lakh with the company, but he failed to get elected as a director. However, Mr. D secured 30% of total valid votes, i.e. the condition of securing more than 25% of total valid votes cast, has been satisfied.
Therefore, Mr. D is entitled to a refund of Rs. 1 lakh deposited with the company. Accordingly, the decision of the company not to refund Rs. 1 lakh to Mr. D is not valid.

Maximum Directorships- Sec 165

9. Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.
In the light of the provisions of the Companies Act, 2013 examine and decide:
(i) The validity of holding directorship of Mr.'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.
(ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director?

Answer: According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Whereas that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.
For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

In the instant case, holding of directorship of Mr. R as on 31.05.2019 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company. So, maximum directorship he is holding in 20 companies.

Holding of directorship of Mr. R as on 30.06.2019 is not valid, as on 30.06.2019 a private company (in which Mr. R is holding directorship) has become a subsidiary of a public company. Accordingly, it means that this private company shall deemed to be included in the limit of public companies and thereby increasing the number of public companies in which he is holding directorship to 11 and making it in valid.

According to section 165(2), Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

Disqualification of Directors (Sec 164) and Vacation of Directors(Sec 167)

10. State with reference to the provisions of Companies Act, whether the following persons can be appointed as a Director of a Company.

i) Mr L, who has not paid any calls in respect of any shares of the Company held by him and 5 months have passed from the last day fixed for payment of calls.

ii) Mr. G is a Director of LDT limited, who has not filed the Company's Annual Return pertaining to the AGM held in Calendar years 2016, 2017 and 2018.

Answer:

The given problem relates to section 164 of the Companies Act, 2013. Section 164 contains various grounds of disqualification for appointment as a director.

i) As per section 164, a person shall be disqualified for appointment as a director if he has not paid any calls due on the shares held by him, and a period of 6 months have elapsed from the last day fixed for the payment of such call. In the given case, the default in the payment of calls.

In the given case, the default in the payment of calls is for a period of 5 months. Since, the period of default is less than 6 month, the disqualification specified under section 164 is not attracted to Mr. L. Accordingly, Mr. L is not not disqualified for appointment as a director.

Disqualification specified under section 164(2) applies if a company makes a default in filing financial statements or annual returns for 3 continuous financial years. Such disqualification shall remain in force for 5 years.

ii) In the present case, LDT Limited, in which Mr. G is a director, has not filed its annual returns for three continuous financial years. Since the conditions for attracting disqualification given under section 164(2) are satisfied, Mr. G is disqualified for directorship for a period of 5 years, i.e. he cannot be appointed or reappointed as a director for a period of 5 years in LDT Limited or in any other company.

As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant. Accordingly, Mr. G can continue as a director in LDT Limited, but if he is a director in any other company also, his office of director in all such other companies shall become vacant.

11. State with reference to the relevant provisions, whether the following can be appointed as directors of a Public Company:

i) Mr A, who has huge personal liabilities far in excess of his assets and properties, has applied to the court for adjudicating him as an insolvent and such application is pending.

ii) Mr B, who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks.

iii) Mr C, a former bank executive was convicted by a court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.

iv) Mr. D is a director of DLT limited, which has not filed its annual returns for 3 continuous financial years.

Answer:

i) A person is disqualified if he himself applies to the Court for adjudicating him as an insolvent [Section 164(1)(c)]. Since, Mr. A has himself applied to the court for adjudicating him as an insolvent, he is disqualified for directorship even if his application is pending.

ii) A person is disqualified only if he is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for 6 months or more [Section 164(1)(d)]. In the present case Mr. B was caught red-handed in a shop lifting case and was sentenced to imprisonment for a period of 8 weeks, i.e. less than 6 months. Since section 164(1)(d) is not attracted, Mr. B is not disqualified for directorship.

iii) A person is disqualified if he is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for 6 months or more. However, such disqualification shall remain in force for a period of S years only. In the present case Mr. C was convicted 8 years ago. Therefore, as on date, the disqualification of Mr. C has come to an end, and so, he is not disqualified for directorship.

iv) Disqualification specified under section 164(2) applies if a company makes a default in filing financial statements or annual returns for 3 continuous financial years. Such disqualification shall remain in force for 5 years. In the present case, DLT Limited, in which Mr. D is a director, has not filed its annual returns for three continuous financial years. Since the conditions for attracting disqualification given under section 164(2) are satisfied, Mr. D is disqualified for directorship for a period of 5 years, i.e. he cannot be reappointed as a director in DLT Limited or appointed as a director in any other company.

As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant. Accordingly, Mr. D can continue as a director in DLT Limited, but if he is a director in any other company also, his office of director in all such other companies shall become vacant.

12. M/S Iqbal & sons ltd issued shares of the nominal value of Rs. 10 per share, out of which Rs. 5 was payable on application and balance Rs. 5 was payable on call. The call money was invited by the Board of Directors but some shareholders including a non-executive Director failed to pay the same within the prescribed period. Explain the status of director who defaulted in paying call money.

Answer: As per section 167 read with section 164 of the Companies Act, 2013, a director shall vacate his office if he fails to pay a call on the shares of the company held by him within 6 months from the last day fixed for the payment of the call. Similarly, a person shall be disqualified from becoming a director if he fails to pay a call on the shares of the company held by him within 6 months from the last day fixed for the payment of the call (Section 164).

In the given case, a non-executive director has failed to pay a call on the shares of the company. If the call is not paid for 6 months from the last date fixed for the payment of the call, he shall vacate the office of director held by him. The vacation of office shall be automatic, i.e. the non-

executive director shall forthwith (i.e. immediately on expiry of 6 months from last date of payment of call) vacate the office of director held by him. Also, in such a case, he shall be disqualified from being appointed as a director in M/s Iqbal Sons Ltd.

13. Mr. John is a director of MNC Ltd., which had accepted deposits from public. The financial position of MNC Ltd. took a southward turn and became bad to worse and ultimately, it failed to repay the deposits which fell due for payment on 10thApril, 2018 and such repayment has not been made till 5th May, 2019. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its annual general meeting to be held on 6thMay, 2019. You are required to state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd.

    Answer: Section 164 (2) (b) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be appointed as a director of any other company for a period of five years from the date on which such company, in which he is a director, failed to repay its deposits.

    In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than one year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd.

14. Mr. Dhruv is a Director of LT Limited and XT Limited respectively. LT Limited did not file its financial statements for the year ended 31st March, 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. LT Limited also did not pay interest on loans taken from a Public Financial Institution from 1st April, 2017 and also failed to repay matured deposits taken from public on due dates from 1st April, 2017 onwards.
    Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

i) Whether Mr.Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of XT Limited scheduled to be held in September,2019?

ii) Mr.Dhruv is proposed to be appointed as an Additional Director of MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in MN Limited? Decide.

Answer: According to section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years; or has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause(b), he shall not incur the disqualification for a period of six months from the date of his appointment.
Also, according to section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

Thus, in the light of the said provisions of the Act and the facts of the question:

(i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as LT Limited did not file financial statements for a period of three years. Also, the LT Limited has defaulted in the repayment of matured deposits taken from public since 1stApril, 2017 (i.e. the default has continued for more than oneyear).
Mr. Dhruv can continue as a director in LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default. Whereas he has to vacate the office of director in XT Limited. Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in XT Limited.

(ii) Mr. Dhruv cannot be appointed as an Additional Director (in the AGM to be held in June 2019) of MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.

Appointment of Additional Directors- Sec 161(1)

15. Prince Ltd desires to appoint an additional Director on its Board of Directors. The Articles of the Company confer upon his board to exercise power to appoint such a director. As such M is appointed as an additional director. In the light of provisions of Companies Act, Examine-

a) Whether M can continue as director if the Annual General Meeting of the company is not held within the stipulated period and is adjourned to a later date.
b) Can the power of appointing additional director be exercised by the Annual General Meeting?
c) As the secretary of the company what checks would you make after M is appointed as an additional Director?

Answer:

Section 161(1) of the Companies Act, 2013 provides that the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office upto the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

(i) M cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting should have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or it could not be called within the time prescribed.

(ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be

conferred such power by the articles of the company.

(iii) As a Company Secretary, I would put the following checks in place in respect of M's appointment as an additional director:

(a) He must have got the Directors Identification Number (DIN).

(b) He must furnish the DIN and a declaration that he is not disqualified to become a director under the Companies Act, 2013.

(c) He must give his written consent in Form DIR-2 on or before his appointment as director and such consent stands filed with the Registrar within 30 days of his appointment.

(d) His appointment is made by the Board of Directors.

(e) His name is entered in the statutory records as required under the Companies Act, 2013.

16. Mr Abhi was appointed as an additional Director of Pioneer ltd on 14th March,2016. The Annual General Meeting was scheduled to be held on 29th September, 2016 but due to heavy rains and floods all records of company were destroyed. In order to rebuild the records, the company approached the Registrar of Companies for extension of time for holding the Annual General Meeting till 30th December, 2016. In the light of Companies Act, 2013, Advice Mr. Abhi who was appointed as additional Director during the year.

Answer:

According to 161(1), an additional director holds office upto the date of next annual general meeting or the last day on which the annual general meeting should have been held, whichever is earlier.

If the AGM is not held upto the last day AGM ought to have been held as per section 96, the additional director shall have to vacate his office on the last day on which the AGM ought to have been held.

The last date for holding the AGM without any extension of time is 30th September, 2016, and the last date for holding AGM including extension of time is 30th December, 2016 assuming that extension was granted by Registrar.

As per reasonable interpretation, where extension is granted by the Registrar, the additional director should have a right to continue in office upto the date of the AGM including the extension granted by the Registrar.

Mr. Abhi is entitled to continue in office as additional director upto 30th December, 2016. If for any reason AGM is not held upto 30th December, 2016, Mr. Abhi shall have to vacate his office on 30th December, 2016.

17. Mr. D who fails to get appointed as a director in the general meeting of AJD Limited was subsequently appointed as an additional director by the Board of directors of the company. Examine the validity of appointment of Mr. D., with reference to the provisions of the Companies Act, 2013.

Answer: As per Section 161(1), a person who fails to get appointed as a director in a general meeting cannot be appointed as an additional director. Since, earlier, the proposal to appoint Mr. D as a director of the company was rejected by the members at the company's Annual General Meeting. Mr. D cannot be appointed as an additional director.

Appointment of Alternate Directors- Sec 161(2)

18. Examine the Validity of the following: The Board of directors of AJD limited appointed Mr. N as an alternate Director for a period of two months against a Director who has proceeded abroad on leave for a period of six months. Articles of Association of Company are silent.

    Answer:
    As per section 161(2), the Board may appoint an alternate director for a director (termed as original director) during the absence of the original director from India for a period of 3 months or more. The Board may appoint an alternate director only if it is authorised by the articles or by an ordinary resolution passed at a general meeting. The alternate director shall vacate his office when the original director returns back to India.

    In view of the provisions of section 161(2), the appointment of Mr. N as an alternate director is not valid since the Board, in the given case, is not authorised to appoint the alternate director by the articles or by a resolution passed in general meeting. Also, the Board is not authorised to appoint an alternate director for any fixed period (2 months in the given case) since the term of office of alternate director has been fixed by the Act, viz. section 161(2), which is upto the date when the original Mr. Casual wa_ director returns back to India.

19. Examine the Validity of the following: Mr P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ ltd for an independent director as an alternate director.

    Answer: As per Section 161(2), the Board may appoint an alternate director for a director (termed as original director) during the absence of the original director from India for a period of 3 months or more. Section 161 (2) also provides that a person can be appointed as an alternate director for an independent director only if he is qualified to be appointed as an independent director as per Section 149(6).

    In the given case, the appointment of Mr. Pappu as an alternate director for an independent director is not valid, since Mr. Pappu is not qualified to be appointed as an independent director.

20. Examine the following with reference to the provisions of the Companies Act, 2013:
    Mr. Narayan, a Director of KPR Limited who is proceeding on a long foreign tour, appointed Mr. Shankar as an alternate director to act for him during his absence. The Articles of the company provide for appointment of alternate directors. Mr. Narayan claims that he has a right to appoint an alternate director.

    Answer:
    As per Section 166(6), no director shall assign his office to any other person, and if a director, in contravention of Section 166(6) assigns his office, such assignment shall be void. As per Section 161 (2), the Board is empowered to appoint an alternate director in place of a director during his absence for a period of not less than 3 months from India. The Board can appoint an alternate director only if it is authorized by the articles or by a resolution passed at a general meeting.

In the given case, the Board of directors of PQR Ltd. may appoint Mr. Y or any other person as an alternate director for Mr. Q since PQR Ltd. is authorized by the articles to appoint the alternate director, provided the duration of foreign tour of Mr. Q is not less than 3 months.

However, if the appointment of Mr. Y as an alternate director is made by Mr. Q, it would amount to assignment of office which is prohibited under Section 166(6) and therefore, the appointment of Mr. Y as an alternate director would be void. Further, an alternate director is appointed by the Board of directors and not by the director in whose place he is appointed (i.e. the original director).

Therefore, in the present case Mr. Q has no power to nominate a person to act as an alternate director in his place and the appointment of Mr. Y is not in order.

21. A, an employee of Arogyam Ltd., was appointed as an alternate director. In the meantime, the original director returned and wanted to attend the Board meeting, Advise.

Answer: An alternate director shall not hold office for a period longer than that permissible to the original director. The alternate director shall vacate his office when the original director returns back to India, irrespective of the fact as to whether the original director attends the Board meetings or not. Thus, after an original director comes back to India, only he can attend the Board meetings. The alternate director would automatically cease to be director.

In the given case, the contention of the original director is correct and he is entitled to attend the Board meeting.

22. Mr. Single, a director or XYZ Ltd. goes to Singapore for a period of 6 months. The Board appoints Mr. Replacement in his place as an alternate director. Mr. Replacement was also holding directorship in XYL Ltd. Identify the nature of appointment of Mr. Replacement in XYZ Ltd. as an alternate director.
    a) he already holds any alternate directorship for any other director in the company; or
    b) he holds any directorship in the same company.

    Answer: Section 161(2) empowers the Board of directors to appoint an alternate director for a director (i.e. original director) during the absence of the original director for a period of not less than 3 months from India, Further, as per Section 161(2), a person cannot be appointed as an alternate director, If he is holding any alternate directorship for any other director in the company or holding directorship in the same company

    In the given case, Mr. Replacement himself holds a directorship in the same company, viz. XYZ Ltd. Therefore, Mr. Replacement as an alternate director for Mr. Single is not valid.

23. You are the CFO and in-charge of legal compliances of large multi-national company in India. The Board of Directors of the Company comprises of directors who are Indian as well as Foreign Nationals. Mr. "X", who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably. Mr. X referring to the

provisions of the Companies Act, 2013.
(a) To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting.
(b) In case of private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director, provide the original director does not return to India for a longer period say 3-4 years?
(c) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

Answer:

a) According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.
According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
Hence, in the instant case, a person can be appointed as an alternate director for only one director in the same company but maximum twenty different companies.

b) An alternate director will have only one vote as he can hold alternate directorship for one director only in the same company.
According to second proviso to section 161(2), an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.
Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. Hence, in the instant case, the alternate director shall hold office till the time original director returns to India, even if the period is as long as 3-4 years.

c) As per section 161(2), the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India. From the above provision, it is clear that an alternate director can be appointed for any director. Hence, an alternate director can be appointed for Executive director/ Whole Time Directors / Managing Director however, not by them but by the Board of Directors.

Appointment of Nominee Directors- Sec 161(3)

24. The Board of directors of Sakthi Limited decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long-term financial assistance to the company. The Articles of Association of the company do not confer upon

the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.

Answer: As per Section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement. The provisions of Section 161(3) are subject to any provision contained in the articles of the company.

In the given case, no agreement has been entered into between PQR Limited and the bank providing the financial assistance with respect to appointment of nominee director. Also, no provision contained in any law for the time being in force authorizes the appointment of nominee director. Further, the articles of the company do not confer any power on the Board to appoint the nominee directors. Thus, the appointment of Mr. Peter as nominee director is not valid.

Casual Vacancy Sec 161(4)

25. The Board of Directors of XYZ ltd filled up a Casual Vacancy caused by the death of Mr. P by appointing Mr. C as a Director on 3rd April, 2014. Unfortunately, Mr. C expired on 15th May, 2014 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advice the Board in this regard.

    Answer: As per Section 161(4) of the Companies Act, 2013, the Board is authorized to fill a casual vacancy in the office of a director only if he was appointed by the company in general meeting. Further, the appointment made by the Board shall be subsequently approved by the members in the immediately next general meeting.

    In the given case, a casual vacancy has arisen as a result of death of Mr. P. Assuming that Mr. P was appointed as a director in a general meeting; such casual vacancy could be filled up by the Board under Section 161(4), and has actually been filled up by appointing Mr. C. The appointment of Mr. C also required the approval of the members in the immediately next general meeting, but before any general meeting could be held, Mr. C died. With respect to appointment of Mr. C, there is no contravention of Section 161(4).
    The death of Mr. C has also resulted in a casual vacancy. However, this casual vacancy cannot be filled up by the Board under Section 161(4) since the casual vacancy has arisen in the office of Mr. C who was not appointed in a general meeting.

    However, MCA allowed such a vacancy to be filled by the Board in the interest of smooth functioning of the company. MCA also expressed the view that if originally an appointment was made in a general meeting, the Board may fill the casual vacancy arising in such office as many times as may be necessary. Thus, the reply of the MCA implies that, the Board had the power to appoint even a new person, say C, when filling the casual vacancy created by resignation of B.

26. M/s. Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the Board of the company for a period

of three years. On 2nd October 2017 Mr. Anmol suffered a severe heart failure and expired. The Board of directors of the company on 16th October. 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the Board. Subsequently at the AGM held on 29.09.2018 Mr. Prateek's appointment was not proposed or approved as the Board was of the view that it is not required. But the CFO of the company is of the opinion that the Board of directors has contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Pratek and his office tenure. Decide.

Answer:
According to section 161(4) of the Companies Act, 2013, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years. However, the appointment of Mr. Prateek for a period of three years is in contravention of above stated provisions as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.

Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018. Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013.Therefore, the opinion of CFO is correct.

Appointment by Single Resolution (Sec 162)

27. In R Ltd, three directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2014, under the category of 'Ordinary Business'. All the three persons as proposed by the board of directors were elected as Directors of the company by passing a 'Single Resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of companies Act, 2013 and decide whether the contention of the members shall be tenable and whether both the appointment of directors and the 'single resolution' passed at the company's Annual General Meeting shall be void.

Answer: At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the

time when such resolution was passed (Section 162).

In the given case, appointment of 3 directors has been made by passing a single resolution. But before moving the resolution for appointment of 3 directors by a single resolution, no resolution was passed that the appointment of 3 directors shall be made by a single resolution. Therefore, the resolution appointing the three directors by a single resolution is void, and consequently the appointment of all the three directors is also void. It is immaterial that no member objected to such appointments. Thus, the contention of the members that the appointment of the 3 directors is void, is correct. The single resolution passed for appointments is also void.

Appointment by Proportional Representation- Sec 163

28. If a company has eight directors, of which six were appointed according to the principle of proportional representation. How many directors can be removed u/s 169?

Answer: In such a case, only two directors which were not appointed following the system of proportional representation, can only be removed by the shareholders.

Removal of Directors- Sec 169

29. Mr. SDR, a shareholder in M/S JKP Ltd holding 50,000 equity shares of Rs. 10 each fully paid up wants to give a special notice to the company for removal of Mr. EDM , a director of M/S JKP ltd without stating any reason in the notice. You are required to state whether Mr. SDR is entitled to do so.

Answer:
U/s 115, Special Notice for removal can be sent by members:
(A) holding Z 1% of total voting power, or,
(B) holding shares on which such aggregate sum 25,00,000 has been paid-up.

The Director may be removed by following procedure u/s 169 as under-

- ✓ Special notice shall be required of any resolution, to remove a director to be sent to company atleast 14 days before AGM/EGM. It is not necessary to state the reasons to support the resolution for his removal as no such requirement exists in Section 169. (2) The company shall inform the concerned Director forthwith.
- ✓ Any representation by the concerned Director to be considered. (4) Special Notice & Representation Letter be circulated to all members at least 7 days before GM
- ✓ The resulting vacancy may be filled by appointing a Director in GM provided Special Notice of the intended Appointment has been given. If the vacancy is not filled, it may be filled as a casual vacancy u/s 161(4).
- ✓ An independent director appointed for the second term by passing Special Resolution can be removed only by passing Special Resolution.
- ✓ A director appointed by the Tribunal u/s 242 and A director appointed by Proportional Representation u/s 163 can't be removed under this section.

Hence, Mr. SDR is correct and can send Notice.

Independent Directors- Sec 149

30. XYZ ltd is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2018 and a turnover of one hundred fifty crores during the year ended 31st March 2018. The total number of directors is thirteen.
    (i) State the minimum number of directors appointed as Independent Director in XYZ limited.
    (ii) What if XYZ ltd. Is a dormant Company?

    Answer:
    (i) As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class of companies shall have at least 2 directors as independent directors;
    (a) Public Companies having paid up share capital of Rs. 10 crore or more.
    (b) Public Companies having turnover of Rs. 100 crore or more.
    (c) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.
    However, the following classes of unlisted public companies shall not be required to have any independent director:

    (a) A joint venture
    (b) A wholly owned subsidiary
    (c) A dormant company as defined under section 455 of the Act.
    In the given case, the paid up capital of XYZ Limited is Rs. 20 crore, and turnover is Rs. 150 crore. XYZ Limited fulfils two criteria out of the 3 criteria given under Rule 4. Accordingly, XYZ Limited is required to appoint a minimum of 2 independent directors.

    (ii) In case of listed public companies, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 does not apply, and such companies are required to appoint the independent directors in accordance with section 149(4). As per section 149(4), in case of a listed public company, at least 1/3rd of its total number of directors shall be independent directors, and any fraction contained in that 1/3rd shall be rounded off as 1.
    In case XYZ Limited is a listed public company, it is required to appoint at least 1/3rd of its total number of directors as independent directors. Accordingly, out of 13 directors, at least 5 directors (1/3rd of 13 = 4.33; any fraction contained in such 1/3rd shall be rounded off as one) shall be independent directors.

31. Considering the regulatory provisions of the Companies Act, 2013 and the rules thereof regarding the appointment of directors on a company's Board, state whether Z ltd, a listed public company is required to appoint Independent Directors. State whether appointment of Independent Director is required in the following cases-
    a) The Public Company has paid-up share capital of 10 crores
    b) What shall be your answer in case the company's paid up share capital is only 2 crores?
    c) Whether a person who holds the position of a key managerial personnel in the same company can be appointed as an Independent Director?
    d) In relation to mandatory women directors as required under Companies Act, 2013

should such directors also be Independent Directors?

Answer:

As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class of companies shall have at least 2 directors as independent directors;
(a) Public Companies having paid up share capital of Rs. 10 crore or more.
(b) Public Companies having turnover of Rs. 100 crore or more.
(c) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.
However, the following classes of unlisted public companies shall not be required to have any independent director:

(a) A joint venture
(b) A wholly owned subsidiary
(c) A dormant company as defined under section 455 of the Act.

i) Z Limited is a listed public company. In case of listed public companies, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 does not apply, and such companies are required to appoint the independent directors in accordance with section 149(4), Thus, Z Limited is required to appoint at least 1/3rd of its total number of directors as independent directors, and any fraction contained in that 1/3rd shall be rounded off as 1.
ii) In case the paid up share capital of an unlisted public company is Rs. 2 crores, it is not required to appoint any independent director.
iii) As per section 149, an independent director means a director who, neither himself nor any of his relatives holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed. Thus, a person who is presently holding the position of a Key Managerial Personnel in the same company cannot be appointed as an independent director.
iv) Every listed Company, Every public company having paid up share capital of Rs. 100 crore or more; and Every public company having turnover of Rs. 300 crore or more must appoint atleast one Woman Director. Neither second proviso to sub-section (1) of section 149 nor Rule 3 requires that a person can be appointed as a woman director only if he is an independent director. Thus, a woman director need not be an independent

32. ABC ltd is an unlisted Public Company having a paid-up equity share capital of Rs. 20 Crores and a turnover of Rs. 150 crores as on 31st March, 2018. The total number of directors on the Board is 13. Referring to the provisions of the Companies Act, 2013 answer the following:
a) The minimum number of Independent Directors that the company should appoint.
b) How many Independent Directors are to be appointed in case ABC ltd is a listed company?

Answer:
Following
a. Public companies having paid up share capital of Rs. 10 crore or more.

b. Public companies having turnover of Rs. 100 crore or more.
c. Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.

As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class(es) of companies shall have at least 2 directors as independent directors:
If a Company ceases to fulfil the prescribed criteria above, for 3 consecutive years, it shall not be required to comply with these provisions (i.e. it shall not be required to appoint any independent director) until such time as it meets any of such conditions.
As per Rule 4, the paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.
Rule 4 also provides that the following classes of unlisted public companies shall not be required 1o have any independent director:
(a) A joint venture
(b) A wholly owned subsidiary
(c) A dormant company as defined under Section 455 of the Act.
In case of listed public companies, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 does not apply, and such companies are required to appoint the independent directors in accordance with Section 149(4).
As per Section 149(4), in case of a listed public company, at least 1/3rd of its total number of directors shall be independent directors, and any fraction contained in that 1/3rd shall be rounded off as 1.
In the given case,
(i)ABC Limited is an unlisted public company. The paid-up capital of ABC Limited is Rs. 20 crore, and turnover is Rs. 150 crore.
ABC Limited fulfils two criteria out of the 3 criteria given under Rule 4. Accordingly, ABC Limited is required to appoint a minimum of 2 independent directors.
(ii)In case ABC Limited is a listed public company, if is required to appoint at least 1/3rd of its total number of directors as independent directors.
Accordingly, out of 13 directors, at least 5 directors (1/3rd of 13 = 4.33; any fraction contained in such 1/3rd shall be rounded off as one) shall be independent directors.

33. The composition of the Board of Directors of a listed public company as on 31-03-2017 comprised of (i) Mr. A, Director (ii) Mr. B. Director, (iii) Mr. C. Director (iv) Mr. D. Director (v) Mrs. E, Independent Director (vi) Mr. F, Independent Director and (vii) Mr. G. Independent Director.
Mr. D & Mrs. E vacated their office of director on 30-04-2017.
You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the company in this regard?

Answer: As per Section 149(4), every listed public company shall have at least 1/3rd of the total number of directors as independent directors. For this purpose, any fraction contained in such 1/3rd shall be rounded off as one.
As per Section 149(1) second proviso read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every listed company shall have at least 1 woman director.

Rule 3 further provides that any vacancy in the office of a woman director shall be filled-up by the Board of the earliest but not later than-

(i) Immediately next Board meeting: or

(ii) 3 months from the date of such vacancy whichever is later.

In the given case,
Because of vacation of office of director by Mr. D and Mrs. E, -
a. total number of directors have reduced to 5;
b. number of independent directors have reduced to 2 (viz. Mr. F and Mr. G);
c. there is no woman director in the company.
Despite the vacation of office of Mr. D and Mrs. E, the requirement of independent directors being not less than 1/3rd of total number of directors is satisfied. Thus, there is no requirement to appoint any independent director. However, the company is required to appoint at least 1-woman director, such appointment shall be made by making an appointment by the Board in the next Board meeting or within 3 months of the date of vacancy, whichever is later.
After the vacancy in the office of woman director is filled,
a) total number of directors shall be 6
b) number of independent directors shall be 2 (assuming that the woman director appointed to fill the vacancy of Mrs. E is not an independent director)
c) there will be 1-woman director.

The above constitution shall be valid as per the provisions of Section 149 (4) and second proviso to Section 149(1).
To conclude, the company is required to fill the vacancy of Mrs. E by appointing a woman director, who may or may not be an independent director. Such vacancy shall be filled-up by the Board in the immediately next Board meeting or within 3 months from the date of such vacancy, whichever is later.

Small Shareholder's Directors- Sec 151

34. DD Ltd is a listed company and it has been served with notice for appointment of small shareholder's director. Referring to the provisions of Companies Act 2013, Advise on the following:

a) Define Small Shareholder and specify the number of small shareholders who may serve notice on the company for the Director representing them.
b) Is it possible to appoint a person who does not hold any share in the Company?
c) What is the tenure of small shareholders' director and whether he can be re-appointed as such after expiry of his tenure? Whether he can be appointed as an officer of Company on expiry of his tenure as SSD?

Answer: The provisions relating to appointment of directors by small shareholders are contained in Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

A Small shareholder means a shareholder holding shares of nominal value of not more than Rs. 20,000 or such other sum as may be prescribed. As on date, no other sum has been prescribed.
The notice shall be given by at least- (i) 1,000 small shareholders; or (ii) 1/10th of the total number of small shareholders, whichever is lower.

The notice shall be signed by all the small shareholders proposing the appointment of Small Shareholders' Director.

As per Rule 7, the notice given to the company by the small shareholders shall specify the details of shares held by the person proposed as a small shareholders director. However, if the person proposed as a small shareholders' director does not hold any shares in the company, such details need not be specified in the notice.
Thus, Rule 7 makes it clear that a person who does not hold any shares in the company, may also be appointed as a small Shareholders' Director.

Also, the disqualifications of a 'Small Shareholders' Director are the same as that of any other director (specified under Section 164). Since Section 164 does not disqualify for appointment a person who does not hold any shares in the company, a person not holding any shares in the company is not disqualified for appointment as a small shareholders' director. Further, there is no eligibility criterion in terms of shareholding in the company for being appointment as a small shareholders' director. Therefore, it is possible to appoint a person as a small shareholders' director even if he does not hold even a single share in the company.

(a) His tenure of office shall not exceed a period of 3 consecutive years.
(b) He shall not be liable to retire by rotation.
(c) On the expiry of the tenure, he shall not be eligible for re-appointment.

As per Rule, a small shareholders director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders director in a company, be
appointed in or be associated with such company in any other capacity, either directly or indirectly.
Thus, a person who ceases to be a small shareholders' director cannot be appointed as an officer of the company for a period of 3 years from the expiry of his tenure as small shareholders' director.

35. Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid?

Answer: The provisions relating to appointment of directors by small shareholders are contained in Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

As per Rule 7, a person shall not hold the position of Small Shareholders' Director in more than 2 companies at the same time. Further, it shall be ensured that the second company in which he is appointed as a Small Shareholders' Director shall not be in a business which is competing or is in conflict with the business of the first company.

In the given case, Mr. Intelligent is already a Small Shareholders' Director in XYZ Limited.
If Mr. Intelligent accepts the appointment as Small Shareholders' Director in A Limited as well as in B Limited, it would result in contravention of Section 151 read with Rule 7. Thus, appointment of Mr. Intelligent as a Small Shareholders' Director in A Limited and B Limited is not valid.
Mr. Intelligent can accept the appointment as a Small Shareholders' Director either in A Limited

or in B Limited. Also, Mr. Intelligent shall have to ensure that the second company (viz. A Limited or B Limited) in which he accepts the directorship as a Small Shareholders' Director shall not be in a business which is competing or is in conflict with the business of XYZ Limited.

36. The Board of directors of M/s. Diya Steels and Aluminum Limited, a listed company having a paid-up equity share capital of Rs. 15 crores and preference share capital of Rs. 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:
(i) Is it mandatory for the company to appoint a director to represent small shareholders?
(ii) If the company decides to appoint such a director, the procedure to be followed by the company for such appointment and the tenure for which such appointment can be made.
(iii) Whether such a director be considered as an independent director?
(iv) When does a person appointed as a small shareholders director vacate his office?
Advice suitably in the light of the provisions of the Companies Act, 2013 and the rules framed there under.

Answer:

i) A Listed company may have 1 director elected by SUCH small shareholders in such manner and with such terms and conditions as may be prescribed.
"small shareholders" means a shareholder holding shares of nominal than 20,000 or such other sum as may be prescribed. So, it is not mandatory for the company to appoint a director to represent small shareholders.

ii) A listed company, may upon notice of: not less than 1,000 small shareholders or (2) 1/10th of the total number of such shareholders, whichever is lower have a small shareholders' director elected by the small shareholders.
A listed company may opt to have a director representing small shareholders Suo-motu. The small shareholders intending to propose a person as a candidate for the post of small shareholder director shall leave a notice of their intention with the company at least 14 days before the meeting. The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating –
(a) his Director Identification Number:
b) that he is not disqualified to become a director under the Act, and
(c) his consent to act as a director of the company

The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-
such director shall not be liable to retire by rotation
such director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years, and
on the expiry of the tenure, such director shall not be eligible for re-appointment.

iii) Such director shall be considered as an independent director subject being eligible u/s 149(6) and his giving a declaration of independence in accordance with section 149(7) of the Act.

iv) Vacation of office by SSD: A person appointed as small shareholders' director shall vacate the office if
(a) the director incurs any of the disqualifications specified in section 164:
(b) the office of the director becomes vacant in pursuance of section 167;

(c) the director ceases to meet the criteria of independence as provided in section 149(6)

37. The Board of directors of M/s. PQR Limited, an unlisted company having a paid-up capital of Rs.6 crores consisting of equity share capital of Rs. 5 crores and preference share capital of Rs. 1 crore seeks your advice on the following: (i) Is it necessary for the company to appoint a director to represent the 'Small Shareholders'?

The provisions relating to appointment of directors by small shareholders are contained in Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014. These provisions are applicable to listed companies only. Thus, it is not necessary for PQR Limited to appoint a director to represent the small shareholders.

Self Practice Questions

1. Sheetal was occupying the office of woman director in a company but due to her sudden death on 17th March, 2019, the intermittent vacancy so occurred was required to be filled-up at the earliest because she was the only woman director on the board. The immediate Board meeting was held on 25th June, 2019. By when vacancy should be filled?

   Answer: The vacancy of the women director must be filled-up latest by 25th June, 2019 or within three months from the date of such vacancy i.e. 16th June, 2019 whichever is later i.e., by 25th June 2019.

2. ABC Company Ltd. in its first general meeting appointed six directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if ABC Company Ltd. does not carry on business for profit?

Ans. As per Section 152(6), not less than 2/3rd of total number of directors shall be the directors whose period of office is liable to determination by retirement by rotation (any fraction contained in that 2/3rd shall be rounded off as 1).
Such directors are referred to as rotational directors. However, the articles of a company may provide for greater number of rotational directors. Articles may even provide that all the directors shall be rotational directors [Section 152(6)].

As per 152(6), at the first annual general meeting and every subsequent annual general meeting, 1/3rd (or nearest to 1/3rd) of directors liable to retire by rotation shall retire from the office. The directors liable to retire by rotation shall be those who have been longest in the office. In case, two or more directors were appointed on the same day, the directors liable to retire shall be determined by an agreement between them. In the absence of any such agreement, their names shall be determined by lots.

In the given case, it is given that the first general meeting has appointed 6 directors whose

period of office is liable to be determined by rotation. It means that all the 6 directors shall be the rotational directors. Therefore, 2 directors (1/3rd of 6) shall retire at the ensuing annual general meeting. The two directors liable to retire shall be those who have been longest in office. In case, 2 or more directors were appointed on the same day, the directors liable to retire shall be determined by an agreement between them. In the absence of any such agreement, their names shall be determined by lots. These directors shall be eligible for reappointment.
A separate resolution shall be moved for reappointment of both the directors (Section 162).
Section 152(6) does not make any special provision for non-Profit Companies. Thus, the same provisions, as discussed above, shall apply even where ABC Company Ltd. does not carry on business for profit.

3. **Is it possible for a retiring director to continue in his office beyond the date of the annual general meeting which had to be adjourned due to disturbances at the meeting? Explain**

Answer: As per Sections 152(6), and 152(7) of the Companies Act, 2013
1. At every annual general meeting, $1/3^{rd}$ (or nearest to $1/3^{rd}$) of rotational directors shall retire from office [Section 152(6)].
2. If the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy, the meeting shall be adjourned automatically to the next week at the same time and place or if that day is national holiday, then to next succeeding day which is not a holiday. If at the adjourned meeting also, the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy, the retiring directors shall be deemed to be reappointed [Section 152(7)].
Where a company does not hold AGM up to the last due date, the directors liable to retire at the AGM shall have to vacate their offices on the last day AGM ought to have been held

a. If the adjourned meeting resolves to reappoint him, he shall be reappointed.
b. If the resolution for the reappointment of retiring director is lost in the adjourned annual general meeting, he shall not be reappointed.
c. If no resolution is passed at the adjourned meeting relating to his appointment and the adjourned meeting does not resolve not to fill the vacancy, he shall be automatically reappointed. However, the automatic reappointment shall not apply in the following cases:

(i) Where a resolution for his appointment was put and lost.
(ii) Where a resolution is required for his appointment.
(iii) Where he is disqualified for appointment.
(iv) Where the retiring director has, in writing, expressed his unwillingness to be reappointed.
(v) Where appointment of 2 or more directors is made by a single resolution passed in contravention of Section 162.

Therefore, the retiring director can continue in office after the date of the annual general meeting. If in the adjourned annual general meeting also, the place of retiring director is not filled up and the meeting has not resolved not to fill the vacancy, he shall be deemed to be reappointed except in five cases**. It is important to note that the original meeting and adjourned meeting should be held within the last day on which AGM ought to be held under Section 96**

4. Can Mr. K appointed as an independent director on the Board of a company, be appointed

in its subsidiary or its holding or its associate company.

Mr. K holds the office of an independent director in a company.
Section 149(6) does not restrict appointment of an independent director as an independent director or a director in the Subsidiary or holding or associate company. Also, Section 149(6) does not restrict appointment of a person as an independent director if he is already an independent director or a director in the subsidiary or holding or associate company.

Therefore, Mr. K can be appointed as an independent director or a director in the subsidiary or holding or associate company and shall not result in vacation of his office of independent director in the company.

5. **ABC Ltd., a listed company having 5,000 small shareholders, upon receiving notice from 400 of such small shareholders has refused to appoint a small shareholders' director under Section 151 of the Companies Act, 2013. Examine the validity of refusal of the company.**

The provisions relating to appointment of directors by small shareholders are contained in Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
The provisions contained in Section 151 read with Rule 7 are applicable to listed companies only.
The small shareholders are entitled to give a notice to the company requiring the company to make appointment of a small Shareholders Director. The notice shall be given by at least-
Whichever is lower.
The notice shall be signed by all the small shareholders proposing the appointment of small shareholders Director.
In the given case,
1. ABC Ltd. is a listed company. It has 5,000 small shareholders. 400 small shareholders have given a notice to the company requiring the company to appoint a Small Shareholders' Director.
2. The small shareholders eligible to give notice for appointment of Small Shareholders' Director shall be –
a) 1,000 small shareholders; or
b) $1/10^{th}$ of 5,000, i.e. 500 small shareholders,
whichever is lower.

Since lower of 1,000 and 500 is 500, the notice for appointment of Small Shareholders' Director has to be given by at least 500 small shareholders.
The notice given by 400 small shareholders does not satisfy the eligibility requirements for giving such notice since it has not been given by at least 500 small shareholders.
Therefore, since the requirements of Section 151 read with Rule 7 have not been satisfied, it is not mandatory for ABC Ltd, to appoint a Small Shareholders Director and so ABC Ltd. can validly refuse to act on such notice.

6. **Mr. Bond and Mr. James were appointed as directors of James bond Ltd. At the AGM held on 30th September, 2017 by a single resolution. State the relevant provisions of the companies Act, 2013 and identify is it possible to appoint the above directors by a single resolution?**

a. Before moving such single resolution, a resolution that the appointments of these 2 directors

shall be made by a single resolution, has been passed at the meeting; and
b. no vote has been cast against such resolution.

At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162).
In the given case, appointments of 2 directors, viz. Mr. James and Mr. Bond, have been made at the AGM by passing a single resolution.
Applying the provisions contained in Section 162, Mr. James as well as Mr. Bond can be appointed by a single resolution at the AGM, provided-
Hence, it is possible to appoint Mr. James and Mr. Bond as directors by a single resolution by complying with the above requirements.

7. **Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the annual general meeting. As a secretary of a public company, how will u deal with the above situation?**

Section 160 recognizes the right of the person, who is not a retiring director, to stand for director ship. A notice received under Section 160 shall be valid, if it complies with the following requirements:
1. The notice is given at least 14 days before the general meeting.
2. It is deposited at the registered office of the company.
3. The notice is signed by the person eligible to give notice.
4. A sum of Rs. 1 Lakh or such higher amount as may be prescribed is deposited along with the notice.
5. As per Section 101, the notice of every general meeting shall be sent by the company to the members at least 21 clear days before the meeting. However, Section 160 does not require that the notice to be given to the company under Section 160 must be received by the company before issue of notice of the general meeting by the company.

In the given case, the notice under Section 160 has been received by the company from a member after the company has issued the notice of the annual general meeting. The notice given by the member shall be in accordance with the provisions of Section160 if it is received by the company at least 14 days before the general meeting and the notice complies with other requirements of Section 160. In case the notice given by the member is in accordance with the provisions of Section 160, the company shall inform its members about the candidature of the proposed director by serving individual notices or by advertisement in accordance with the provisions of Section 160 read with Rule 13 or The Companies (Appointment and Qualification of Directors) Rules, 2014.

8. **Whether the company's annual general meeting can appoint someone qualified as the additional director when the proposal to appoint comes before the meeting for the first time?**

The power to appoint additional directors is expressly conferred on the Board of directors by Section 161(1) of the Companies Act. 2013. Accordingly, it is not possible for the members to exercise this power. Thus, additional directors cannot be appointed in the annual general meeting or any other general meeting

9. **Mr. Person together with one of his relatives holds 3% of the total voting power of XYZ Ltd. The Board of directors of the company appointed him as an independent director. Examine the validity of such appointment with reference to the provisions of the Companies Act, 2013.**

   Answer: Section 149(6) contains conditions with respect to eligibility for appointment as an independent director. If a person does not fulfil any condition with respect to eligibility criteria contained in Section 149(6), he cannot be appointed as an independent director.

   Besides other conditions, one of the conditions with respect to eligibility criteria contained in Section 149(6) is that a person cannot be an independent director in a company if he along with his relatives holds 2% or more of the total voting power of the company.
   In the given case,

a. Mr. Person, together with one of his relatives, holds 3% of the total voting power of XYZ Ltd. Mr. Person has been appointed as an independent director in XYZ Ltd.
b. Section 149(6) does not allow the appointment of a person as an independent director, if he, along with his relatives, holds 2% or more of the total voting power of the company.
c. Therefore, Mr. Person does not satisfy the eligibility criteria contained in Section 149(6), and so he cannot be appointed as an independent director in XYZ Ltd.
d. The appointment of Mr. Person as an independent director in XYZ Ltd. is not valid.

Multiple Choice Questions

1. As per Section 149(1), minimum number of Directors in case of Private Company and OPC are-

a. 2,1	b. 1,2
c. 3,1	d. 3,2

2. Atleast one Woman Director is required for-

a. Every listed Company	b. Public Company with PUC 100 crores or more; or Turnover 300 crores or more
c. Private Company with PUC 100 crores or more; or Turnover 300 crores or more	d. Both (a) and (b)

3. The definition of 'director' is contained in ----

a. Clause (10) of Sec. 2	b. Clause (34) of Sec. 2
c. Clause (33) of Sec. 2	d. Clause (32) of Sec. 2

4. Mrs Shivangi, The only Woman Director of BMV ltd resigns on 10th May, 2019. The Board meeting was held on 15th September 2019. Board wants to appoint Sudha as woman Director. The appointment should be made before

a. 10th August 2019	b. 15th September 2019
c. 31st March 2020	d. 10th November 2019

5. A person who is below the age of ----- years is disqualified to be appointed as a director.

a. 70 years	b. 25 years
c. 65 years	d. None of these

6. Mr. Hari resigns from directorship of ABC Ltd. by sending a notice of resignation on 5th December, 2019. The said notice is received by the company on 8th December, 2019. Mr Harry files Form No. DIR-11 with the Registrar on 12th December, 2019. ABC Ltd. files Form No. DIR-12 with the Registrar on 15th December, 2019. The resignation of Mr. Hari shall take effect from -----

a. 5th December, 2019	b. 8th December, 2019
c. 12th December, 2019	d. 15th December, 2019

7. Karan is appointed as an independent Director of ABC ltd. Karan is also a promoter of XYZ ltd which is an associate of ABC ltd. Appointment of Karan is -

a. Valid	b. Void
c. Voidable	d. Any one of these

8. A company may have more than 15 directors ----

a. By passing an ordinary resolution	b. By passing a special resolution
c. With the approval of the Central Government	d. With the approval of the Tribunal

9. A person who is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for --------- or more shall be disqualified for a period of ------ from the date of -------

a. 3 months; 5 years; expiry of the sentence	b. 6 months; 5 years; expiry of the sentence
c. 6 months; 7 years; expiry of the sentence	d. 6 months; 7 years; the sentence

10. The articles of ABC Ltd. contain a provision that any person who is not a Chartered Accountant shall not be eligible to be appointed as a director. Whether Mr. Z, who is not a Chartered Accountant, is disqualified for appointment as a director?

a. No	b. Yes
c. No, if a special resolution is passed in general meeting for his appointment	d. No, if an ordinary resolution is passed in general meeting for his appointment

11. A person can't be a director in 10 companies excluding-

a. Dormant companies	b. Section 8 companies
c. Both (a) and (b)	d. None of these

12. Mr. X holds shares of A ltd. He failed to pay a call on such shares. The last day for the payment of call was 3rd December 2018. Mr X shall be disqualified for appointment as a director if the default in payment of call continues till-

a. 2nd June 2019	b. 3rd June 2019
c. 3rd December 2018	d. 3rd March 2019

13. A person can be a director in 20 companies excluding-

a. Dormant companies	b. Section 8 companies
c. Both (a) and (b)	d. None of these

14. Mr. X, a director of XYZ ltd fails to disclose his interest in a contract or arrangement in which he was interested. The consequences of such default shall be-

a. His office of director in XYZ ltd shall vacant	b. His office of director in XYZ ltd shall become vacant, if so decided by the Board
c. His office of director in all the companies in which he is a director shall become vacant	d. His office of director shall not be vacated

15. In a board meeting of a company, Mr. A and Mr. B are appointed as additional directors by passing a single resolution. The appointments of Mr. A and Mr. B shall be valid if-

a. The company is a public company	b. The company is a private company
c. The company is a private company which has not made any default in filing with registrar	d. All of these

16. Mr. Singh applied for the first time for allotment of a directors Identification Number on 1st November, 2016 as he is planning to incorporate a private limited company in form no. DIN-3 under the Companies Act, 2013. The status of his DIN applications presently is showing as 'Put under Resumbission'. Within ----- days Singh needs to resubmit the application

a. 30 days	b. 15 days
c. 1 month	d. 90 days

17. The Nomination and Remuneration Committee of Hero ltd recommended to appoint Mr. Amit as an Independent director. As per section 160 Mr. Amit needs to deposit-----

a. 100000	b. No deposit required
c. 50000	d. 1000000

18. The board of directors of XYZ ltd filled up a casual vacancy caused by death of Mr. P by appointing Mr. C as a director on 3rd April 2014. Unfortunately, Mr. C expired on 15th May 2014 after working for about 40 days as a director. Further appointment of director shall be made by ------

a. Board of Directors	b. Members at General Meeting
c. None of the above	d. Any of the above

19. Where all the directors of company vacate their office under any of the disqualifications specified, the ----- shall be appointed till the required number of directors who shall hold office till the directors are appointed by the company in general meeting

a. Promoter	b. Members
c. CFO	d. Central Government

20. If a person has been convicted of any offence and sentenced for more than or equal to 7 years

a. He will be ineligible to act as director for 5 years	b. He will be ineligible to act as director for lifetime
c. He will be ineligible to act as director for 10 years	d. None of the above

21. A rotational director may be appointed -

a. In AGM	b. In EGM
c. In AGM as well as in EGM	d. In AGM or in EGM or in Board meeting

22. Every person proposed to be appointed as a director shall furnish to the company a declaration that he is not disqualified to become a director-

a. Within 15 days of his appointment as a director	b. Within 30 days of his appointment as a director
c. Within 60 days of his appointment as a director	d. Anytime before his appointment as a director

23. A person who is not a retiring director can stand for directorship-

a. By giving a special notice	b. By giving a notice atleast 14 days before general meeting
c. By giving notice at least 7 days before meeting	d. By giving a notice atleast 14 days before board meeting

24. A company which has adopted proportional representation shall appoint not less than ----- of the total number of directors by proportional representation and such appointment shall be made once in every-----

a. 1/3; 3 years	b. 2/3; 5 years
c. 2/3; 3 years	d. 1/3; 5 years

25. Every company shall have atleast 1 director who stays in India for a total period of not less than ----- days during -----

a. 180; Calendar Year	b. 180; financial Year
c. 182; Calendar Year	d. 182; Financial Year

26. Mr. X had pecuniary relationship exceeding 10% but not exceeding 20% of his total income with XYZ ltd during the financial year 2016-17. Mr. X cannot be appointed as an independent director in XYZ ltd during financial year -----

a. 2017-18 and 2018-19	b. 2016-17, 2017-18 and 2018-19
c. 2016-17, 2017-18, 2018-19 and 2019-20	d. None of these

27. Mr. X has taken loan of Rs. 25 lakh from XYZ ltd. Consider the following statements:
1) The wife of Mr. X cannot be appointed as an Independent Director in XYZ ltd
2) The father-in-law of Mr. X cannot be appointed as an independent director in XYZ ltd

a. Only statement (1) is correct	b. Only statement (2) is correct
c. Both statement are correct	d. None of these

28. An independent director shall hold office for-

a. Maximum term of 5 consecutive years	b. Maximum term of 3 consecutive years
c. 2 term of 5 years	d. None of these

29. An independent director shall be eligible for re-appointment--

a. On passing an ordinary resolution	b. On passing special resolution
c. On approval of CG	d. On approval of tribunal

30. The provisions relating to appointment of Small Shareholders Director apply to -

a. All listed companies	b. All public companies having 1000 or more small shareholders
c. All public companies having 100 crore or more PUC	d. Any of these

31. The board may appoint Additional Director if-

a. Company in General meeting has authorized board by passing resolution	b. The articles of the company has authorized board
c. Both (a) and (b)	d. Either (a) or (b)

32. Mr. D, a director died in an accident. The board can fill such vacancy if----

a. Mr. D was appointed as an additional director by the Board	b. Mr. D was appointed as a director in general meeting
c. Mr. D was appointed to fill casual vacancy in the office of Mr. C	d. None of these

33. Who can appoint an Alternate Director?

a. Original Director	b. Members of the company
c. Board of directors	d. Central Government

34. A small shareholders director may be removed-

a. By passing an ordinary resolution in a meeting of small shareholders	b. By passing a special resolution in a meeting of small shareholders
c. By passing a special resolution in a general meeting	d. By passing an ordinary resolution in a general meeting

35. Which of the following directors cannot be appointed by passing a resolution by circulation?

a. An additional Director	b. An Alternate Director
c. A director filling a casual vacancy	d. None of these

36. After allotment of DIN to Ms. Nikita some changes took place in her particulars as stated in Form No. DIR-3. Ms. Nikita shall have to intimate such changes to the Central Government in form No. ----- within ------

a. DIR 3C; 30 Days	b. DIR 6; 15 days
c. DIR 6; 30 days	d. DIR 3C; 60 days

37. A company is required to file with the Registrar a return in Form No. DIR-12 within ------ of appointment of every director and key managerial personnel and any change taking place in their particulars.

a. 7 days	b. 14 days
c. 15 days	d. 30 days

38. Mohan, a member of M ltd, requests the company to furnish to him a copy of the register of directors and KMP. M ltd shall have to provide the copy to Mr. Mohan ----- within -----

a. Free of cost: 30 days	b. Free of cost: 7 days
c. On payment of Rs. 100;30 days	d. On payment of Rs. 100; 7 days

39. If a company contravenes any of the provisions contained in section 149 to 172, for which no specific punishment is provided, the company and every officer in default shall be punishable with a fine which shall not be less than ----- but which may extend to -----

a. 25000; 5 lakh	b. 50000: 5 lakh
c. 50000: 10 lakh	d. 1 lakh: 5 lakh

40. On an application made by any person for allotment of DIN, the Central Government shall allot DIN to the applicant within 1 month of receipt of such application.

a. 7 days	b. 14 days
c. 15 days	d. 1 month

41. Mr. Swann is convicted by a Court of an offence under IPC and is sentenced to imprisonment for 2 years. However, court does not specify that the offence involves moral turpitude. What will be the consequences?

a. Disqualified for 5 years from expiry of sentence	b. Disqualified for life
c. Not disqualified	d. None of these

42. A vacancy in the office of Independent Director arises on 13th August, 2018. After 13th August 2018, the next board meeting was held on 3rd December 2018. The vacancy in the office of independent director shall have to be filled on or before-

a. 13th November, 2018	b. 13th February 2019
c. 3rd December 2018	d. 30th November, 2018

43. The Independent directors of the company shall hold atleast ----- in a financial year

a. Two meetings	b. Three meetings
c. Four meetings	d. None of these

44. An unlisted public company shall not be required to have any independent director if it is---

a. A joint venture	b. A wholly owned subsidiary

c. A dormant company	d. Any of (a) or(b) or (c)

45. In order to remove a director before the expiry of his term of office, a special notice is given to the company not earlier than ----- before the date of the meeting but at least ------ before the general meeting

a. 1 month: 14 days	b. 1 month: 30 days
c. 3 months: 14 days	d. 3 months: 30 days

46. The board is entitled to appoint an alternate director in place of a director during his absence from ----- for a period of ---- or more.

a. India; 3 months	b. India; 6 months
c. State; 3 months	d. State; 6 months

47. Resignation submitted by a director to the company shall become effective-

a. When it is accepted by the Board	b. When it is received by the Company
c. From the date specified by the director in the notice of resignation	d. Later of (b) and (c)

48. A company may have more than 15 directors without passing a special resolution if the company is ----

a. A government company	b. Section 8 company
c. Both (a) and (b)	d. A private company

49. Disqualification specified u/s 164(2) shall apply to ----

a. Directors of Government Companies	b. Nominee Directors appointed by Public Financial Institutions
c. Directors of private companies	d. Both (a) and (b)

50. S ltd is an unlisted public company having a paid up share capital of Rs. 80 Crore. The audit committee of S ltd has 7 directors. S ltd is required to appoint ------ independent directors

a. 2	b. 3
c. 4	d. 5

Answer to MCQs

1	(a)	11	(b)	21	(c)	31	(b)	41	(c)
2	(d)	12	(b)	22	(d)	32	(b)	42	(c)
3	(b)	13	(c)	23	(b)	33	(c)	43	(d)
4	(b)	14	(a)	24	(c)	34	(d)	44	(d)
5	(d)	15	(d)	25	(d)	35	(c)	45	(c)
6	(b)	16	(b)	26	(b)	36	(c)	46	(a)
7	(b)	17	(b)	27	(a)	37	(d)	47	(d)
8	(b)	18	(b)	28	(a)	38	(a)	48	(c)
9	(b)	19	(a)	29	(b)	39	(b)	49	(a)
10	(a)	20	(b)	30	(a)	40	(d)	50	(c)

Appointment and Remuneration of Managerial Personnel

Class Questions

Manager and MD Definitions

1. Sukanya Limited, a company incorporated under the Companies Act, 2013, approved the appointment of Mr. Rajaram as the managing director of the company in the company's last annual general meeting. Accordingly, Mr. Rajaram was vested with the substantial powers of managing the business of the company. After a period of 1 year from the appointment of Mr. Rajaram, the company wants to employ Mr. Rakesh, the whole time employee of the company, as the manager of the finance department of the company. Now the company is in dilemma regarding the appointment of Mr. Rakesh. Comment

Answer: In the said case, according to section 2(53) of the Companies Act, 2013, manager means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a Company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not. According to the above definition, a manager is an individual person. Such person is given the charge of whole or substantially the whole of managing the affairs of a company. Therefore, a person appointed as manager to head any department of the company cannot be said to be a 'manager' within the meaning of section 2(53). Further the provisions of section 196(1) of the Companies Act, 2013 applies to manager falling within the meaning of the definition of section 2(53) In the given example, Mr. Rakesh is not falling within the meaning of the definition of section 2(53) and accordingly section 196(1) is not applicable. Hence company can go ahead with the appointment of Mr. Rakesh as manager of the Finance Department.

2. Prince was appointed as additional director by the Board of directors of John ltd on 1st March 2015. He was simultaneously appointed as the company's managing director by majority voting at the same Board meeting. Referring to the provisions of the Companies Act, 2013, examine the validity of the appointment of prince as additional director and as the managing director at the same time. What shall be your answer in case Prince failed to get appointed at the company's annual general meeting?

Answer: Prince was appointed as the additional director and then, in the same Board meeting he was appointed as a managing director.
There is no requirement that the appointment of a person as an additional director and as a managing director has to be made in separate Board meetings. Thus, the company has not contravened any provision of the Act by appointing Prince as an additional director and also as a managing director in the same Board meeting. But provisions of Section 196(4) have to be followed.

Assuming that the articles of John Ltd. authorize the Board to appoint the additional directors, the appointments of Prince as additional director as well as managing director are valid.

lf Prince fails to get appointed as a director in the annual general meeting. he shall cease to be the additional director. Also, he shall simultaneously cease to be the managing director since a person cannot be a managing director unless he is a director.

Appointment of Managerial Personnel (Section 196 read with Schedule V)

3. There are four directors in Two squares ltd. Mr. Rao, being the director in station, has been authorized to draw and endorse cheque or other negotiable instrument on account of the company and also to direct registration of transfer of shares and signing share certificate etc. Whether as per provisions of Companies Act, 2013, he will be treated as managing director of the company?

Answer: As per Section 2(54), 'managing director' means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, Is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.
As per the Explanation to Section 2(54), the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

Mr. Rao has been authorised to do certain acts on behalf of the company, which are essentially of administrative nature. Because of the mere fact that Mr. Rao has been exercising certain administrative powers, he cannot be considered as the managing director of the company.

Procedure for appointment of managing director

- Appointment should be made as per 152(2) Ordinary resolution by following the procedure laid down under Section 160
- Before appointment, disqualification has to be checked under Section 164
- Consent of the director has to be obtained under Section 152(5)

Check whether the proposed candidate fulfills conditions given in Part I of Schedule V

- No Imprisonment /fine>1000 under 19 statutes
- No detention under specified Acts
- Age not less than 21 and not attained 70
- Resident

The terms and conditions of the appointment of a managing director and his remuneration shall be

- approved by the Board of directors at a meeting:
- approved at a general meeting held immediately after the approval by the Board; and
- approved by the Central Government, in case such appointment is at variance to the conditions specified in Part 1 of Schedule V.

If any condition not fulfilled, then CG approval shall be needed in addition otherwise no need. Application for obtaining approval of the Central Government shall be made by the company in Form No. MR.2. The application shall be made within 90 days of such appointment.

- Conduct BM and pass BR.
- Send Notice of GM with Explanatory statement containing details of Proposed candidate
- Within 60 days of appointment of the managing director, the company shall file with the Registrar a return of appointment in Form No. MR.1.

4. Mr. Smart, a technocrat aged 71 years and reputed to be a specialist in reviewing sick companies is being considered to be appointed as Managing Director of Downhill Industries limited. The company has been incurring losses for the past several years and its effective capital is Rs. 500 crores. Discuss:

a) Can Mr. Smart be appointed as Managing director of the company despite being over 70 years of age?. If so, what is the process to be followed to enable this?
b) What is effective capital as per schedule V of the Act?
c) What is the maximum permissible remuneration under Companies Act?

Answer:

a) As per Section 196(3), a person who has attained the age of 70 years may be appointed as a managing director, whole time director or manager, if-

- such appointment is made by passing a special resolution
- However, even if no such special resolution is passed, the appointment of Mr. Smart may be made, if- the votes cast in favour of the motion exceed the votes, if any, cast against the motion; and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company.

b) Section IV of Part II of Schedule V defines the term 'effective capital' as follows:
Effective capital' means the aggregate of the paid-up share capital (excluding share application money or advances against shares): amount, if any, for the time being standing to the credit of share premium account; reserves and surplus excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc.. and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

c) If Downhill Industries Limited has made adequate profits, and it has not employed any whole-time director and manager, then if can pay a maximum of 5% of net profits of that financial year as the remuneration to Mr. Smart.
However, payment of remuneration exceeding 5% of net profits may be made it-

- the approval of the company in general meeting is obtained by passing a special resolution, and
- where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be shall be obtained by the company before obtaining the approval in the general meeting by passing a special resolution.

If Downhill Industries Limited has made no profits or its profits are inadequate, it can pay to Mr. Smart a maximum of Rs. 120 Iakhs plus 0.01% of the effective capital in excess of Rs.

250 crores.
Thus, the maximum remuneration payable to Mr. Smart can be –
Rs. 120 lakhs; and 0.01% of Rs. 250 crores, i.e. Rs. 2.5 lakh. Total: Rs. 122.5 lakh.
However, the remuneration in excess of Rs. 122.5 Iakh may be paid if the resolution passed by the shareholders approving the remuneration of Mr. Smart, is a special resolution.

Sec 197 read with Schedule V: Managerial Remuneration

5. Advise M/S Super specialities ltd in respect of
(i) Payment of commission of 4% of the net profits per annum to the directors of the company.
(ii) payment of remuneration of Rs. 40,000 p.m. to the whole time director of the company running in loss and having an effective capital of Rs. 95 lakhs.

Answer:

(i) Under section 197 (1) the limit of total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198. Further, the third proviso to section 197 (1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed one per cent. of the net profits of the company, if there is a managing or whole-time director or manager. Whereas in any other case, the remuneration payable to directors shall not exceed three per cent of the net profits.
Therefore, in the given case, the commission of 4% is beyond the limit specified, and the same should be approved by the members by passing a special resolution.

(ii) As per section 197(3) of the Companies Act, 2013, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager or any other non-executive director, including an independent director, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of Part II of Schedule V provides that where in any financial year during the currency of tenure of a managerial person 34or other director, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding 60 lakhs for the year if the effective capital of the company is negative or upto 5 crore. In the given situation, the proposed remuneration of 40,000 rupees per month (i.e. 4,80,000 rupees per annum) can be paid to the whole-time director of the company which is running in loss because the remuneration is within the permissible limit of 60 lakhs.

6. M/S Star health specialities limited owns a multi speciality hospital in Chennai. Dr. Hamilton, a practicing Heart surgeon has been appointed by the company as its non-executive ordinary director and it wants to pay him fee, on case to case basis for surgery performed on the patients at the hospital. A question has arisen whether payment of such fee to him would amount to payment of managerial remuneration to a director subject to

any restriction under companies Act. Advise the company, which seeks to ensure that the same does not contravene an provisions of companies Act, 2013

Answer: As per Section 197(4), the remuneration paid to a director for rendering services in any other capacity shall also be covered in 'remuneration payable to the directors' under the provisions of Section 197(1).
However, remuneration paid to a director for rendering services in any other capacity shall not be so included, if –

(i) the services rendered are of a professional nature; and
(ii) in the opinion of the Nomination and Remuneration Committee if the company is required to constitute Nomination and Remuneration Committee under Section 178) or the Board of directors (in any other case), the director concerned possesses requisite professional qualifications.

In the given case, M/s Star Health Specialties Limited intends to pay fees for surgery performed by Dr. Hamilton, its non- executive director, on case to case basis. It means that the services rendered by Dr. Hamilton are of a professional nature. Such payment of fees shall not be included in the limits of managerial remuneration specified under Section 197(1), if the Nomination and Remuneration Committee (or in its absence, the Board of directors) passes a resolution to the effect that Dr. Hamilton possesses requisite professional qualifications.

7. Venus ltd is a widely held, listed company having two executive directors who are technocrats. The company has suffered losses in the last four years. The company wants to enhance the remuneration of the executive directors to 6,00,000 per month from existing remuneration of Rs. 4,00,000. The audited balance sheet as on 31st March 2016 reveals that the paid up capital of the company is Rs. 15 crores, accumulated losses 11 crores and secured long term borrowings Rs. 5 crores. Besides the company has long term investments of 11 crores. The company's remuneration committee has recommended the proposal and the company is regular in repayment of its debts. Analyse the proposition with reference to the provisions of Companies Act, 2013.

Answer: As per Section 197, where the proposed increase in remuneration is within the limits laid down in item (A) of Section ll of Part ll of Schedule V (based upon the effective capital of the company), the company is Competent to increase the remuneration of the managerial person. For the purpose of Section lI of Part ll of Schedule V, the 'effective capital' shall be computed as follows:
Following should be added
a) Paid-up share capital (excluding share application money or advances against shares)
b) Securities premium account
c) Reserves and surplus (excluding revaluation reserve)
d) Long-term loans
e) Deposits repayable after 1 year (excluding working capital loans, overdrafts, interest due on loans Unless funded, bank guarantee, etc., and other short-term arrangements)

Following should be deducted
a) Investments (except in the case of an investment company
b) Accumulated losses
c) Preliminary expenses not written off.
d) The effective capital shall be calculated as on the last day of the financial year preceding the

financial year in which the appointment of the managerial person is made.

The effective capital of Venus Limited shall be calculated as on 31.03.2016. Accordingly. the effective capital of Venus Limited is Rs. 15 crore +Rs. 5 crore - Rs. 11 crore - Rs. 11 crore Rs. 2 crore (negative).

As per Item (A) of Section Il of Part ll of Schedule V, in the absence of inadequacy of profits, a company having negative effective capital or effective capital of less than Rs. 5 crore may pay a maximum of Rs. 60 Iakh per financial year as the managerial remuneration to each managerial person. Thus, based upon the effective capital (viz. negative effective capital of Rs. 2 crore). Venus Limited can pay a maximum of Rs. 60 Iakh to each of the two executive directors.

However, the remuneration in excess of Rs. 60 Iakh may be paid, if the resolution passed by the shareholders is a special resolution. Thus, Venus Limited shall be entitled to pay Rs. 72 Iakh each to the two executive directors, if it is so authorised by the shareholders by passing a special resolution.

Conditions to be satisfied for payment of remuneration as per Sec Il of Part lI of Schedule V
The payment of remuneration of Rs. 72 Iakh each to the two executive directors is possible only if the following conditions are satisfied:
(a) The payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of Section 178 also by the Nomination and Remuneration Committee.
This condition has been satisfied as the given problem states that company's remuneration committee has recommended the proposal to increase the remuneration.
(b) The payment of remuneration as per Section lI of Part Il of Schedule V is possible if the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor. However, in case the company has made such a default, this condition shall be deemed to be complied with if the company obtains the prior approval of the bank or public financial institution concerned or the non-Convertible debenture holders or other secured creditor, as the case may be, before obtaining the approval in the general meeting. This condition has been satisfied as the given problem states that the company is regular in repayment of its debts.
(c)A special resolution has been passed at the general meeting of the company authorising the payment of remuneration.
(d) A statement shall be given to the shareholders along with the notice calling the general meeting. The statement shall contain the following information:
(i) General Information
(ii) Information about the appointee
(iii) Other information
(iv) Disclosures.

8. Mr. Weldon was appointed as a director of Esquire Engineering ltd with effect from 1st April, 2017. Since the company namely, Esquire Engineering ltd wanted to take full advantage of the wisdom and expertise of Mr. Weldon, it offered him remuneration payable on monthly basis. Esquire Engineering ltd started paying such remuneration from the date of appointment continued to do so till 31st March 2018. On scrutiny of the accounts, it was established that the company, till 31st March, 2018 has paid to Mr. Weldon a total sum of 1.20 lakhs in excess of remuneration permissible u/s 197. You are required to state with reference to the provisions of Companies Act, 2013 in respect of recovery and waiver of

recovery of the excess remuneration so paid, whether Mr. Weldon can keep excess remuneration received and under what conditions.

Answer: As per Section 197(9), if any director draws or receives, directly or indirectly, by way of remuneration any sum in excess of the limit prescribed under Section 197 or without the approval required under Section 197, he shall refund the excess remuneration drawn by him to the company, within 2 years or such lesser period as may be allowed by the company. Until such sum is refunded, he shall hold the excess remuneration in trust for the company.

As per Section 197(10), the company shall not waive the recovery of any excess remuneration drawn or received by a director, unless approved by the company by passing a special resolution within 2 years from the date the sum becomes refundable.
But, if the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver by passing a special resolution.

Rs. 1.20 lakh is the amount of excess remuneration paid to Mr. Weldon by Esquire Engineering Ltd. for the financial year 2018-2019. Mr. Weldon is required to refund to the company this amount of Rs. 1.20 lakh within 2 years or such lesser period as may be allowed by the company. Until such sum is refunded, he shall hold it in trust for the company.

Esquire Engineering Ltd. cannot waive the recovery of such excess remuneration unless such waiver is approved by passing a special resolution within 2 years from the date the sum becomes refundable.
But, if Esquire Engineering Ltd has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by if before obtaining approval of such waiver by passing a special resolution.

9. Examine whether the payment of following remuneration to non-executive directors (directors who are neither in whole time employment nor managing director) is in accordance with the provisions of the Companies Act, 2013:
   Sitting fee payable to directors is increased from 30,000 to 60,000 per meeting.

   Answer: As per first proviso to Section 197(5) sitting fees payable to a director shall not exceed such sum as may be prescribed. As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the sum prescribed is Rs. 1 lakh for every meeting of the Board or any committee of the Board. The said Rule 4 further states that the amount of sitting fees shall be such as may be decided by the Board of directors of the company.
   In the present case it is proposed to increase the sitting fees payable to directors from Rs. 30,000 to Rs. 60,000 per meeting. Since, the amount proposed is within the ceiling limits prescribed, the increase in sitting fees from Rs. 30,000 to Rs. 60.000 per meeting is valid. Such increase in sitting fees shall require a resolution of the Board.

10. You are provided with the relevant extract of the financials of Tribhuke Limited for the financial year ended as on 31st March 2020 as below:

Authorised Share Capital	10,00,00,00,000
Issued and Paid up Share Capital	5,00,00,000
Share Premium Account	25,00,000
Reserves and Surplus (Amount of Rs. 25,00,000 is included as Revaluation Reserve)	35,00,000
Term loan repayable after 1 year	12,00,000
Current Borrowings (Cash Credit Loan from Banks)	20,00,000
Non-Current Investments	10,00,000
Accumulated Losses	5,00,000
Preliminary expenses not written off	3,00,000

The company has three managerial persons in its Board of Directors – Mr. A – Managing Director, Mr. B – Whole Time Director and Mr. C – Director-. According to their terms of appointment, in case the company has no or inadequate profits, the managerial remuneration payable to them shall be in accordance with Schedule V. You are required to compute the total managerial remuneration payable considering the provisions of Schedule V.

Answer:
Section II of Part II of Schedule V states the provisions applicable for the payment of managerial remuneration in case where the company has no profits or its profits are inadequate. In such a case, managerial remuneration is payable on the basis of the effective capital as on the last date of the financial year for which the remuneration is payable. Accordingly, to compute the total managerial remuneration payable, effective capital is calculated as:

Issued and Paid up Capital	5,00,00,000
Add: Share Premium Account	25,00,000
Add: Reserves and surplus excluding revaluation reserve	10,00,000
Add: Term Loan repayable after 1 year (excluding working capital loans)	12,00,000
Less: Non-Current Investments	10,00,000
Less: Accumulated Losses	5,00,000
Less: Preliminary Expenses	3,00,000
Effective Capital	5,29,00,000

Explanation 1 to Section II of Part II of Schedule V states effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Section II of Part II of Schedule V states that where the effective capital is 5 crores and above but less than 100 crores, the remuneration payable shall not exceed Rs. 84 lakhs. Accordingly, the total

managerial remuneration payable by the Companies to three managerial personnel for the year ended 31st March, 2020 shall not exceed Rs. 252 lakhs (Rs. 84 lakhs x 3 managerial personnel).
Note: As nothing is specified about Mr. C, whether he is part-time or non-executive or Independent director, he may be considered as director in whole time employment.

11. Rainbow Industries Ltd. is a listed entity. It has one Managing Director (MD) and one Whole Time Director (WTD) in the Board. There are 15 directors in the Board including the MD and WTD.

(in crores)

Particulars	31.3.2020	31.3.2021
Net Profit	50	10
Share capital	75	75

The remuneration of the directors from the respective financial year, has not been deducted from the gross profits.
The Company wants to give maximum remuneration to the MD, WTD and other directors as prescribed under the Companies, Act, 2013.
Based on the above facts:
(i) Determine the remuneration payable to MD for the financial year ended on 31.03.2020 and 31.03.2021.
(ii) Is it permissible if the company wants to pay remuneration over and above the maximum ceiling prescribed under the Company Act, 2013?

Section 197(1) provides that the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:
Provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting, by a special resolution,—
(a) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
(b) the remuneration payable to directors shall not exceed,—
(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; (B) three per cent. of the net profits in any other case.

For the FY ended on 31.03.2020	
Remuneration to all the directors in terms of section 197(1): 11% of the Net Profit of Rs. 50 cores	5.50
Remuneration to MD in terms of second proviso i.e. 5% of Rs. 50 Crores	2.5
Remuneration to WTD in terms of second proviso i.e. 5% of Rs. 50 Crores	2.50
Remuneration to other directors in terms of second proviso i.e. 1% of Rs 50 crores	0.50

The first proviso to section 197(1) provides that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.

12. Mr. X, a director of sunrise ltd, was appointed on 1st April, 2014. One of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with schedule V. The company suffered heavy losses during the financial year ended 31st March 2018. The company was not in a position to pay any remuneration but he was paid Rs. 50 lakhs for the year as paid to other directors. The effective capital of the company is Rs. 150 crores. Referring to provisions of Companies Act, 2013 as contained in schedule V, Examine the validity of above payment of remuneration to Mr. X.

Answer: Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to managerial personnel or directors is linked to the effective capital of the company in case of inadequacy or loss of profits.

Schedule V states that where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding 120 Lakhs in the year in case the effective capital of the company is between 100 crores and 250 crores.
However, the remuneration in excess of 120 Lakh may be paid if the resolution passed by the shareholders is a special resolution.

From the foregoing provisions as contained in Schedule V, the payment of 50 lakh in the year of loss as remuneration to Mr. X is less than 120 lakhs which is otherwise permissible when the effective capital of the company is between 100 crores and 250 crores. Thus, payment of 50 lakhs being made to Mr. X is within the prescribed limit and can be validly made to him.

Calculation of Net Profits (SECTION 198)

13. The following particulars are extracted from the statement of profit and loss of Surya Cement Limited for the year ended 31st March 2020:

Gross Profit	60,00,000
Profit on sale of building (Cost Rs. 10,00,000 and written down value Rs. 6,00,000)	5,00,000
Salaries & wages	2,50,000
Sundry Repairs to Fixed Assets	1,00,000
Subsidy from the government	3,00,000
Compensation for breach of contract	1,00,000
Depreciation	1,40,000
Loss on sale of investments	2,00,000
Interest on unsecured loans	50,000
Interest on debentures issued by the company	1,00,000
Repair Expenses to fixed assets (Capital in nature)	2,00,000
Net Profit	13,00,000

You are required to calculate the overall managerial remuneration payable under section 197 of the Companies Act, 2013 subject to the provisions under Schedule V.

Answer: The managerial remuneration shall be computed in accordance with the provisions laid down in section 198 of the Companies Act 2013:

Net profit	13,00,000
Less: Capital profits on sale of building	1,00,000
Add: Repair expenses to fixed assets (Capital in Nature)	2,00,000
Net profits as per section 198	14,00,000

Therefore, the overall maximum managerial remuneration shall be 11% of the Net profits computed in accordance with section 198 i.e. 11% x 14,00,000 = Rs. 1,54,000.
It is assumed that the net profit given in the question is arrived after giving effect to all the line items given therein.

Notes:
As per section 198(3), credit shall not be given for profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets; provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written- down value.
Accordingly, the calculation of capital profit is computed as under:
Profit = Selling Price – Written down value
5,00,000 = Selling Price – 6,00,000. Therefore, Selling Price = 11,00,000. Capital profit = 11,00,000 – 10,00,000 (original cost) = 1,00,000

According to section 198 (4), the following sums shall be deducted:
a) All the usual working charges – salaries and wages are considered as usual working charges
b) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature
c) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract
d) interest on debentures issued by the company
e) interest on unsecured loans and advances
f) depreciation to the extent specified in section 123
Since all of the above charges are already deducted while arriving at net profit, no effect will be given.

According to section 198 (2), credit shall be given for bounties and subsidies received from any government, or any public authority constituted or authorised in this behalf, by any government, unless and except in so far as the Central Government otherwise directs.

According to section 198(5), Loss of a capital nature including loss on sale of the undertaking or any

of the undertakings of the company or any part thereof shall not be deducted. In the given question, in the absence of the specific information about the nature of investments, the said investments are considered as current investments and revenue in nature and accordingly no effect is given as it is already deducted while arriving at net profit.

According to section 198(4), expenses on repairs, whether to immovable or to movable property is deducted only for repairs which are not capital in nature. Accordingly, we have added back to the net profit.

Appointment of KMP (SECTION 203)

14. ABC limited, an unlisted company having a paid up share capital of 10 crores during the preceding financial year has appointed Shri X, a fellow member of the Institute of Chartered Accountants of India as Chief financial officer of the company who is appointed as Key Managerial Personnel u/s 203 of Companies Act, 2013. Shri X is also a fellow member of the Institute of Company Secretaries of India. The Company secretary post has become vacant. In order to reduce the administrative expenses, the company proposes to appoint Shri X as Company secretary in addition to Chief financial Officer post. Whether the proposal is legally valid?

Answer: The paid-up share capital of ABC Limited is Rs. 10 crore , it is required to appoint the following whole-time key managerial personnel:

i. Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director:
ii. Company Secretary; and
iii. Chief Financial Officer.

Shri X, who is a fellow member of the Institute of Chartered Accountants of India has been appointed as the Chief Financial Officer of ABC Limited. Shri X is also a fellow member of the Institute of Company Secretaries of India.

If Shri X is also appointed as the Company Secretary, Shri X would simultaneously hold the position of Chief Financial Officer as well as the position of Company Secretary of ABC Limited.

Applying reasonable interpretation, the words 'whole-time' as well as 'and' used in Section 203 read with Rule 8 imply that the Company is required to appoint one person as Managing director, or Chief Executive Officer or manager or whole-time director, appoint another person as Company Secretary and appoint some other person as the Chief Financial Officer. In simple words, for the three positions specified in Rule 8, there has to be three different individuals. It would not be reasonable / logical to draw an interpretation that one person can be appointed at all the three positions since in such a case he would not be able to fulfil the responsibilities and duties attached with these three positions. Thus, if a person who already holds the position of Chief Financial Officer of the company is also appointed as the Company Secretary of the company, it does not amount to compliance of Section 203 read with Rule 8.

The proposal of ABC Limited to appoint Shri X as the Company Secretary, when he is already holding the office of Chief Financial Officer, is not valid since it would result in non-compliance of the provisions of Section 203 read with Rule 8.

15. Mr. Amit is the managing director of ANJ ltd which is a non-government public company. The directors of CHH ltd decided to appoint Mr. Amit as the managing director of the company, even though Mr. Amit decided not to vacate his place of office of managing director of ANJ ltd. A notice for a board meeting specifying a resolution containing the proposal of appointment of Mr. Amit was served to all the eligible directors of CHH ltd. Out of 8 directors of the company, 6 directors attended the meeting and out of them 4 directors gave consent to the resolution, one director voted against the said appointment and another director abstained from voting. The Board of directors seek your opinion whether Mr. Amit can be appointed as the managing director of the company in this situation. Advise them.

Answer: As per Section 203, a company may appoint or employ a person as its managing director it such person is already the managing director or manager in any other company, subject to the fulfilment of the following conditions:
(a) Such person is the managing director or manager of one, and of not more than one, other company:
(b) The appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting: and
(c) Specific notice of such meeting, and of the resolution to be moved thereat, has been given to all the directors then in India.

The Board of directors of CHH Limited intends to appoint Mr. Amit as the managing director of the company. Mr. Amit is already the managing director of ANJ Limited. Since, Mr. Amit is the managing director of only one other company, the requirement of Section 203, that the person should not be managing director of more than one other company, has been fulfilled.

The requirement of Section 203, that specific notice of the Board meeting and of the resolution to be moved thereat, has been fulfilled. In such Board meeting, 6 out of total 8 directors were present. The quorum, as required by Section 1/4 (1.e. 3 directors, in this case), was present. The proposal for appointment of Mr. Amit as managing director was supported by 4 directors, and 1 director voted against the resolution, and 1 director abstained from voting.

As per Section 203, appointment of Mr. Amit as the managing director requires voting in favour by all the 6 directors present in the Board meeting. However, all the 6 directors have not voted in favour of his appointment. Therefore, the requirement of Section 203 has not been fulfilled

Since the appointment of Mr. Amit as the managing director has not been approved in accordance with the requirements of Section 203 (viz. approval by all the 6 directors present in the Board meeting), the proposal for his appointment has failed. Accordingly, Mr. Amit cannot be appointed as the managing director of CHH Limited.

16. Primus group of companies has three companies, viz., Primus Rolling Mills Ltd., Primus Steel Pipe Manufacturers Ltd. and Primus Marketing Company Ltd. All the three companies want to appoint Mr. Prem as their managing director. You are required to state with reference to the provisions of the Companies Act, 2013 whether such appointments are permissible.

Answer: As per Section 203, a company may appoint or employ a person as its managing director if such person is already the managing director or manager in any other company, subject to the following conditions:
(a) Such person is the managing director or manager of one, and of not more than one, other company;
(b) Such appointment or employment is approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting; and
(c) Specific notice of such meeting, and of the resolution to be moved thereat, has been given to all the directors then in India.

In the given situation, It is proposed to appoint Mr. Prem as the managing director of 3 companies. Section 203 permits a person to be a managing director of maximum 2 companies, subject to the fulfilment of certain Conditions as above
However, in no case, it is permissible for any person to be a managing director of more than 2 companies.

It is not permissible for the three companies to appoint Mr. Prem as their managing director. He can be appointed as a managing director in maximum 2 companies.

Compensation for Loss of Office (Sec 202)

17. Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.2016 on a salary of 12 lakhs per annum with other perquisites. The Board of Directors of the company came to know about certain questionable transactions entered into by Mr. Doubtful and therefore, terminated his services as Managing Director from 1.3.2019. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of Rs. 5 lakhs on adhoc basis to Mr. Doubtful pending settlement of his dues. Discuss whether:
    (i) The company is bound to pay compensation to Mr. Doubtful and, if so, how much.
    (ii) The company can recover the amount of 5 lakhs paid on the ground that Mr. Doubtful is not entitled to any compensation, because he is guided by corrupt practices.

    Answer: According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing Director, Whole-time Director or Manager. The amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

    In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be 25 Lakhs calculated at the rate of 12 Lakhs per annum for unexpired term of 25 months.

    It will not be possible for the company to recover the amount from Mr. Doubtful in view of the decision in case of Bell vs. Lever Bros. (1932) AC 161 where it was observed that a director was not legally bound to disclose any breach of his fiduciary obligations so as to

give the company an opportunity to dismiss him. In that case the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation.

SELF PRACTICE QUESTIONS

1. Virasat Limited, a company incorporated under the Companies Act, 2013, has a board of directors consisting of 10 directors, wants to appoint Mr. Vakharia as its Managing Director (MD) in the upcoming Annual General Meeting (AGM). Mr. Vakharia is already serving as the MD of other public company. Accordingly, for the appointment of Mr. Vakharia specific notice for the board meeting and the resolution to be moved thereat has been given to all the directors. The resolution for the appointment of Mr. Vakharia has been passed at the board meeting Out of 8 directors present, 6 directors voted in favour of the resolution and the remaining 2 directors refrained from voting. Thereafter, the company approved the appointment of Mr. Vakharia in the AGM. Is the appointment valid?

Answer: Here in the given instance, appointment of Mr. Vakharia is not valid in law as the resolution is not passed by all the directors present in the board meeting.

2. International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:
   (i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.
   (ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.
   (iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

   You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

   Answer: International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

   (i) Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.
   In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general

meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company: Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by passing a special resolution.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services to be rendered by him as software engineer, whenever such services are utilized by the company

According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting, and

the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

Any remuneration for services rendered by any such director in other capacity shall not be so included if—

- ✓ the services rendered are of a professional nature; and
- ✓ in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration payable to Mr. Bhatt, a director, for professional services rendered by him as software engineer will not be included in the maximum managerial remuneration. Accordingly, such additional remuneration shall be allowed but opinion of Nomination and Remuneration Committee needs to be obtained.

3. Aster limited (a listed company) deals in business of trading of raw materials to the manufacturer of the garments. The company was running in losses for past two years. The Board of the company appointed Mr. C with good experience in cost management to overcome the said situation, as whole time director. He was of 70 years on the date of his appointment i.e. 18.12.2019.

Following were the relevant extracts from latest audited financial statements (as on 31st March, 2019)

(a) Authorised Share capital is Rs. 390 crore, out of which paid up share capital was Rs. 215

crore; company was in process of FPO, hence had balance of Rs. 15 crore in share application money account.
(b) Balance of reserve and surplus was Rs. 170 crore, out of which Rs. 150 crore was general reserve and Rs. 20 crore was on accounts of revaluation reserve.
(c) Outstanding amount for long term loans was Rs. 200 crore
(d) Company had investment of Rs. 40 crore at book value; due to economic slowdown same is not liquid investment
(e) Accumulated losses were of Rs. 10 crore.
In the light of the given facts and figures, evaluate the given situations in terms of the relevant provisions of the Companies Act, 2013-

(i) Validity of appointment of Mr. C, as managerial person in office of whole time director in Aster Limited.
(ii) Compute the Effective Capital of Aster Limited for payment of Managerial Remuneration.
(iii) Since Aster Ltd. was running in losses, state the maximum amount of remuneration to be paid on yearly basis to each Managerial Person.

Answer:

(i) As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution with explanatory statement annexed to the notice for such an appointment of person.
Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.
Therefore, appointment of Mr. C as whole time director in the Aster Ltd. being of 70 years, is valid in compliance to above legal provisions.

(ii) As per section II of Part II of Schedule V to the Companies Act 2013, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off. According to the particulars given:

Particulars	Amount(In crores)
Paid up share capital (Excluding share application money) (215-15)	Rs. 200
General Reserve (Excluding Revaluation Reserve) (170-20)	150
Long term loans	200
Less; Investments (40) and Accumulated losses	50

(10)	
Effective Capital	500

(iii) As per Section II of Part II of Schedule V to the Companies Act 2013,in case of no or inadequate profits, if effective capital of company is Rs. 250 crore or more then, yearly remuneration per person payable shall not exceed by Rs. 120 lakh plus 0.01% of the effective capital in excess of Rs. 250 crore.

The maximum remuneration that may be paid to each managerial person will be [120 lakh+ (0.01% x 250 cr)] = 122.5 lakh.

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

4. The articles of association of a listed company provides for fixed payment of sitting fee for each meeting of directors subject to maximum of Rs. 30,000. In view of the increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to Rs.45.000 per meeting. Advise the company about the requirement under the companies Act, 2013 to give effect to the Proposal.

Answer: As per first proviso to Section 197(5) sitting fees payable to a director shall not exceed such sum as may be prescribed. As per Rule 4 of the companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the sum prescribed is Rs. 1 Iakh for every meeting of the Board or any committee of the Board. The said Rule 4 further states that the amount of sitting fees shall be such as may be decided by the Board of directors of the company.

In the present case, IT Is proposed to increase the sitting fees payable to directors from Rs. 30,000 to Rs. 45,000 per meeting. Since, the amount proposed (i.e. Rs. 45,000 per meeting) is within the ceiling limit prescribed by the Central Government (i.e. Rs. 1 lakh per meeting), such increase is permitted. Such increase in sitting fees shall require-

(a) a resolution of the Board; and

(b) amendment of articles (to provide that sitting fees upto Rs. 45,000 can be paid by the company) by passing d special resolution.

5. Mr. X is a Whole Time Director (WTD) in a Super Ltd. He is also Whole Time Director (WTD) in its subsidiary company. Discuss the validity of Mr. X as WTD in its subsidiary company.

Answer: As per Section 203, a whole-time key managerial personnel shall not hold office in more than one company except in its Subsidiary company at the same time. For example, a person can be the manager in a company as well as the manager in its Subsidiary Company, or a person can be a managing director in a company and the manager in its subsidiary company.

As per Section 2(94), 'whole-time director' includes a director in the whole-time employment of the company.

Though Section 203 permits a whole-time key managerial personnel to become a whole-time key managerial personnel in its subsidiary company at the same time, yet it is not possible for a person to become a whole time director in a company as well as in its subsidiary company. This is so because the definition of whole-time director clearly implies that a whole-time director is a whole-time employee, and a person cannot become a whole-time employee in more than once

company at the same time.
Thus, Mr. X Cannot validly hold the position of whole-time director in Super Ltd. as well as in its Subsidiary, at the same time.

6. Explaining the provisions of the Companies Act, 2013, examine whether the following companies are required to get the Secretarial Audit conducted:
   (i) ABC Company Limited is a company listed at Bombay Stock Exchange and has a paid-up share capital of Rs. 40 crore.
   (ii) DEF Company Limited is a company which has a paid-up equity share capital of Rs. 100 crore but has a turnover of Rs. 100 crore during the financial year 2014-15. The company is not listed on any of the Stock Exchanges.

Answer: Secretarial audit is mandatory if a company satisfies any of the following 3 conditions:
(a) It is a listed company. or
(b) It is a public company having a paid-up share capital of Rs. 50 crore or more.
(c) It is a public company having a turnover of Rs. 250 crore or more.

(i) ABC Company Ltd. is a listed company. Since secretarial audit is mandatory for every listed company irrespective of its paid-up share capital, ABC Company Ltd. is required to get the secretarial audit conducted.
(ii) DEF Company Ltd. is not a listed company. Also, its turnover is less than Rs. 250 crore. However, it satisfies the condition "It is a public company having a paid-up share capital of Rs. 50 crore or more". Therefore, DEF Company Ltd. is required to get the secretarial audit conducted.

Multiple Choice Questions

1. A company cannot appoint or re-appoint any MD, WTD or manager for a term exceeding-

a. 4 years	b. 5 years
c. 1 year	d. 6 months

2. Whole time director includes a director who is---

a. In whole time employment of the Company	b. In part time employment of the company
c. Either (a) or (b)	d. None of these

3. Mr. X was appointed as a Managing director for life by AOA of a private company incorporated on 1st feb 2019. Can he be appointed in such manner?

a. Mr. X can be appointed as managing director for life in a private company	b. No, Mr. X can be appointed as Managing director for life in public company but not in private company company
c. No, Mr. X can't be appointed as MD for life since maximum term cannot exceed 5 years at a time	d. None of these

4. Resident in India according to Schedule V includes a person who has been staying in India for ----- immediately preceding date of his appointment as a managerial personnel.

a. More than 182 days	b. 182 days or more

c. Continuous period of not less than 12 months	d. Continuous period of not less than 6 months

5. Key managerial Personnel in relation to a company means-

a. Managing director	b. Chief Executive Officer
c. Both (a) and(b)	d. None of the above

6. No company shall appoint or continue the employment of any person as managing director, whole time director or manager who has attained age of----

a. 65 years	b. 55 years
c. 70 years	d. 60 years

7. Mr. X was appointed as a Manager of XYZ ltd for the period of 5 years in July 2018, considering his performance, management decided to re-appoint him before completion of his tenure as a manager. when can he be re-appointed at the earliest?

a. July 2022	b. July 2023
c. March 2023	d. None of these

8. Every public company having paid up share capital of ------- or more shall have whole time key managerial personnel

a. 1 crore	b. 5 crore
c. 10 crore	d. 50 crore

9. XYZ ltd had no profits in FY- 2018-19. It can pay remuneration upto ------ to its managerial person if its effective capital is 90 crores

a. 60 lakhs	b. 84 lakhs
c. 120 lakhs	d. Any of these

10. Who shall not be entitled to any stock option

a. Woman Director	b. Managing Director
c. Whole time director	d. Independent director

11. Where appointment of Managerial personnel is not approved by company at a general meeting, any act done by him before such approval shall be deemed to be-----

a. Voidable	b. Void
c. Valid	d. As decided by Board

12. Which form shall be filed with registrar and within how many days for appointment of managerial personnel

a. MR 1, 60 days	b. MR 2, 60 days
c. MR 2, 30 days	d. MR 3, 60 days

13. If the office of any whole time KMP is vacated, the resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of ------ from date of such vacancy

a. 1 year	b. 6 months
c. 30 days	d. Nine months

14. No company shall appoint in the employment of any person as managing director, whole time director or manager who is below age of----

a. 22 years	b. 21 years
c. 18 years	d. 30 years

15. Every Public Company with -------shall appoint secretarial auditor.

a. Paid up share capital of 50 Crore or more	b. Turnover of 250 crore or more
c. Both (a) and (b)	d. None of the above

16. Every key managerial personnel shall be appointed by means of -------- resolution containing the terms and conditions of appointment including remuneration.

a. Board	b. General
c. Ordinary	d. Special

17. Any independent director can receive remuneration by way of--------

a. Sitting fees	b. Reimbursement of expenses for participation in meetings
c. Profit related commission	d. All of the above

18. The terms and conditions and remuneration approved by board of directors for appointment of MD, WTD & Manager shall be subject to the approval of -------

a. Shareholders by a resolution at next GM	b. NCLT
c. Central Government	d. None of the above

19. Directors including managing director, WTD and manager of public companies are eligible to maximum -------% of profits of company for that FY.

a. 1	b. 3
c. 10	d. 11

20. Sitting fees of directors shall not exceed ----- per meeting of board or committee thereof.

a. 50,000	b. 1,00,000
c. 10,00,000	d. None of the above

21. In case of loss, a newly incorporated company may, without approval of the Central Government, pay remuneration to managerial remuneration in excess of amounts specified in Part II of schedule V for------

a. 3 years	b. 5 years
c. 7 years	d. 10 years

22. Where a person is a managerial person in 2 companies, he shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed ---- maximum limit admissible from any one of the companies of which he is a managerial person.

a. Lower	b. Higher
c. Average	d. None of these

23. The remuneration payable to the directors and manager of a company shall be determined-----

a. By the articles of the company	b. By an ordinary resolution
c. By a special resolution where articles require	d. Either (a) or (b) or (c)

24. The compensation for loss of office cannot be paid to-----

a. An ordinary director	b. Whole time director
c. Manager	d. Managing director

25. A company shall have a whole time company secretary, if-------

a. It is a private company	b. It is a public company
c. Paid up share capital is 2 crore or more	d. None of these

26. What is the requisite requirement for increasing the remuneration of directors including whole-time directors and Managing Director to 12% so that it shall be in accordance with the relevant provisions of the Companies, Act, 2013?
(a) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the ROC.
(b) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Tribunal.
(c) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.
(d) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Central Government through Regional Director.

Answer to MCQs

1	(b)	6	(c)	11	(c)	16	(a)	21	(c)
2	(a)	7	(a)	12	(a)	17	(d)	22	(b)
3	(c)	8	(c)	13	(b)	18	(a)	23	(d)
4	(c)	9	(a)	14	(b)	19	(d)	24	(a)
5	(c)	10	(d)	15	(c)	20	(b)	25	(d)
								26	(c)

Case Study

Ali Baba Limited is a listed company incorporated under the provisions of Company Law having its registered office at Andhra Pradesh. Mrs. Smart is a Managing Director of Ali Baba Limited since its incorporation. She was first director and one of the promoters of the company. She has vast experience of managing the company in very efficient manner.
Ali Baba Ltd. is a holding company of PM Limited with a Fira Private Limited as a subsidiary to PM Limited. Following are the details pertaining to the incorporation of the related entities and its capital structure:

Particulars	Ali Baba Limited	PM Limited	Fira Private Limited

Date of Incorporation	17/09/1985	06/09/1988	28/09/1989
Place of Registered Office	Andhra Pradesh	Delhi	Hyderabad
Authorised Share Capital	Rs. 100,00,00,000/-	Rs. 20,00,00,000/-	Rs.10,00, 00,000/-
Paid Up Share Capital	Rs. 99,00,00,000/-	Rs. 10,00,00,000/-	Rs. 10,00,00,000/-

Under the guidance of Mrs. Smart, Ali Baba Limited acquired shareholding in PM Limited and thus resulting it into a subsidiary company of Ali Baba Limited. Now the Board of Directors of Ali Baba Limited wishes to nominate Mrs. Smart for the position of Managing Director in PM Limited and also to appoint her as Whole Time Director(WTO) in Fira Private Limited, which is a wholly owned subsidiary (WOS) of PM Limited.

Therefore, the Board of Directors of PM Limited passed a Board Resolution through resolution by circulation to appoint Mrs. Smart as Managing Director of the company. Subsequently, the Board of Directors of Fira Private Limited passed the Board Resolution at Board Meeting, wherein all directors present in the meeting approved the resolution for appointing her as Whole Time Director of the company and then subsequent to unanimous Board approval, Fira Private Limited also conducted the general meeting for getting approval of shareholders and passed the ordinary resolution to appoint her as Whole Time Director in the company.

Further, for appointment of Mrs. Smart, PM Limited and Fira Private Limited had complied with Schedule V of the Companies Act, 2013 as a result respective companies did not take any approval from Central Government for her appointment as Managing Director and Whole Time Director respectively.

Based on the above provided information and in the light of applicable provisions of the Companies Act, 2013, read with Schedule V of the Act, you are asked to advice on the following:

Multiple Choice Questions:

1. State on the validity of the appointment of Mrs. Smart as Managing Director in PM Limited in terms of the provisions of the Companies Act, 2013?
   (a) Invalid, as no such appointment was made or approved by resolution passed at the board meeting with the consent of all the directors present at the meeting and supported by general meeting's ordinary resolution under section 196.
   (b) Valid as whole time KMP shall hold office in its subsidiary at the same time.
   (c) Valid with further approval of the Central Government
   (d) Invalid because a person cannot hold more than one office as Managing Director

2. Whether Mrs. Smart appointment as Whole Time Director in Fira Private Limited is valid as per provisions of the Companies Act, 2013?
   (a) No, because being Fira Private Limited is private company so rule 8 & 8A of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, not applicable
   (b) Yes, as per section 2(71) it is deemed as public Co.
   (c) Yes, on further approval of Central Government
   (d) No, because of restriction under section 203(3) on appointment in more than one company.

3. What will be legal position as to the appointment of Mrs. Smart as Managing Director in PM Limited, if Ali Baba Limited is a Government Company?
   (a) Invalid due to non-compliance of section 203
   (b) Valid in light of the provisions 203(4A)
   (c) Valid with approval of central government
   (d) Invalid because a person cannot hold office of Managing Director in more than 1 company.

4. What is the status of Fira Private Limited for the purpose of the applicability of the Companies Act, 2013, if Ali Baba Limited is a Government Company?
   (a) Private Company
   (b) Public Company
   (c) Government Company
   (d) Associate Company

5. Whether appointment of Mrs. Smart as Whole Time Director in Fira Private Limited is legally acceptable, if Ali Baba Limited is a Government Company?
   (a) No, because being Fira Private Limited is private company so rule 8 & 8A of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, not applicable
   (b) Yes, because section 203 is not applicable on Government Companies
   (c) Yes, with further approval Central Government
   (d) No, because of restriction under section 203(3)

Answer to Case Study MCQs

1	(a)
2	(b)
3	(b)
4	(c)
5	(b)

Meetings of Board and its Powers

Class Questions

Participation in Board Meetings via AV [Section 173(2)]

1. Moonlight ltd held its board meeting through video conferencing. Due to technical problems, the video recording which was done, could not be retrieved. The company seeks your advice for the preparation and recording of the minutes of the board meeting in the above situation, under the provisions of the Companies Act, 2013.

Answer: According to Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, at the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority and the draft minutes so recorded shall be preserved by the company till the confirmation of same.

The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board. Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within 7 days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

In the given case, though recording could not be retrieved but the secretary of Moonlight Limited in consultation with the Chairman of the meeting can use the draft minutes that would have been recorded during the meeting to prepare the minutes. Further, when the same minutes will be circulated to the directors, they can give comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the minutes, within 7 days or some reasonable time as decided by Board.

2. M/S OBC ltd at its forthcoming Board Meeting decided that it will not provide the directors with the facility of participation in the said meeting through electronic mode; can the directors insist on attending the meeting through such mode? Will your answer differ, if a director participates in a Board Meeting through electronic mode from his end even if company does not provide such facility?

Answer: It is mandatory for the companies to provide audio visual means facility for participation in Board meetings to the Directors if they insist
The same has been established in the case law of Achintya Kumar vs Ranjit Barthkur.

The word "may" used in Section 173 (2) only gives an option to the Director to choose whether he would be participating in person or through audio visual means. This word "may" does not give option to the company to deny this right given to the Directors for participation through audio visual means

3. The Board of Directors of Infotech Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2019.It was decided to hold board meeting in Chennai through video conferencing, though all the directors of the company reside at Kolkata. Comment

Answer: As provision in the Companies Act, 2013 does not requires that the board meetings must be held at a particular place. Accordingly, there is no difficulty in holding the current board meeting at Chennai through video conferencing even if all the directors of the company reside at Kolkata and the registered office is also situated at Kolkata. However, it is to be seen that the legal requirements as prescribed by Section 173 (2) and Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 are meticulously followed.

Notice of Board Meeting [Sec 173(3)]

4. XYZ Ltd. is a foreign collaborator in ABC Ltd. incorporated in India under the Companies Act, 2013. The foreign collaborator holds 49% of the shareholding. The Board meetings of ABC Ltd are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association that during such situations, notices of the meetings of the Board can be sent by e-mail. Comment

Answer: In terms of the proviso to section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. No exception is made for any class or classes of companies.

Further, under section 173(3) a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

If we examine the above provision, it is amply clear that the notice is allowed to be sent, inter-alia, by electronic means also. Hence, the sending of notice by e-mail is a permissible mode of delivery and can be resorted to without any hindrance. In case Articles contain such a provision, there is no illegality involved even if there is a foreign collaborator in the company.

Therefore, in the given case the shorter notice by e-mail is legally permitted. It is to be noted that there should be the presence of quorum and at least one independent director at the meeting. The provision of the Articles in this regard is not so relevant since the position is quite clear in the Act itself.

5. The Board of directors of Infortech consultants ltd registered in kolkata proposes to hold the next board meeting in the month of May 2018. They seek your advice in respect of the following matters:
   a) Can the board meeting be held in Chennai through video conferencing when all the

directors of the company reside at Kolkata?

b) Whether the Board meeting can be called on a national holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.

c) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?

Answer: There is no provision in the Companies Act, 2013 which requires that a Board meeting shall be held-
(a) only on a day that is not a national holiday
(b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated
(c) only during business hours.

As such, a Board meeting can be held anywhere in India or even outside India.

Agenda of a Board meeting is not required to be sent along with the notice of a Board meeting unless there is some express provision of the Act which requires a specific notice to move a resolution at a Board meeting.
However, as a matter of good secretarial practice, the agenda and all the relevant documents and information should also be given along with the notice so that the directors can prepare beforehand the subject matter of the proposed business.

6. Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

a) Alternate director
b) An interested director
c) A director who has expressed his inability to attend a particular Board Meeting
d) A director who has gone abroad (for less than 3 months)

What if the above omissions were accidental?

Answer: As per Section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

a) Since an alternate director is also a director, he is covered in the term 'every director', and so notice of Board meeting must be sent to alternate director
b) Since an interested director is also a director, he is covered in the term 'every director, and so notice of Board meeting must be sent to interested director though he is not allowed to participate and vote, he has a right to receive information about the same.
c) A director who has expressed his inability to attend a particular Board Meeting also must be given notice.
d) Notice of board meeting must be sent to a director who has gone abroad (irrespective of the period of his stay outside India and irrespective of the fact that an alternate director has been appointed in his place or not). Notice shall be served on him at his address registered with the company.

If the notice was improper, the meeting shall be void, and consequently, all the resolutions passed at such meeting such be invalid. Even an accidental omission to give notice to a single director would render the resolution passed at that meeting void.

Quorum for Board Meeting [Sec 174]

7. Discuss the following situations with respect to the quorum.
   a) There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant.
   b) There are 15 directors in a company and during discussion of a particular item, 13 of the directors are said to be interested within the meaning of section 184.

   Answer: As per Section 174(1), the quorum for a Board meeting shall be higher of-
   a) 1/3rdof total strength (any fraction contained in that one-third shall be rounded off as one); or
   b) 2 directors.

   'Total strength' shall not include directors whose places are vacant.

   In the present case, the total strength shall be 9 – 2= 7 directors.
   Quorum shall be higher of 2 or 1/3rd of 7 i.e. 2.33.
   Any fraction of a number shall be rounded off as one, Accordingly, the quorum shall be 3 directors (being higher of 2 or 3).

   As per Section 174(3), where at any time the number of interested directors (present in the Board meeting) exceeds or is equal to 2/3rd of the 'total strength', the number of disinterested directors present at the meeting, being not less than two, shall be the quorum.
   In the instant case, 1/3rd of 15 comes to 5. Thus, a Board meeting can commence only if at least 5 directors are present. Since all the 15 directors are present, the Board meeting has validly commenced. During discussion on a particular item of business.13 directors are interested. 2/3rd of the total strength' comes to 10. Since the number of interested directors (present in the Board meeting) is 13, which is more than 2/3rd of total strength (viz. 10). Section 174(3) has become applicable. Thus, the remaining 2 directors who are not interested shall constitute the quorum and hence such item of business can be validly transacted (i.e. discussed and voted upon).

8. The board meeting of MNO ltd was held on 10th May 2018 at Chennai at 11 am. At the time of starting the board meeting the number of directors present were 7. The total number of directors were 10. The board transacted ten items in the Board meeting. At 12 noon after the completion of four items in the agenda 4 directors left the meeting. Examine the validity of these transactions.

   Answer: As per Section 174(1), the quorum for a Board meeting shall be higher of-
(a) 1/3rd of total strength (any fraction contained in that one-third shall be rounded off as one); or
(b) 2 directors.

Quorum has to be present at the time of transacting each and every business. It is not enough that a

quorum was present at the commencement of the meeting. Therefore, where quorum is present at the beginning of the meeting, but some of the directors leave the meeting, so that remaining directors do not constitute quorum, any subsequent resolutions will be invalid.

In the given case, total strength is 10. Quorum for the Board meeting held on 10thMay, 2018 shall be 1/3rd of 10 directors, ie.3.33, rounded off to 4. Since 7 directors were present at the time of commencement of the Board meeting, the Board meeting has been validly held.
However, after transacting 4 items on agenda, 4 directors left, because of which the number of directors present has fallen below the quorum required. Since, quorum is required at the time of transacting each and every business, the remaining 6 agenda items cannot be validly discussed and voted upon. Therefore, resolutions passed in respect of these 6 agenda items are void, and have no legal effect.

9. The articles of association of Amriz ltd provides for a maximum of 15 directors. But the company has only 10 directors and for two of them representing collaborators, alternate directors have been appointed. Board meeting held on 1st august 2018 was attended by four directors including two alternate directors. Examine whether quorum was present at the Board meeting held on 1st august 2018. Will your answer be different if the articles provide for a quorum of six directors?

Answer: As per Section 174(1), the quorum for a Board meeting shall be higher of-
(a) 1/3rd of total strength (any fraction contained in that one-third shall be rounded off as one); or
(b) 2 directors.

In the Board meeting of Amriz Limited, 4 directors (including 2 alternate directors) are present. The two alternate directors shall also be included while determining as to whether quorum is present or not.
Since the directors present in the Board meeting (1.e. 4 directors) are not less than the required quorum (1.e. 4 directors), the required quorum is present in the Board meeting held on 1stAugust, 2018. However, if the articles provide for a quorum of 6 directors, the required quorum shall be 6.
In such case, the required quorum is not present in the Board meeting held on 1stAugust, 2018.

10. A meeting of the Board of 'No Holiday Ltd' was held on a holiday on account of Ganesh Chaturthi. However due to lack of quorum, the proceedings of the meeting could not be held and therefore the Chairman of the meeting with the consent of the majority decided that the Board meeting be adjourned to next week on the same day. However, the date fixed for the adjourned meeting happened to be a Sunday. Comment on the validity

Answer: In such case, where a board meeting is adjourned due to lack of quorum, then under section 174(4) the adjourned meeting can be held on the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place, unless the Articles provide otherwise.

Since Section 174(4) specifies exclusion of only a national holiday, any original/adjourned/ committee meetings can be held on Sundays and other holidays. In view of this provision, the adjourned meeting of the Board of 'No Holiday Ltd' can be held on Sunday without involvement of any illegality.

Passing of Resolution by Circulation [Sec 175]

11. In respect of certain matter which did not require to be decided at a board meeting, PQR Ltd. thought it prudent to pass resolution thereof by circulation. Accordingly, a draft resolution was circulated among all the six directors by e-mail. Three directors did not give their consent and desired that the resolution was required to be decided at a meeting.

Answer:

In the light of the Proviso to Section 175 (1) where minimum 1/3rd of the total number of directors require that any resolution under circulation must be decided at a meeting, the Chairperson shall put the resolution to be decided at a meeting of the Board. In the given case, one-half of the total number of directors (i.e. three out of six) requires that the resolution must be decided at a Board meeting. Since their counting is more than one-third of total strength, the Chairperson needs to take the call and put the resolution to be decided at a duly convened meeting of the Board.

12. Proximo limited has 9 directors out of whom 3 directors have gone abroad. The Chairman had an urgent matter to be approved by the Board of Directors which could not be postponed till the next board meeting. The Company therefore circulated the resolution for the approval of the directors. 4 out of 6 directors in India approved the resolution. The Company claimed that the resolution was passed. Examine with reference to the provisions of Section 175 of the Companies Act, 2013 the validity of the resolution.

Answer: As per Section 175 read with Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014), a resolution may be passed by the Board by circulation if the following conditions are satisfied:

- The resolution has been circulated in draft, together with necessary papers, to all the directors at their addresses in India registered with the company, by hand delivery or by post or by courier, or through electronic means.
- The resolution has been approved by a majority of all the directors as are entitled to vote on such resolution.

A resolution shall be passed by circulation if any of the 5 directors (whether in India or outside India) vote in favour of the resolution.
However, the resolution has been approved by only 4 directors. Since approval by majority of all the directors has not been obtained, the resolution has not been passed by circulation.

Passing of Resolution by circulation [Section 176]

13. MTP was appointed as a director at the Annual General Meeting of a limited company held on 30th September 2013 and he carried on his duties and functions as a director. In the month of August, 2014, it was found out that there were certain irregularities in his appointment and on 31st August, 2014, his appointment was declared invalid. But Mr. MTP continued to act as director even after 31st august 2014. You are required to state, with reference to the provisions of the Companies Act, 2013 whether the acts done by MTP are valid and binding upon the Company.

Answer:
In accordance with sec 176 of Companies Act 2013, No act done by a person as a director shall be deemed to be invalid. notwithstanding (in spite of) that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company. Provided that nothing in this section shall be deemed to give validity to any act done by the director

after his appointment has been noticed by the company to be invalid or to have terminated.

Hence, the acts done by Mr. MTP upto 31st Aug. 2018 will be deemed as valid and binding on the Company . However, Any act done by him after 31st Aug. 2018 will be deemed invalid and not binding upon the Company.

Audit Committee [Section 177]

14. An Audit Committee of a listed company constituted under Section 177 of the Companies Act. 2013 submitted its report containing the recommendations in respect of certain matters to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether
(a) The Board is empowered not to accept the recommendations of the Audit Committee
(b) If so, what alternative course of action, would the Board resort to?

Answer:
According to Section 177, the Board's Report shall disclose the composition of the Audit Committee and where the Board has not accepted any recommendations of the Audit Committee, the same shall also be disclosed along with the reasons thereof.

Although the language suggests that Board of Directors should accept the recommendations of the Audit Committee failing which a Disclosure in Board Report is required which is circulated to all the members of the company, yet it is not mandatory for the Board of Directors to accept the recommendations of the Audit Committee. They may choose not to accept the recommendations of the Audit Committee under genuine circumstances and legitimate reasons and disclose the same in the Board Report.

If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its Board's report which is prepared under section 134.

15. M/S Dreamworks ltd (an unlisted company) without any public deposits as per the audited financial statements of the company as at 31st March, 2018 gives you the following information:

Paid up share capital	20 Crores
Gross turnover	500 crores
Bank borrowings	40 crores from Nationalized Bank
Other Borrowings	40 crores from PFI

Mr. Gupta, a Chartered Accountant employed in the finance and Audit department of the

company wants to form a Vigil Mechanism for directors and employees of the company. Advise whether it is mandatory for the company to form Vigil Mechanism. Are there any penalties that could be imposed for not formulating Vigil Mechanism?

Answer:
Every listed company
Or following class of prescribed companies,
the Companies which accept deposits from the Public
the Companies which have borrowed money from Banks and PFI > 50 crores.

shall establish a Vigil Mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

In the instant case, Dreamworks Limited does not have any public deposits. However, They have borrowings from banks and public financial institutions of 80 crores which is in excess of 50 crores.
So, the company is mandatorily required to form a Vigil Mechanism for directors and employees of the company.

In case of any contravention of the provisions of section 177 and 178, the company shall be punishable with penalty of 500000 and officer in default with penalty of 100000.

Powers of Board [Sec 179]

16. Advise the Board of Directors to Spectra Papers ltd regarding validity and extent of their powers, under the provisions of Companies Act, 2013 in relation to following matters:
Buy back of the shares of the Company upto 10% of the paid up equity share capital without passing SR.

Answer:
As per Section 179(1), the Board is entitled to exercise all such powers as the company is authorized to exercise. Similarly, the Board is authorized to do all such acts and things as the company is authorized to do. However, the provisions of Section 179(1) are subject to the other provisions of the Companies Act, 2013 (like Sections 179(3), 180, 181 and 182 of the Companies Act, 2013).
The Board shall exercise the powers mentioned under Section 179(3) only by means of a resolution passed at a meeting of the Board, Among other powers, the power to buy-back as referred to in Section 68 is also included in Section 179(3).

As per Section 68 (2), no company shall buy-back its own shares or other specified securities, unless-
(a) the buy-back is authorized by the articles; and
(b) a special resolution is passed at a general meeting authorizing such buy-back.

However, a company may buy-back its own shares or other specified securities without being authorized by a special resolution, if-
(i) the buy-back is 10% or less of aggregate of paid up equity share capital and free reserves; and

(ii) the buy-back is authorized by a resolution passed in a Board meeting.
Hence, in the present case, the Board is authorized to buy-back the shares of the company up to 10% of the paid-up equity share capital, provided the resolution authorizing the buy-back is passed at a Board meeting and not by circulation.

17. A is the Director of M & Co. ltd. A has borrowed Rs. 50 lakhs on reasonable terms from X for company's benefit and business. A has no power to borrow, What will be the legal position?

Answer:
As per Section 179(3), the power to borrow money shall be exercised by the Board at a Board meeting. However, such power may be delegated by the Board, subject to the following:
(a) The power to borrow money may be delegated to a committee of directors, managing director, manager, a principal officer of the company or a principal officer of the branch office.
(b) The delegation of power is made by passing a resolution at a Board meeting.
(c) The Board may delegate such powers subject to such conditions as it may deem fit.

A director is a principal officer of the company. Thus, as per Section 179(3), the power to borrow money may be delegated to any director of the company.

Restriction on Powers of Board [Sec 180]

18. The Board of Directors of Stepping Stones Publications Ltd. resolved to borrow a sum of ` 15 crore from a nationalized bank at a Board meeting held on 15.1.2019. One of the directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the borrowing powers of the Board. The following data is given for your information:
    (i) Share Capital Rs. 5 crore
    (ii) Reserves and Surplus Rs. 5 crore
    (iii) Secured Loans Rs. 15 crore
    (iv) Unsecured Loans Rs. 5 crore

    Answer: According to the provisions of Section 180(1)(c) of the Companies Act, 2013, , the borrowings should not exceed the aggregate of the paid-up share capital, free reserves and securities premium. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded. However, from the figures available in the present case, the proposed borrowing of Rs. 15 crore will exceed the limit calculated as per the given information. Thus, the proposed borrowings are beyond the powers of the Board of directors.

    In view of the above position, the management of Stepping Stone Publications Ltd., should take steps to pass a special resolution authorising to borrow the proposed amount of ` 15.00 crore, so that the requirement of Section 180(1)(c) is satisfied. Only thereafter, the proposed borrowing can be availed of.

19. Big Ben ltd, a reputed Public Company had advanced certain sum of money to one of its directors, namely Mr. Tanmay on certain terms and conditions and fixing the time limit for

repayment thereof. Now, Mr. Tanmay has approached the Company with a request to extend the time limit for repayment of balance of loan amounting to Rs. 12 lakhs by another six months. Who is authorized to grant the extension as requested by Mr. Tanmay?

Answer:
Section 180 contains certain powers which the Board may exercise, but only after obtaining the consent of the members in the general meeting. Section 180(1)(d) states that SR is needed
To remit, or give time for the repayment of any debt due by a director.
Thus, it is evident that if it is desired to remit or give time for the repayment of any debt due by a director, the Board is required to exercise such power, but the Board shall have to obtain the consent of the members by way of a special resolution.

In the given case, the proposal is to extend the time limit for repayment of loan of Rs. 12 lakhs payable by Mr. Tanmay, a director of the company. The unpaid amount of Rs. 12 lakhs amount to a debt payable by the director. So, this case is covered under Section 180(1) (d). Therefore, such extension can be granted by the Board, but with the consent of the members by way of a special resolution passed in general meeting.

20. The paid up share capital and free reserves of XYZ Co. ltd, a public company is Rs. 100 crores as on 1st April, 2014. The shareholders of the company at their General Meeting held on 4th April 2014 by a special resolution authorized the Board of Directors of the Company to borrow money exceeding the paid up share capital and free reserves of the company, to the extent required by the Board of Directors. The Board as a result borrowed money to an extent of Rs. 130 crores, including 20 crores as short term loan and Rs. 25 crores as temporary loan for financing the construction of a building of the company. Examine the validity of the following:

i) The Board exercising powers for borrowing money to an extent of Rs. 130 crores?
ii) What if Company's Paid-up share capital and free reserves increased to Rs. 150 crores and the Board borrow money to an extent of Rs. 140 crores which does not include short-term or temporary loan for financing construction of building of company.

Answer:
As per Section 180(1)(c). without the prior consent of the members in general meeting by way of a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid-up share capital, free reserves and securities premium account. The total amount up to which moneys may be borrowed by the Board of directors must be specified in the special resolution passed by the company in the general meeting. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

i) The aggregate of paid up share capital, free reserves and securities premium account amounts to Rs. 100crores. The directors have borrowed Rs. 130 crores out of which 20 crores is short term loan and hence not to be considered as
However, an amount of Rs. 25 crores which has been borrowed for financing the construction of building (for financing capital expenditure) does not amount to temporary loan in terms of Section 180(1)(c), and therefore, it shall be included in the borrowings.
The Board could borrow money exceeding Rs. 100 crores only with the consent of the

shareholders in general meeting by way of a Special resolution. Moreover, the special resolution passed at the general meeting must specify the total amount up to which moneys could be borrowed by the Board of directors. If is evident that the special resolution passed by the members in the general meeting does not specify the total amount that could be borrowed by the Board and is thus detective. Therefore, the borrowings made by the Board violates the provisions of Section 180(1)(c) of the Companies Act, 2013.

ii) In the second case, the paid-up share capital, free reserves and securities premium account of the company amount to Rs. 150 crores. As such, Board can borrow money up to Rs. 150 crores without the consent of the members in the general meeting by way of a special resolution. Since on amount of Rs. 140 crores only has been borrowed by the Board, borrowings are well within the limits specified under Section 180(1)(c) of the Companies Act, 2013 and therefore the exercise of borrowing powers by the Board is in order.

21. The Board of directors of Stepping Stones Publications ltd at a meeting held on 15.1.2001 resolved to borrow a sum of Rs. 15 crores from a nationalized bank, subsequently the said amount was received by the company. One of the directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board. The company seeks your advice and the following data is given for your information:

i) Share Capital: Rs. 5 Crores
ii) Reserves & Surplus: Rs. 5 Crores
iii) Secured Loans: Rs. 15 Crores
iv) Unsecured Loans: Rs. 5 Crores

Advise the management of the company.

Answer:

As per Section 180(1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a special resolution, the Board shall not borrow money if moneys already borrowed, together with moneys to be borrowed will exceed the aggregate of the paid up share capital, free reserves and securities premium account of the company. Any borrowings in contravention of this Section cannot be enforced by the lender unless he proves that he advanced the loan in good faith and without knowledge that the limit imposed under this Section had been exceeded.

In the present case the aggregate of paid up share capital, free reserves and securities premium account amount to Rs. 10 crores. But the company has borrowed Rs. 20 crores (i.e. exceeding the limit of Rs. 10 crores), without the consent of members by a special resolution. Therefore, the borrowings have been made by the Board without proper authority.

The company shall be held liable if the money borrowed by the Board is used for the benefit of the company. Even if the borrowing is unauthorized, the company will be liable to repay. if it is shown that the money has gone into the hands of the company

The directors may be held personally liable n he lender, on the ground of breach of implied warranty of authority.

22. The last 3 years balance sheet of RBS ltd contains the following information and figures:

	As at 31.03.2002	As at 31.03.2003	As at 31.03.2004
Paid up Capital	50,00.000	50,00,000	75,00,000
General Reserve	45,00,000	50,00,000	60,00,000
DRR	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000
Net profit for the year	12,50,000	19,00,000	34,50,000

In the ensuing Board meeting scheduled to be on 5th November, 2004 among other items of agenda, following item is also appearing:
'To decide about borrowing from financial institutions on long-term basis'
Based on above information, you are required to find out as per the provisions of the Companies Act, 2013 the amount upto which the Board can borrow from financial institutions without seeking approval in General Meeting.

Answer:

As per Section 180 (1) (c) of the Companies Act, 2013, without the prior consent of the members in the general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid up share capital, free reserves and securities premium account. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

In the given case, the aggregate of paid up share capital, free reserves and securities premium account comes to Rs. 1,35,00,000. It is to be noted that net profit for the year amounting to Rs. 34,50,000 would already have been added while arriving at the figure of General Reserve, and accordingly, it shall not be again added at the time of determining the aggregate of paid up share capital, free reserves and securities premium account. Debenture Redemption Reserve is not free for distribution of dividend and is therefore not considered as free reserves.

The borrowings already made by the company is Rs. 30,00,000. Therefore, without requiring any consent of shareholders, the long-term borrowings from financial institutions shall not exceed a sum of Rs. 1,05,00,000.

23. One of the objects of the Memorandum of Association of Info Company ltd conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an extraordinary general meeting of the company members passed a special resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions. Examining the provisions of the Companies Act, 2013, answer the following:

i) Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

ii) Whether it is possible for the members to usurp the powers which by the Articles are

vested in the directors by passing a resolution in the General Meeting

Answer:
As per Section 180(1) (a), the Board of directors of a company shall exercise the power to sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company only with the consent of the company by a special resolution.

Where the Board has not approved the decision to sell the undertaking of the company, and the members have passed a special resolution for sale of undertaking of the company, such special resolution does not have any force of law, since the decision to sell the undertaking in such case has not been first approved by the Board of directors. Therefore, such special resolution is not binding on the Board of directors.

The members, even if acting unanimously, have no authority to pass a resolution for sale of the undertaking of the company, and require the Board to implement it.
The contention of the members that the members are the principal and the directors are the agents, is not correct. The directors are the agent of the company, and not of the members.

Contribution to Bonafide and Charitable Funds [Sec 181]

24. The last three years' balance sheets of PTL ltd contains the following information and figures:

	As at 31.03.2003	As at 31.03.2004	As at 31.03.2005
Paid up Capital	50,00.000	50,00,000	75,00,000
General Reserve	45,00,000	50,00,000	60,00,000
Credit Balance of P/L	5,00,000	7,50,000	10,00,000
DRR	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000

On going through other records, Net profit for the year:
12,50,000- As at 31.03.2003
19,00,000- As at 31.03.2004
34,50,000- As at 31.03.2005
In the ensuing Board meeting scheduled to be held on 5th November 2005, among other items of agenda, following are also appearing:
Decide about contributions to be made to Charitable funds

Answer:
As per Section 181 of the Companies Act, 2013, without the prior consent of the members in general meeting, the Board shall not contribute to bonafide charitable and other funds exceeding 5% of average net profits during immediately preceding 3 financial years.

The average net profits during immediately preceding 3 financial years comes to Rs. 22,00,000. viz., 1/3rd of (Rs. 12,50,000 + Rs. 19,00,000 + Rs. 34,50,000). 5% of Rs. 22,00,000 comes to Rs. 1,10,000. Therefore, the Board may make contributions to charitable funds up to Rs. 1,10,000

during the financial year 2005-06 without prior permission of the company in general meeting.

25. Decide in the light of the provisions of the Companies Act, 2013 the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters: Donation of 5 lakhs to a hospital established exclusively for the benefit of employees

Answer:
As per Section 181 of the Companies Act. 2013, without the prior consent of the members in the general meeting, the Board shall not contribute to bona fide charitable and other funds, if the amounts contributed in a financial year will exceed 5% of average net profits during immediately preceding 3 financial years.

Any contribution made by a company shall amount to charitable contribution only if it is not intended to result in any benefit for the company or for its employees, and does not have any direct relation with the business of the company.

In the given case, donation of Rs. 5,00,000 to a hospital exclusively for the benefit of employees amounts to welfare expenses for the employees by which the employees are likely to receive benefits. By making such donation, the company has not made any charity; the facilities in the hospital cannot be used by any member of the public, but only by the employees of the company.
As such, the donation of Rs. 5,00,000 is outside the purview of charitable donations, and so the provisions of Section 181 of the Companies Act, 2013 are not at all attracted. Therefore, donation of Rs. 5,00,000 to the hospital established exclusively for the benefit of employees is within the powers of the Board, and so the permission of the members in general meeting is not required.

26. Decide the validity of power of Board in:
A donation of Rs. 5 lakhs to a Charitable trust registered u/s 12A and exempted u/s 80G of the Income Tax Act

Answer:
As per Section 181 of the Companies Act, 2013, prior permission of the company in general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

The donation of Rs. 5,00,000 to a charitable trust registered under Section 12A and exempted under Section 80G of the Income-tax Act, 1961, is not related to the business of the company and is therefore subject to the restrictions imposed under Section 181 of the Companies Act, 2013. Accordingly, such donation shall not exceed 5% of average net profits during immediately preceding 3 financial years, unless prior permission of the company in general meeting is obtained.

Thus, contribution of Rs. 5 lakhs by the Board (without obtaining prior permission of the members) shall be within the powers of the Board only if the company has made average net profits of Rs. 1 crore or more (i.e. Rs. 5,00,000 x 100/5) during immediately preceding 3

financial years.

27. M/S Jai Industries Ltd earned net profit for last three years as under:

Financial Year	Net Profit
2013-14	30 Crores
2014-15	40 Crores
2015-16	50 Crores

During FY: 2016-17, the Board of the company contributed to a Charitable fund Rs. 1.25 crores in July, 2016. Again in January 2017, the Board passed resolution to contribute to another charitable fund Rs. 1 crore. Decide the validity.

Answer:
As per Section 181 of the Companies Act. 2013, prior permission of the company in general meeting shill be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

The average net profits of M/s Jai Industries Ltd. during the preceding 3 financial years is Rs. 40 crore. 5% of the average net profits amounts to Rs. 2 crore. Thus, the Board may, without obtaining prior permission of the company in general meeting, contribute to charitable funds any amount not exceeding Rs. 2 crore. But, charitable contribution exceeding RS. 2 crore may be made by the Board only if the prior permission of the members is obtained.

The donation of Rs. 1.25 crore and of Rs. 1 crore (totaling Rs. 2.25 crore) to charitable funds are not related to the business of the company and are therefore subject to the restrictions imposed under Section 181 of the Companies Act, 2013. The donation of Rs. 1.25 crore made in July, 2016 is in accordance with the provisions of Section 181. However. the charitable contribution made in January, 2017 is in contravention of Section 181, since the Board could only contribute 0.75 crore without obtaining the prior permission of the members in the general meeting, but the Board has contributed Rs. 1 crore. Thus, the excess Contribution of Rs. 0.25 crore is ultra-vires the provisions of Section 181.

Prohibition and Restriction regarding Political Contribution [Sec 182]

28. The board of LM ltd incorporated in 2015 proposes to donate 50000 to a political party during financial year ending 31st March 2017. Average Net profits during two immediately preceeding financial years is 20,00,000. Whether proposed donation is within powers of Board?

Answer:
In this case, the company is not prohibited from making political contribution since it is not a Government company, and it has been in existence for more than 3 financial years. Accordingly, it may make the political contribution without any limit, provided-
(a) the political contribution is made by passing a resolution at a Board meeting only;
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party:
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Disclosure of Interest by Director [Sec 184]

29. With the knowledge of all the Directors of a Public Limited Company, a mortgage was created over the property of the company in respect of a loan given by the brother of one of the Directors of the company But the interested Director neither disclosed his interest nor abstained from voting at the Board Meeting when the loan transaction was approved by unanimous board resolution. Examine with reference to the provisions of the Companies Act, 2013 whether there is any ban on such contracts and whether non-disclosure of interest and voting by the interested Director would make the contract void.

Answer:
Section 184 of the Companies Act, 2013 requires the disclosure of interest by a director and prohibits an interested director to participate or vote on Boards' proceedings. But where a whole body of directors is aware of the facts relating to an interest of a director, a formal disclosure is not necessary. [Venkatachalapathy V.S. Guntur Cotton Mills,]

i) The mere voting by an interested director will not render the contract void or voidable unless with the absence of that vote, there would have been no quorum. The mere fact that voting under such situation is an offence punishable with fine under Section 184 of the Act, does not render the contract void or violable In this case, there is no allegation of earning secret profits. Thus, the action of the company will fail as the contract of mortgage is fair and in the interest of the company.

ii) Under Section 184 of the Act, there is no ban on a contract in which a director is interested. The only requirement is that the interest should be disclosed, bonafide and fair [P. Leslie & Co. vs. V.O. Wapshare].
Even where the interest is not disclosed the transaction is only voidable against the interested director, and not void. [Narayan Das Shreeram Somani vs. Sangli Bank]

30. Mr Nanavati became a director of OPQ Ltd on 1.5.2000. He holds 3% shares in OPQ Ltd. You are informed that Mr Nanavati holds 1.5% of the share capital of A Ltd and that his wife holds another 3% of the shar capital of A Ltd Mr. Nanavati is not a director in A Ltd. The company, prior to his appointment as director had commenced transactions with A Ltd. In the next Board Meeting to be held on 10.5.2000, the Bo proposes to discuss about price revisions sought for by A Ltd. Briefly explain: Whether Mr. Nanavati should make a disclosure of his interest in A Ltd., assuming that the company going to have transactions with A Ltd. on a continuous basis: if yes, when and how? When should it renewed? C an he vote in the price revision resolution in the Board Meeting?

Answer:
According to Section 184(1) of Companies Act, 2013, Every director shall

- at the first meeting of the Board in which he participates as a director,

- Thereafter at the first meeting of the Board in every financial year,
- Whenever there is any change in the disclosures already made, then at the first Board meeting heid after such change.

disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in Form MBP-1.

According to Section 184(2) of Companies Act, 2013, Interested director not to participate in the BM in which the contract is to be discussed Every director of a company who is directly or indirectly concerned or interested in a Contract Arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with any other director, holds more than 2% shareholding of that body corporate, shall disclose the nature of his concern or interest at the meeting of the Board i which the contract or arrangement is discussed and shall not participate in such meeting.

As Mr. Nanavati holds only 1.5% shares of A Ltd, he need not disclose the nature of his interest to OPQ Ltd.

31. Company Y with a paid up capital of 50 lakhs entered into a Contract with Company Z in which a director of Company Y is holding equity shares of the nominal value of Rs. 50,000. The director did not disclose his interest at the Board meeting u/s 184. Is the director liable for his act?

Answer: Section 184 of the Companies Act. 2013 requires the disclosure of interest by a director and prohibits an interested director to participate or vote on Boards' proceedings.
However, according to Section 184(5)(b), Nothing in this section apply to any contract or arrangement entered into or to be entered into between 2 companies or between 1 or more companies and 1 or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than 2% of the paid-up share capital in the other company or the body corporate.

In the present case, the holding of the director of Y company in company Z is less than 2% [(50,000/ 50,00,000)*100= 1%), so the director of Y company is not liable.

Loan to Directors [Sec 185]

32. Queen Construction Company Ltd. acquired 60% of the equity paid up share capital of ABC Ltd. Queen Construction Ltd. has planned to expand its operation for which additional fund is required. The Board of Directors decided to avail additional exposure of ` 10 crore from the Bank. The following data is furnished as on 30th June, 2017.

	In crores
Authorised Equity Share Capital	25
Issued and Subscribed Equity Share Capital	22
Paid up Equity Share Capital	20
Capital Reserve	2
Revaluation Reserve	1
General Reserve	3

Open cash credit Limit (for working Capital requirement) with the Bank repayable in 3 months	5
Loan obtained under the Hire Purchase agreement for acquiring vehicles	1
Long term Borrowing from Banks and other parties	15

ABC Ltd. approached Queen Construction Ltd. to grant a loan of 25 Lakhs and stand as guarantor for repayment of loan 10 Lakhs to be sanctioned by a Bank. The two loans (25 Lakhs plus 10 Lakhs) will be utilized by ABC Ltd. for its principal business activities. You being the Financial Advisor of the company, advise the Board of Directors about the procedure to be followed to avail additional exposure of 10 Crore from the Bank. Also evaluate whether the loan guarantee given by Queen construction Ltd. to ABC Ltd. is valid according to Section 185 of the Companies Act, 2013.

Answer:
As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of at Company, without obtaining the approval of shareholders in a general meeting through a special resolution, can borrow the funds including funds already borrowed upto an amount which does not exceed the aggregate of paid up capital of the company and its free reserves. Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business.

According to the above provisions, the Board of Directors of Queen Construction Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Paid up Equity Share Capital	20
General Reserve	3
Capital Reserve	-
Revaluation Reserve	-
Aggregate of paid up capital and free reserve	23
Total borrowing power of the Board of Directors of the company, i.e. 100% of the aggregate of paid up capital and free reserves	23
Less: Amount already borrowed as Long term loan	16
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	7

In the present case, the Directors of Queen Construction Limited by a resolution passed at its meeting decide to borrow an additional sum of 10 Crores from the bank. Hence, the borrowing will be beyond the powers of the Board of directors.

Thus, the Management of Queen Construction Limited., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then, the borrowing will be valid and binding on the company and its members.

According to Section 185 of the Companies Act, 2013, no Company shall, directly or

indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. However, the above sub-section shall not apply to any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary Company. [Section 185(1)(c)].

It is also provided that the loans made under this clause are utilized by the subsidiary company for its principal business activities.

In the instant case, Queen Construction Ltd. acquired 60% of the equity paid up share capital of ABC Ltd. Hence, ABC Ltd. is a subsidiary company of Queen Construction Ltd. [as per Section 2(87)] Hence, as per Section 185(1)(c), granting of loan of 25 Lakhs by Queen Construction Ltd to ABC Ltd is not valid but providing of guarantee for repayment of loan of 10 lakhs to be sanctioned by bank is valid.

33. Mr. DRT is a director of PCS Ltd. The said company is having sufficient liquid funds and Mr. DRT is in dire need of funds. In order to mitigate the hardship of Mr. DRT the board of directors of PCS Ltd. wants to lend 5 lakhs to him and 2 lakhs to his wife. State whether such loans can be given and if so under what conditions. What would be your answer if the company PCS Ltd. would have been PCS Private Ltd.?

Answer:
No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by
(a) any Director of company, or of a company which is its holding company or any Partner or Relative of any such director, or
(b) any firm in which any such director or relative is a partner.

Section 185 shall not apply to a private company which satisfies ALL the following conditions:
(a) In whose share capital no other body corporate has invested any money.
(b) If the borrowings of such a company from banks or financial institutions or any body corporate is less than lower of Twice of its Paid Up Share Capital or 50 crore.
(C) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

In the given situation, if PCS Ltd. wants to lend 5 Lakhs to Mr DRT who is a director in PCS Ltd. and 2 Lakhs to his wife, then it is in violation of Sec 185 of the Co. Act, 2013 and punishment will be attracted. If PCS Ltd would have been PCS Private Ltd. Section 185 of the Companies Act, 2013 shall not apply to Private companies if all 3 conditions are satisfied.

34. In the light of the conditions laid down by Section 185 of the Companies Act, 2013, examine if the following transactions can be considered as loans to Directors:

a) Advance payment of salary to the employee who is also the spouse of the Managing Director of

b) A sale of flat of the company at the Current Market Rate and Price. The Director pays sixty

percent Cash immediately and contracts to pay the balance in ten monthly instalments Company.

c) A loan to a firm in which the Director of the company is a Partner

Answer:
According to Section 185 of Companies Act, 2013
There is Prohibition on Loan, guarantee or security to/for the directors No company shall, directly or indirectly, advance any loan, including any loan represented by a book del to, or give any guarantee or provide any security in connection with any loan taken by

- any Director of company, or of a company which is its holding company or any Partner or Relative of any such director, or
- any FIRM in which any such director or relative is a partner

a) Advance Salary to the Employee is a popular practice to mitigate the hardships faced by the Employee the company extends such Advance salary to all its employees at the same level as the MD's spouse, thus it cannot be considered as Loan u/s 185.
b) selling one of its flats to one of a directors on receiving more than half the price in cash and agreeing to accept the balance in instalment does not amount to giving a loan to the directors. It is a credit sale. (Fredie Ardeshir Mehta V. Union of India)
c) Section 185 clearly prohibits loan to any firm in which any such director or relative is a partner. Thus it is in contravention of the provisions of Section 185(1).

Loan and Investment by Company [Sec 186]

35. Amar Textiles Ltd. is a company engaged in manufacture of fabrics. The Company has investments in shares of other bodies corporate including 70% shares in Amar Cotton Co. Ltd. and it has also advanced loans to other bodies corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd. exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, Amar textiles Ltd. has obtained a term loan from IDBI and the same is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Amar Cotton Co. Ltd. by purchase of additional 10% shares from other existing shareholders. State the legal requirements to be complied with by Amar Textiles Ltd. under the provisions of the companies Act, 2013 to give effect to the above proposal.

Answer:
According to Sec 186, No company shall -give any loan to any person / other body corporate or give any guarantee / provide security in connection with a loan to any other body corporate / person or acquire by way of subscription, purchase /otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Where it exceed the limits specified ,no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.
Any investment shall be made or loan or guarantee or security given by the company only

after when the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
The prior approval of the public financial institution concerned where any term loan is subsisting shall also be obtained .

However, where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of passing a special resolution as required by Section 186 (3) shall not apply.

In the given situation, Amar Cotton Co. Ltd. is not a wholly-owned subsidiary of Amar Textiles Ltd. So there is no exemption. Moreover, The aggregate of the investments in shares and loans granted to other bodies corporate exceeds the Ceiling limit mentioned above
No company which is in default in the repayment of any deposits or interest thereon, shall make an acquisition till such default is subsisting
If Amar Textiles Ltd. had defaulted in payment of matured fixed deposits accepted by it from the public, then it cannot make any acquisition till such default is subsisting.

36. Soft and Secure Lenders Limited, has convened a Board Meeting on 25th October,2016. One of the items of the agenda is to approve the grant of loan of Rs.20 crore to Easy Going Industries Limited, for expansion of its business activities. At the Board Meeting , out of the total of six Directors of the lending company, five directors were present and expect one director, the remaining four directors approved the grant of loan of Rs.20 crores to Easy Going Industries Limited. The Borrowing company has taken loans from a public financial institution and also deposits from public. Examine the loan proposal with reference to the provisions of the Companies Act,2013

Answer:
According to Sec 186, No company shall -give any loan to any person / other body corporate or give any guarantee / provide security in connection with a loan to any other body corporate / person or acquire by way of subscription, purchase /otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Where it exceed the limits specified ,no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.
Any investment shall be made or loan or guarantee or security given by the company only after when the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
The prior approval of the public financial institution concerned where any term loan is subsisting shall also be obtained .

In the given case, Unanimous Board Resolution is required for the loan where All the Directors present in the meeting or participating in the Board Meeting should vote in favour. Since only 4

out of the 5 directors present have cast votes in favour, UBR is not passed u/s 186.
So, loan proposal is not in compliance with the Companies Act, 2013.

37. Star ltd proposes to acquire 15% equity shares of gain investments(P) ltd for 45 lakhs which has a face value of 35 lakhs. Star ltd has an outstanding loan of 15 lakhs to a public financial Institution and had not defaulted in the repayment of loan instalments stipulated in the loan agreements. Based on the following data, Advise Star ltd about the legal position regarding the allowability of the proposed investment under the provisions of the Companies Act, 2013

	In Crores	In Crores
	Star ltd	Gain Investment (P) ltd
Authorized Capital	1	3
Paid up Share Capital	0.5	2
Free Reserves	0.2	1.5

As on the date of proposition, star Ltd does not hold any shares of any company.

Answer:

According to Sec 186, No company shall -give any loan to any person / other body corporate or give any guarantee / provide security in connection with a loan to any other body corporate / person or acquire by way of subscription, purchase /otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Where it exceed the limits specified ,no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.
Any investment shall be made or loan or guarantee or security given by the company only after when the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
The prior approval of the public financial institution concerned where any term loan is subsisting shall also be obtained .

Calculation of limit

PUSC	0.5 Cr
Free reserves	0.20 Cr
Securities Premium	-
a) 60% of (PUSC+ FR+SP)	0.42 Cr
b) 100% (FR+SP)	0.20 Cr
Higher of above (a or b)	0.42 Cr

In the given question, Star Limited has proposed to acquire 15% equity shares of Gain Investments (P) Limited for 45 lakhs. Since, the investment proposed by Star Limited in Gain Investment (P) Limited exceeds the ceiling limit of 42 lakhs, following approvals are needed

- Unanimous Board Resolution
- SR in GM or by Postal Ballot
- PFI Approval

38. ASK Housing finance company limited is prepared to give housing loans to the employees of M/S News Pharmacy ltd subject to the condition that the loans are guaranteed by M/S News Pharmacy ltd. M/S News Pharmacy ltd is not a listed company and the company will be exceeding the limits prescribed under Companies Act, 2013 by providing guarantee. Advise the Company about this legal requirement? What would be your advice if the company was required to provide security instead of guarantee?

Answer:

Related Party Transactions [Sec 188]

39. M/s.Kith and Kin Consultants Private Limited seeks your legal advice regarding the following appointments relating to directors and their relatives.
    a) Miss. Niece, a relative of a director, is to be appointed as Chief Public Relations Officer on a salary of Rs. 65,000 per month
    b) Mr. Wellconnected, a relative of a director is to be appointed as Chief Executive Officer on a consolidated salary of 2,55,000 per month.
    c) Mr. Nephew, who is a relative of one of the directors, is to be appointed as the Managing Director on a monthly salary of Rs. 2,80,000 plus other perquisites as applicable to other executives of the company.

    Advise explaining the relevant provisions of the Companies Act, 2013

Answer:
Section 188 requires compliance with the following legal requirements:
Consent of the Board is to be obtained by passing a resolution at a Board Meeting.
The agenda of the Board meeting in which the approval of the Board is to be obtained shall contain the particulars prescribed
If any director is interested in such appointment, he shall not be present at the Board meeting during discussions on such appointment.
The appointment shall require the prior approval of the members by an ordinary resolution if the monthly remuneration exceeds Rs. 2,50,000.
The explanatory statement annexed to the notice of the general meeting in which the ordinary resolution is to be passed, shall contain the prescribed particulars.
If a member is a related party, he shall not vote on such ordinary resolution.

a) Miss Niece is a relative of a director and a relative of a director is a related party. Thus, appointment of Miss Niece as Chief Public Relations Officer at a monthly remuneration of Rs. 65,000 amounts to appointment of a related party to an office or place of profit in the company, attracting the provisions of Section 188. However, such appointment does not require the prior approval of the members by passing an ordinary resolution since the monthly remuneration does not exceed Rs. 2,50,000.
b) Mr. Well connected is a relative of a director and hence a related party. Thus, appointment of Mr. Well connected as Chief Executive Officer at a monthly remuneration

of Rs. 2,55,000 amounts to appointment of a related party to an office or place of profit in the company, attracting the provisions of Section 188. Such appointment also requires the prior approval of the members by passing an ordinary resolution since the monthly remuneration exceeds Rs. 2,50,000. Thus, the appointment of Mr. Well connected as Chief Executive Officer at a monthly remuneration of Rs. 2,55,000 requires compliance with legal requirements

c) Mr. Nephew is a relative of a director and hence a related party. He is proposed to be appointed as a managing director of the company at a monthly remuneration of Rs. 2,80,000. It is assumed that managing director does not draw anything more than the remuneration to which he is entitled as a director, and is within arm's length. Hence, the office of managing director cannot be said to be an office or place of profit. Thus, the appointment of Mr. Nephew as a managing director does not attract the provisions of Section 188, and so compliance with any of the legal requirements specified under Section 188 is not required.

40. Reliable Castings Limited is a subsidiary of unique Machineries Limited. The Board of Directors of the respective companies have made the following appointments on a consolidated monthly salary of 2,52,000 with effect from 1.6.2014:

a) A, a Director of Unique Machineries Limited, s Factory Manager of Reliable Castings Limited.
b) B, a Director of Reliable Castings Limited, as Purchase Manager of Unique Machineries Limited.
c) C, a relative of a Director of Unique Machineries Limited, as Sales Manager of Unique Machineries Limited.
d) D not related to any Director of both the companies as Chief Accountant of Unique Machineries Limited. But his relative has been appointed as Additional Director of Unique Machineries Limited with effect from 1.11.2014.

Answer:

In accordance to section 188 of Companies Act, 2013- Appointment of any related party to an office or place or profit in the company, its subsidiary company or associate company attracts Section 188 of the Companies Act, 2013.

Section 188 requires compliance with the following legal requirements:

Consent of the Board is to be obtained by passing a resolution at a Board Meeting.

The agenda of the Board meeting in which the approval of the Board is to be obtained shall contain the particulars prescribed

If any director is interested in such appointment, he shall not be present at the Board meeting during discussions on such appointment.

The appointment shall require the prior approval of the members by an ordinary resolution if the monthly remuneration exceeds Rs. 2,50,000.

The explanatory statement annexed to the notice of the general meeting in which the ordinary resolution is to be passed, shall contain the prescribed particulars.

If a member is a related party, he shall not vote on such ordinary resolution.

Reliable Castings Limited is the subsidiary company of Unique Machineries Limited. Shri Ram Singh is the director of Unique Machineries Limited. As per section 2(76), a director of a company is a related party.

a) Therefore, appointment of Mr. A as a factory manager of Reliable Castings Limited

amounts to appointment of a related party to an office or place of profit in the subsidiary company, thus attracting the provisions of Section 188. Such appointment also requires the prior approval of the members by passing an ordinary resolution since the monthly remuneration exceeds Rs. 2,50,000. Thus, the appointment of Mr. A as a factory manager of Reliable Castings Limited at a monthly remuneration of Rs. 2,52,000 requires compliance with legal requirements

b) Mr. B is the director of Reliable Castings Limited and hence a related party, and so Mr. Mr. B is a related party. He is to be appointed as purchase manager in Unique Machineries Limited. The appointment of Mr. B as purchase manager in Unique Machineries Limited amounts to appointment of a related party to an office or place of profit in the holding company, which is not covered under Section 188. Therefore, the appointment of Mr. B does not attract the provisions of Section 188. Such appointment can be made without requiring any compliance with any of the legal requirements specified under Section 188.

c) Mr. C is a relative of a director of Unique Machineries Limited and hence a related party. He is to be appointed as sales manager in Unique Machineries Limited. The appointment of Mr. C as sales manager in Unique Machineries Limited amounts to appointment of a related party to an office or place of profit in the company, thus attracting the provisions of Section 188. Such appointment also requires the prior approval of the members by passing an ordinary resolution since the monthly remuneration exceeds Rs. 2,50,000. Thus, the appointment of Mr. C as sales manager of Unique Machineries Limited at a monthly remuneration or Rs.2,52,000 requires compliance with legal requirements

d) Mr. D is not related to any director at the time of appointment, and so he is not a related party . Therefore, his appointment does not attract the provisions of Section 188, and so he can be appointed as Chief Accountant in Unique Machineries Limited at a monthly remuneration of Rs. 2,52,000 without requiring any compliance with any of the legal requirements specified under Section 188.

41. Explain the legal requirements to be compiled with the Companies Act to give effect to or continuation of the above appointments of employees.

Sweet tea limited wants to sell its tea by entering into contract with the following parties:

a) Tea bros, a partnership firm in which a director of Sweet Tea ltd is a partner.
b) R & T pvt ltd in which one of the director of Sweet Tea ltd is a member
c) Strong Tea ltd in which one of the directors of Sweet Tea ltd is a director holding 3% of the paid up capital of Strong Tea ltd.

Advise steps to be taken for entering into contracts in which directors are interested.

Answer:

As per Section 188 of the Companies Act, 2013, any contract or arrangement between a company and any related party for sale, purchase or supply of any goods or materials shall require compliance with the requirements specified under Section 188 read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

As per Section 2(76), among others, following are the related parties:

(i) A firm, in which a director, manager or his relative is a partner.

(ii) (ii) A private company in which a director or manager or his relative is a member or director.

(iii) A public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital.

In the given case, all the three parties are related parties. Therefore, following legal requirements are required to be complied with for sale of tea to any of these parties:

Section 188 requires compliance with the following legal requirements:

Consent of the Board is to be obtained by passing a resolution at a Board Meeting.

The agenda of the Board meeting in which the approval of the Board is to be obtained shall contain the particulars prescribed

If any director is interested in such appointment, he shall not be present at the Board meeting during discussions on such appointment.

The appointment shall require the prior approval of the members by an ordinary resolution if the monthly remuneration exceeds Rs. 2,50,000.

The explanatory statement annexed to the notice of the general meeting in which the ordinary resolution is to be passed, shall contain the prescribed particulars.

If a member is a related party, he shall not vote on such ordinary resolution.

SELF PRACTICE QUESTIONS

1. Mr. Mohan was appointed as director at the Annual General Meeting of a company held on 30thSeptember, 2018 and he functioned in the capacity as director from then onwards. Subsequently, during the mid of August, 2019, it was noticed that there were certain irregularities in his appointment and therefore, on 31st August, 2019, his appointment was declared invalid. However, Mr. Mohan continued to act as director even after 31stAugust, 2019.

Answer: In view of the Section 176, the acts done by Mr. Mohan till the date of noticing irregularity in his appointment shall be deemed as valid and binding on the company.
Any act done by him after the date on which irregularity in his appointment was noticed by the company shall be invalid. Accordingly, acts done by Mr. Mohan after 31stAugust, 2019 shall be invalid and not binding upon the company.

2. There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant. Decide about the quorum required in a Board Meeting

Answer: According to section 174(1) of the Companies Act, 2013, quorum is one third of the total strength of Board (any fraction contained in the said one third being rounded of as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant; the total strength comes to seven. In this case 1/3 of 7 = 21/3 directors which will be rounded off as 3 which is higher than 2. Therefore, 3 directors would constitute the quorum for the Board meetings here.

3. What if there are total 15 directors in a company and during discussion on a particular item, 13 of the directors happen to be 'interested'. Decide about the quorum required in a Board Meeting

Answer: Under section 174(3) of the Companies Act, 2013, if at any time the number of the interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of the directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum.
In the given situation, there are total 15 directors and the Board meeting commences with all of them. During the meeting, an item comes up for discussion in respect of which 13 directors happen to be 'interested directors'. Inspite of the fact that the interested directors are more than two-thirds, minimum two non-interested directors who are present at the meeting shall constitute the quorum and they can validly transact that particular item of business in view of Section 174 (3).

4. State with reference to the provisions of the Companies Act, 2013 whether following companies can make donation to political parties and if so the conditions to be complied with in this regard

i) ABCD ltd, a Government Company registered in 1991 wants to donate a sum of 10 lakhs
ii) EFG ltd public company registered in 2013 wishes to contribute a sum of 5 lakhs
iii) RST ltd a company incorporated in 2014 wants to contribute a sum of 3 lakhs
iv) Rama ltd wants to make political contribution of 2000 in cash

Answer:

i) ABCD Ltd. is a Government company and so it is prohibited from making any political contribution.

ii)

iii) EFG Ltd. and RST Ltd. have been in existence for more than 3 financial years and so these companies can make political contribution without any limit, provided-
the political contribution is made by passing a resolution at a Board meeting only and each company shall disclose in its profit and loss account, the amount contributed by it to any political party and the political contribution shall not be made except –
by an account payee cheque drawn on a bank; or
by an account payee bank draft; or
by use of electronic clearing system through a bank account; or
through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

iv) Rama Ltd. cannot make any political contribution in cash since political can be made only by the following means:
By an account payee cheque drawn on a bank; or
By an account payee bank draft; or
By use of electronic cleaning system through a bank account; or
Through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

5. Out of the powers exercisable by the Board under Section 179 of the Companies Act, 2013, the Board of MN Limited wants to delegate the power to borrow monies otherwise than on debentures to the Managing Director. Advise whether such a delegation is possible? Would

your answer be different, if the delegation is made to the manager or any other principal officer including a branch officer of the company?

Answer: Under section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:

(a) To make calls on shareholders in respect of money unpaid on their shares;
(b) To authorise buy-back of securities under section 68;
(c) To issue securities, including debentures, whether in or outside India;
(d) To borrow monies;
(e) To invest the funds of the company;
(f) To grant loans or give guarantee or provide security in respect of loans;
(g) To approve financial statement and the Board's report;
(h) To diversify the business of the company;
(i) To approve amalgamation, merger or reconstruction;
(j) To take over a company or acquire a controlling or substantial stake in another company;
(k) Any other matter which may be prescribed.

Provided that the Board may, by a resolution passed at a meeting, delegate to any Committee of Directors, the Managing Director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

From the foregoing provisions, it is clear that the Board of MN Limited shall be perfectly in order if it delegates the power to borrow monies under clause (d) of Section 173 (3) to the Managing Director or to the manager or any other principal officer.

6. Mr. P and Mr. Q who are the directors of C-Tech Limited informed the company about their inability to attend the Board meeting because the notice thereof was not served on them. Discuss whether there is any default on the part of C-Tech Limited and the consequences thereof.

Answer: Under section 173(3) of the Companies Act, 2013 a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Section 173(4) further provides that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ` 25,000.

In the given case, as no notice was served on Mr. P and Mr. Q who are the directors of C-Tech Limited, every officer responsible for such default in serving notice shall be punishable with fine of ` 25,000 as required by Section 173 (4).

Neither the Companies Act, 2013 nor the Companies (Meetings of the Board and its Powers) Rules, 2014 lay down any specific provision regarding the validity of a resolution passed by the Board of Directors in case notice was not served to all the directors. The Companies Act, 2013 clearly provide for the notice to be sent to every director. The Supreme Court, in case of Parmeshwari Prasad vs. Union of India (1974) has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Hence, even though the directors concerned knew about the Board meeting, the meeting shall not be valid

and resolutions passed thereat also shall not be valid.

7. What is the procedure to be followed, when a board meeting is adjourned for want of quorum?

Answer: Section 174(4) of the Companies Act, 2013 provides that, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

Multiple Choice Questions

1. PQR Company give its assent to give guarantee to ABZ Company on the taking of loan from financial Institution. According to Companies Act 2013, the said act should be approved by the Board of Directors. State the mode of approval adopted by the Board of Directors of PQR company-

a. Board shall give approval for giving guarantee on the loan by simple majority.	b. Board shall give approval by passing circular resolution.
c. Board shall give approval by passing resolution through special majority	d. Board shall give unanimous approval.

2. Mr. X, a director of the Company intimated of his participation in the meeting scheduled on August, 2018. He declared his participation through Electronic mode in April 2017. State whether Mr. X is entitled to participate in the meeting to be conducted in August 2018-

a. Yes, intimation about such participation was made at the beginning of the calendar year	b. No because intimation was made in previous calendar year
c. Yes, because company was intimated of its participation in the meeting	d. No, because valid period of declaration(1 year) of his participation expired.

3. A director of XYZ, a pvt ltd takes a loan from its company. Due to some reasons, he fails to repay the debt within the given time period. He requests board of directors to give him time for repayment of debt. State which of the below statements is correct with respect to the exercise of the power in the given situation as per Companies Act, 2013-

a. Power to fix time limit for repayment of any debt due from director can be exercised only by members by SR at a general meeting	b. Power to fix time limit for repayment of any debt due from director can be exercised by Board of the Company itself.
c. Power to fix the time limit for repayment of any debt due from director can be exercised with the prior permission of the company in general meeting while taking debt.	d. Board shall not exercise this power if the provision related to repayment of debt is contained in the articles of the Company

4. According to Companies Act, 2013, the draft minutes of a Board meeting held through Audio visual means shall be circulated among all the directors within ----- of the meeting.

a. 10 days	b. 15 days
c. 30 days	d. One Month

5. There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the Board Meeting?

a. 2	b. 3
c. 4	d. 5

6. Mr. Rajesh Jathar and Mr. Veena Jathar are the shareholders of NY Private limited. Mr. Jathar is out of country for business purpose. They have to have a Board Meeting through video Conference to comply with the requirements. Which of the following items they cannot discuss in such meeting?

a. Convening of General Meeting	b. Approval of Board's Report
c. Appointment of Managing Director	d. Transfer of Shares

7. The gap between two consecutive board meetings of a company shall not exceed ----- days.

a. 90	b. 120
c. 150	d. 180

8. A company shall not hold more than ----- board meetings in a calendar year.

a. 4	b. 6
c. 10	d. None of these

9. Notice of every Board meeting shall be sent to every director of the company at ------

a. Indian Address	b. Address registered with Company
c. Residential Address	d. Office Address

10. No Board meeting is required to be held by -----

a. Small companies, dormant companies and companies u/s 8	b. One person Company
c. An OPC in which there is only 1 director	d. All of these

11. Central government is empowered to to grant exemption from the provisions relating to holding of Board meeting. Such exemption may be granted to-

a. An class of Companies	b. Any company
c. Small companies	d. Dormant companies

12. The notice of a board meeting shall be sent by---

a. Hand delivery	b. Post
c. Electronic means	d. Any of these

13. Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the ------year and the said declaration shall be valid for -----

a. Calendar year; 6 months	b. Calendar year; 1 year
c. Financial year; 1 year	d. Financial year; 6 months

14. In case of a Board Meeting, the quorum is required to be present-

a. Only at commencement of board meeting	b. At the time of passing each and every resolution
c. No quorum needed in Board meeting	d. None of these

15. Every contract or arrangement to which section 188 applies, shall be disclosed in ----

a. AOC-2 in Board's report	b. MBP-2 in Annual Return
c. MBP-2 in Board's report	d. AOC-2 in financial statements

16. Every company is required to keep at its registered office, a copy of contract of service entered into by it with -----

a. Managing director	b. Whole-time director
c. Both (a) and (b)	d. Every director

17. Every contract of service entered into by a company with its managing director and whole time director shall be open to inspection by -----

a. Any member of the company	b. Any director of the company
c. Both (a) and (b)	d. Any creditor of the company

18. A company intends to acquire laptops from one of its directors and in return the company shall deliver some old furniture to the director concerned. Such arrangement requires prior approval of the members by passing-----

a. An ordinary resolution	b. A special resolution
c. A resolution with no vote against it	d. A resolution with consent of all members present.

19. Where an OPC enters into a contract which is required to be recorded in the minutes of Board meeting, the company shall inform the ----- about such contract within ---- of the date of approval by the Board of directors

a. Central Government; 7 days	b. Registrar; 7 days
c. Registrar; 15 days	d. Central Government; 30 days

20. Where any investment in securities is beneficially held by the company but such investments are not held in its own name, the company shall include the particulars of such investment in the Registrar maintain by it in Form No. ---- and such register shall be preserved ------

a. MBP-2; for 8 years	b. MBP-2; permanently
c. MBP-3; for 8 years	d. MBP-3; permanently

21. Where a company makes any loan, investment, guarantee or security, it shall within ----- enter the required particulars in the register maintained in Form ------

a. 7 days; MBP-4	b. 7 days; MBP-2
c. 30 days; MBP-4	d. 30 days; MBP-2

22. Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms or other association of individuals at ---

a. First Board Meeting in which director participates	b. First Board meeting of every Financial year
c. First board meeting after any change	d. All of these

23. A notice of disclosure of interest by a director u/s 184(1) shall be given in Form ----- and it shall be preserved by the company-----

a. MBP-1; for a period of 8 years	b. MBP-2; for a period of 8 years
c. MBP-1; permanently	d. MBP-2; permanently

24. A director is required to make disclosure of his interest if he is, whether directly or indirectly concerned or interested in a contract or an arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which he with any other director holds ---- of that body corporate.

a. More than 10% shareholding	b. More than 2% shareholding
c. More than 1% shareholding	d. Share

25. If an interested director does not disclose his interest in a contract or arrangement, such contract or arrangement shall be---

a. Voidable at the option of company	b. Voidable at option of other party
c. Void	d. Illegal

26. Where a director is interested in any contract or arrangement-----

a. He shall not participate in discussion on such contract or arrangement	b. He shall not vote on such contract or arrangement
c. His presence shall not be counted for determining quorum with respect to such contract	d. All of the above

27. A company may make political contribution if approval of the board is obtained----

a. By passing a resolution by circulation	b. By passing a resolution in Board Meeting
c. Either (a) or (b)	d. By passing Unanimous Resolution of Board

28. The Board of directors of ABC ltd intends to contribute Rs. 50 lakhs to a charitable fund. Such charitable contribution exceeds the limit prescribed u/s 181. Such contribution-----

a. Cannot be made	b. Can be made if an ordinary resolution is passed in General meeting
c. Can be made if special resolution is passed in general meeting	d. Can be made on approval of CG

29. A company which makes any political contribution shall disclose in P/L-----

a. Amount contributed to Political Party	b. Name of Political Party to whom contribution is made
c. Both (a) and (b)	d. Either (a) or (b)

30. A company can contribute how much to National Defence fund?

a. Such amount as it thinks fit	b. Maximum 5% of the average net profits during immediately preceding 3 financial years
c. Maximum 7.5% of the average net profits during immediately preceding 3 financial years	d. Maximum 50,000

31. The consent of company by a ----- is required for borrowing of money if money already borrowed together with money proposed to be borrowed will exceed aggregate of ------

a. Ordinary resolution; Paid up share capital, free reserves and securities premium account	b. Special resolution; paid up share capital, free reserves and securities premium.
c. Ordinary resolution; paid up share capital and free reserves	d. Special resolution; paid up share capital and free reserves

32. A company may sell the whole of any of one or more of its undertakings if it is so authorized by-----

a. A special resolution passed in general meeting	b. An ordinary resolution passed in general meeting
c. The Central Government	d. A resolution passed in Board Meeting with consent of all directors present

33. The board may delegate----

a. Power to borrow money	b. Power to invest funds of company
c. Power to grant loans or give guarantee or provide security in loan	d. All of the above

34. Any regulation made in a general meeting shall not ----- any prior act of Board which was otherwise valid.

a. Override	b. Invalidate
c. Validate	d. None of these

35. Ac act which is ultra Vires the companies Act, 2013 may be ratified by----

a. The Board	b. The members in General meeting
c. The Central government	d. None of these

36. The quorum of Board meeting shall be---

a. one-half its total strength or one director, whichever is higher	b. one fourth of its total strength or two director, whichever is lower
c. one-third of its total strength or two directors, whichever is higher	d. one-third of its total strength or two directors, whichever is lower

37. when a resolution exercising any of powers specified in section 179(3) is passed in a Board meeting, the Company shall file with the registrar form ------ within 30 days

a. MBP-1	b. MBP-2
c. MBP-3	d. MGT-14

38. Board of directors of a company which consists of more than 1000 at any time during a financial year shall constitute a Relationship Committee.

a. Debenture holders	b. Deposit holders
c. Shareholders	d. All of the above

39. A member of the company is entitled to inspect----

a. Minutes of General Meeting	b. Minutes of Board Meeting
c. Both (a) and (b)	d. None of these

40. A company cannot hold an original Board meeting on---

a. Sunday	b. Public holiday
c. National Holiday	d. None of the above

41. Acts done by a person as a director shall be deemed to be valid even if it was subsequently noticed that-----

a. His appointment was invalid by reason of any defect or disqualification	b. His appointment was terminated by virtue of any provision contained in the Act or in the articles
c. Either (a) or (b)	d. None of the above

42. Omnibus approval granted by the Audit Committee shall be valid for a period not exceeding----

a. 1 months	b. 6 months
c. 3 months	d. 1 year

43. Vigil mechanism shall be performed in _____ company

a. Every listed company	b. Companies which accept deposits from public
c. Both of the above	d. None of the above

44. The Nomination and Remuneration Committee shall consist of -------

a. Minimum of 3 directors with independent directors forming a majority	b. 3 or more non-executive directors with at least 50% independent directors
c. 3 or more Independent directors	d. 3 or more directors with atleast 50% independent directors

45. In the Board Meeting of Moon ltd, 9 directors were present out of total 12 directors. Suppose, 3 directors vote against the resolution, and 1 director abstains from voting. The resolution shall be passed by majority if ----- or more directors vote in favour of the resolution.

a. 7	b. 5
c. 4	d. 3

46. The function of Nomination and Remuneration committee shall ----- effective evaluation of -----

a. Specify manner for; performance of Board, its committees and Individual directors	b. Carry out; performance of Board, its committees and individual directors
c. Specify manner for; every director's performance	Carry out; every director's performance

47. In case a company has appointed an alternate director to act for the original director, the notice of Board meeting shall be given-

a. To the original director	b. To the alternate director
c. Either to the original director or to the alternate director at the option of the company	d. To the original director as well as the alternate director

48. ABC ltd, a public company carrying on publication business intends to advance a loan of Rs. 20 lakhs to one of its non-executive directors. Such loan is-

a. Prohibited	b. Permitted, if it forms part of the conditions of service extended by company to all its employees
c. Permitted, if it is given pursuant to any scheme approved by members in SR	d. Permitted, if it is approved by members by passing a SR

49. It is permitted for a company to hold the shares in its subsidiary company in the name of ---------- of the company, if it is necessary to do so to ensure that the number of members of the subsidiary company is not reduced below the statutory limit

a. Any nominee	b. Any member
c. Any director	d. Managing director

50. A contract or arrangement shall not be required to be included in the register of contracts or arrangements in which directors are interested, if it relates to the sale, purchase or supply of any goods, materials or services and the value of such goods and materials or the cost of such services does not exceed ----- in the aggregate in any year.

a. Rs. 1 lakh	b. Rs. 5 lakh
c. Rs. 10 lakh	d. Rs. 25 lakh

Answer to MCQs

1	(d)	11	(a)	21	(b)	31	(b)	41	(c)
2	(d)	12	(d)	22	(d)	32	(a)	42	(d)
3	(b)	13	(b)	23	(a)	33	(d)	43	(c)
4	(b)	14	(b)	24	(b)	34	(b)	44	(b)
5	(b)	15	(a)	25	(a)	35	(d)	45	(b)
6	(b)	16	(c)	26	(d)	36	(c)	46	(a)
7	(b)	17	(a)	27	(b)	37	(d)	47	(d)
8	(d)	18	(a)	28	(b)	38	(d)	48	(a)
9	(b)	19	(c)	29	(a)	39	(a)	49	(a)
10	(c)	20	(d)	30	(a)	40	(d)	50	(b)

Inspection, Inquiry and Investigation

Class Questions

Section 206- CALL FOR INFORMATION AND INSPECTION OF BOOKS AND CONDUCT INQUIRIES

1. A notice was sent to Mr. Left by the registrar to furnish the information related to a business transacted during his tenure in the X Company. Mr. Left ignored the notice considering that he is no more an employee of X company. Registrar issued the summons against Mr. Left. Explain in the light of the Companies Act. 2013 about the liability of Mr. Left in the given case.

Answer:
The Registrar is empowered to issue a written notice to a company requiring such company-

- ✓ to furnish in writing such information or explanation, within such reasonable time, as may be specified in the notice
  or
- ✓ to produce such documents, within such reasonable time, as may be specified in the notice.

Where the information or explanation required to be furnished to the Registrar relates to any past period, the officers who had been in the employment of the company for such period, it so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

Since the Registrar has issued a written notice to Mr. Left and the information required by the Registrar relates to the past period during which Mr. Left was an employee of x Company, Mr. Left is bound to furnish to the Registrar the information required by the Registrar.

Section 209- SEARCH AND SEIZURE

2. A group of creditors of Mac Trading ltd makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 am on 6th June 2020 and the Registrar has attempted to enter the premise of company at 11:30 am but has been denied by the company, due to not having order from special court. Is the contention of company being valid in terms of Companies Act, 2013?

Answer:
As per Section 209, the Registrar may exercise the above powers only after obtaining an order

from the Special Court for the seizure of such books and papers.

In the given case, the Registrar received the complaint on 6th June, 2020 at 11 a.m., and the Registrar entered the premises of the company on the same day at 11:30 a.m., viz. within next 30 minutes. It is evident that the Registrar did not obtain any order from the Special Court to seize the books, which is a mandatory requirement as per Section 209. If the Registrar has seized the books and papers of the company, such seizure is ultra vires the provisions of Section 209, viz. the Registrar is not authorised to enter, search and seize the books and papers.

3. The Registrar of Companies West Bengal has received a complaint from a group of creditors of a company. The complaint alleges that the Directors of the company in order to prevent the unearthing of her embezzlement of company's funds are engaged in falsification and destruction of original accounting books and records The complaints urged the Registrar to seize the accounting books and records of the company so that the Directors may not be able to tamper the same You are required to state the powers, if any of the Registrar in this respect.

Answer: According to section 209(1) of Companies Act, 2013-
Where upon information in his possession or otherwise the Registrar or inspector has reasonable ground to believe that the books of a company are likely to be Destroyed, Mutilated, Altered, Falsified or Secreted, he may, after obtaining an order from the Special Court for the seizure of such books

a) Enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and
b) Seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost

The Registrar or inspector is bound to return the books seized within 180 days.
However, books and papers may be called for by the Registrar or inspector for a further period of 180 days by an order in writing if they are needed again.

Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

In view of above provisions, Registrar is empowered to seize the books and papers of the company against whom the complaint has been made by following the procedure laid down in the section.

Section 210- INVESTIGATION INTO AFFAIRS OF COMPANY

4. Shareholders of Hide and seek ltd are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture. With reference to the provisions of Companies Act, 2013, mention whether shareholders' application will be accepted?

Answer:

As per Section 210 of the Companies Act 2013, the Central Government is empowered to order an investigation into the affairs of the company if it is of the opinion that such investigation is necessary-

a) on the receipt of a report of the Registrar or inspector under Section 208
b) on intimation of a special resolution passed by d company that the affairs of the company ought to be investigated: or
c) in public interest.

In the given case, the application to the Central Government requesting investigation into the affairs of the company has been made by some shareholders. No general meeting of the company has been held, and no special resolution has been passed that the affairs of the company ought to be investigated. Since, the requirement of Section 210 with respect to passing of the special resolution has not been complied with, the application made by 101 shareholders is bound to be rejected.

However, Section 210 empowers the Central Government to order investigation into the affairs of the company, if the Central Government is of the opinion that such investigation is in public interest. Hence, upon receipt of an application from 101 shareholders, if the Central Government may consider the allegations contained in the application, is of the opinion that an investigation into the affairs of the company is necessary in the public interest, the Central Government may order such investigation.

5. Greater DINA Investors Association made a complaint by an informal letter to the Central Government that management of Secret ltd has been indulging in fraudulent activities causing loss to the shareholders and that an investigation should be carried out to find out the whole truth. On receipt of the letter, the Central Government directed the Association to approach them formally after complying with the provisions of the Companies Act, Advise the Association.

Answer:

As per Section 210 of the Companies Act 2013, the Central Government is empowered to order an investigation into the affairs of the company if it is of the opinion that such investigation is necessary-

a) on the receipt of a report of the Registrar or inspector under Section 208
b) on intimation of a special resolution passed by d company that the affairs of the company ought to be investigated: or
c) in public interest.

As per Section 214, where the Central Government receives an intimation of a special resolution under Section 210 (that the affairs of the company ought to be investigated), the Central Government is empowered to require the applicants to give such security not exceeding Rs. 25,000 as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation.

In the given case, Greater DINA Investors Association made a complaint to the Central Government requesting an investigation into the affairs of the company. Such complaint has been made by way of an informal letter. It implies that no general meeting of the company has been held, and no special resolution has been passed that the affairs of the company ought to be investigated.

On receipt of the informal letter, the Central Government has directed Greater DINA Investors

Association to make a formal application by complying with the provisions of the Companies Act, 2013. Greater DINA Investors Association is advised to get a special resolution passed in the general meeting of Secret Limited.

The formal application made by Greater DINA Investors Association to the Central Government shall state the date of passing the special resolution in General Meeting

Further the application shall be accompanied by such amount, not exceeding Rs. 25,000, as has been prescribed under Rule 5 of the Companies (inspection, Investigation and Inquiry) Rules, 2014, as the security for payment of the costs and expenses of investigation, as required under Section 214. Such security deposit shall be refunded to Greater DINA Investors Association if the investigation results in prosecution.

6. The shareholders of Kumar ltd passed a special resolution that the affairs of the company ought to be investigated. The company submitted the special resolution to the Central Government. Examine, explaining the relevant provision of the Companies Act 2013, whether the Power of Central Government to order an investigation is mandatory or discretionary?

Answer:
As per Section 210(1), the Central Government is empowered to order an investigation into the affairs of the company if it is of the opinion that such investigation is necessary –

a) on the receipt of a report of the Registrar or inspector under Section 208;
b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
c) in public interest.

As per Section 214, where the Central Government receives an intimation of a special resolution under Section 210 (that the affairs of the company ought to be investigated), the Central Government is empowered to require the application to give such security not exceeding Rs. 25,000 as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation.

In the given case, a special resolution has been passed by the shareholders of Kumar Ltd. to the effect that an investigation into the affairs of the company is required. A copy of the special resolution has been submitted to the Central Government seeking an order of investigation.
Section 210(1) has granted a discretionary power to the Central Government to order an investigation into the affairs of a company, where the Central Government receives an intimation of special resolution passed by the company. This is evident by the words "Where the Central Government is of the opinion, that it is necessary to investigate" and "it (i.e. the Central Government) may order an investigation into the affairs of the company" used in Section 210(1).

The power of the Central Government to order an investigation into the affairs of the company is not mandatory, but is discretionary, where it receives an intimation of special resolution passed by the company.

7. A majority of the Board of directors of M/S Bulk drugs ltd have reasons to believe that some of the business activities carried on in the name of the company are prima facie

against the interests of the company and its members. They want the matter to be referred to the Central Government in the form of an application for appointment of an Inspector to reach to the bottom of the matter and unveil the truth. In this connection you are required to state the steps required to be taken with reference to the provisions of Companies Act?

Answer:
The Board of directors may get a special resolution passed in a general meeting of the company, and then an application may be made to the Central Government for seeking an order of investigation into the affairs of the company in accordance with section 210 of Companies Act, 2013. On receipt of such application, the Central Government may order an investigation of the affairs of the company

Section 212- INVESTIGATION INTO AFFAIRS OF COMPANY BY SFIO

8. Mrs. Preeti, a lady aged about 32 years and Managing Director of M/S Growmore Plantations ltd has been arrested for an offence covered u/s 447 of the Companies Act, 2013 on a complaint made by the director, Serious fraud Investigation Officer. Mrs. Preeti seeks your legal advice as to the conditions under which she can be released on bail and the role of special court in this regard.

Answer:

As per Section 212(6), a person accused of an offence under Section 447 may be released on bail or on his own bond, by the Special Court only if-

a) an opportunity is given to the public prosecutor to oppose the application for such release; and
b) the Public Prosecutor either does not oppose such application for release, or if the Public Prosecutor opposes the application for release, the Special Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, a person, who is under the age of 16 years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

Further, Section 212(6) provides that the Special Court shall not take cognizance of any offence under Section 447 except upon a complaint in writing made by-

- ✓ the Director, Serious Fraud Investigation Office; or
- ✓ any officer of the Central Government authorized, by a general or special order in writing in this behalf by the Central Government.

In the given case, the complaint to the Special Court has been made by the Director, Serious Fraud Investigation Office, and so the Special Court shall take cognizance of the offence committed by Mrs. Preeti.

Mrs. Preeti has been arrested for an offence covered under Section 447. So, she can be released on bail in accordance with the provisions contained in Section 212(6). Since Mrs. Preeti is a woman, she may be released on bail if the Special Court so directs, i.e., the Special Court has the discretion to grant bail to Mrs. Preeti even without providing any opportunity to the public prosecutor to oppose the bail application.

Section 213- INVESTIGATION INTO COMPANY'S AFFAIRS IN OTHER CASES

9. The business of Weak Fabrication ltd is conducted fraudulently and the management activities are not in the interest of the company. The paid up capital of the company is one crore rupees. A group of shareholders numbering 110 representing 1/9th of total voting power decided to approach Tribunal to carry out investigation into the Company's affairs under the provision of the Companies Act. They seek your advice in the following matters stating the relevant provisions of the Companies Act, 2013.
   a) Whether the group can make valid application?
   b) Other than member, can any other person make application?
   c) Are the applicants required to furnish security for payment of cost and expenses of Investigation?

   Answer:
   According to Section 213(a)(i), the Tribunal may on an application made by not less than 100 members or members holding not less than 1/10th of the total voting power, in the case of a Company having a share capital, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the CG.

   a) In the instant case, the application by 110 members representing 1/9th of total voting power of Weak Fabrication Limited to carryout investigation into the company's affairs is valid.

   b) According to Section213(b)(i), the Tribunal may, on filling of an application by other person (not being a member of Company), if satisfied, that there are circumstances suggesting that the business of the Company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the Company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the Company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an Order is passed, the Central Government shall appoint one or more competent persons as Inspectors to investigate into the affairs of the Company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.Thus, any other person (other than a member) can also make an application.

   c) As per Section 214, Where an investigation is ordered by the CG in pursuance of an order made by the Tribunal u/s 213, the CG may before appointing an Inspector u/s 213(b), require the applicant to give such security not exceeding 25,000 as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation. Such security shall be refunded to the applicant if the investigation results in prosecution.

10. Some creditors of NTY ltd approached you to guide them to apply to the Tribunal for seeking an order for conducting an investigation into the affairs of the company due to the fact that the business of the company is being conducted with intention to defraud its

creditors. Referring to the provisions of Companies Act, guide them regarding the circumstances under which and how a person not being a member of the company can apply to the Tribunal to seek an order for conducting an investigation into the affairs of the company.

Answer:
According to Section 213(b)(i), The Tribunal may on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent.
to defraud its creditors, members, or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the CG and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it.

In the above stated manner, the creditors of NTY Ltd may approach Tribunal for conduct of Investigation.

Section 218- PROTECTION OF EMPLOYEES DURING INVESTIGATION

11. Damage ltd, the company wanted to suspend Mr. Z, the CFO of the Company during the pendency of an investigation being conducted under the provisions of the Companies Act, 2013 on the order of the Tribunal. The company approached the Tribunal on 3rd January 2017 for the proposed action. The company on 15th February, 2017 passed an order of suspension without waiting for the orders from Tribunal. Comment upon the action taken by Company with reference to latest provisions of the Act.

Answer: According to Section 218(1), Notwithstanding anything contained in any other law for the time being in force, if

a) during the course of any investigation of the affairs and other matters of or relating to a company or
b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI such company other body corporate or person proposes
   - ✓ to discharge or suspend any Employee or
   - ✓ to punish him, whether by dismissal, removal, reduction in rank or otherwise: or
   - ✓ to change the terms of employment to his disadvantage,

the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed. it shall send by post notice thereof in writing to the company other body corporate or person concerned.

If the company, other body corporate or person concerned does not receive within 30 days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company. other body corporate or person concerned may proceed to take against the employee, the action proposed.

According to section 218, the action taken by Damage ltd to suspend Mr. Z is valid as the company approached Tribunal on 3rd January, 2017 for the proposed action and on 15th Feb, 2017 passed an order of suspension without waiting the orders from Tribunal.

12. Pursuant to section 210 of the Act, an inspector was appointed to investigate the affairs of Sterling Trading limited. Mr. Ahmed the General Manager (Operations) who is aware of certain misdeeds of the management, desires to know whether he is entitled to any protection against dismissal by the company if he discloses the misdeeds during the course of examination by the Inspector. Advise him explaining relevant provisions of the Companies Act, 2013

Answer: According to Section 218(1), Notwithstanding anything contained in any other law for the time being in force, if

c) during the course of any investigation of the affairs and other matters of or relating to a company or
d) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI such company other body corporate or person proposes
   - ✓ to discharge or suspend any Employee or
   - ✓ to punish him, whether by dismissal, removal, reduction in rank or otherwise: or
   - ✓ to change the terms of employment to his disadvantage,

the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed. it shall send by post notice thereof in writing to the company other body corporate or person concerned.

If the company, other body corporate or person concerned does not receive within 30 days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company. other body corporate or person concerned may proceed to take against the employee, the action proposed.

The above protection under Section 218(1) and Section 218(2) is available to Mr Ahmed, Sterling Trading Limited, the General Manager of the company.

Section 222- IMPOSITION OF RESTRICTIONS UPON SECURITIES

13. An investigation was ordered by the Central Government u/s 216 of the Companies Act, 2016, against PKR ltd for determining the true membership of the company. In connection with the investigation, it appears to the Tribunal that there is good reason to find out the relevant facts about 9% Redeemable Cumulative Preference Shares issued by the company on 15.10.2017 and the Tribunal is of the opinion that unless restriction is imposed on further issue of such shares, the purpose can't be solved. Accordingly, the Tribunal by an order dated 15.08.2018, directed the company that the further issue of RCPS shall be subject to restrictions for a period of 4 years. Despite the order of the Tribunal as above, PKR ltd proceeded with further issue of RCPS on 20.08.2018 in order to fund working capital requirements for expansion. Referring to provisions of Companies Act, Can the Tribunal restrict further issue of RCPS? If yes, then to what period?

Answer:
In accordance with section 222 of Companies Act, 2013, Where it appears to the Tribunal in connection with any investigation u/s 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit are imposed.
the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem t for such period not exceeding 3 years as may be specified in the order.

In the instant case, the Tribunal can restrict the further issue of RCPS for such period not exceeding 3 years. So, the restriction for 4 years is invalid

14. Remedial Pharma ltd, over the years enjoys a high reputation in the market and its general reserve are ten times more than the paid up capital of the company. There is a serious apprehension of cornering the share of the company by a group of unscrupulous persons likely to result in change in the Board of directors which may be prejudicial to the public interest. The company seeks your advice as to how it can block the transfer of shares of the company under the provisions of Companies Act.

Answer:
In accordance with section 222 of Companies Act, 2013, Where it appears to the Tribunal in connection with any investigation u/s 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit are imposed.
the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem t for such period not exceeding 3 years as may be specified in the order.

The management of the company may make an application to Tribunal to inform them about transfer of shares to unscrupulous person resulting in change of composition of Board which shall be prejudicial to public interest. If Tribunal is satisfied with such plea it may pass an order for blocking such transfer.

Section 227- LEGAL ADVISERS AND BANKERS NOT TO DISCLOSE CERTAIN INFORMATION

15. Mr. Sharma is a legal advisor of M/s ABC Ltd. and in that capacity, he has rendered legal advice by way of a written communication to the company. The registrar of companies, Mumbai, issues and order to Mr. Sharma to disclose and furnish a copy of the communication made by him. Examine the power of the registrar to call for the said document from Mr. Sharma.

Answer: Section 227 constitutes professional communication incorporated in the Indian Evidence Act, 1872, according to which no advocate or legal advisor shall be compelled to disclose as to what communication was made to him by the client.

As per Section 206, the Registrar is empowered to issue a written notice and demand information or explanation and require production of documents from –
a) the company
b) any officer or employee of the company
c) any past officer or employee of the company.
As is evident from a study of Section 206, the Registrar has no power to demand any information or explanation or require production of books from the legal adviser of the company.

In the given case, Mr. Sharma is a legal adviser of M/s ABC Ltd., and the Registrar issued an order to Mr. Sharma requiring him to disclose the Communication made by him to ABC Ltd. The Registrar has also demanded a copy of the communication made by Mr. Sharma to M/s ABC Ltd. The Registrar is not empowered to call for the said document from Mr. Sharma.

Self Practice Questions

1. A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records.

Answer: **Here,** according to the provisions, Registrar may enter and search the place where such books or papers are kept and seize them **only after obtaining an order** from the Special Court.
Since in the given question, Registrar entered the premises for the search and seizure of books of the company without obtaining an order from the Special Court, he is not authorized to seize the books of the Mac Trading Limited.

2. Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture

Answer:
Here, the shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

3. The Registrar, after inspection of the book of accounts of the PQR Ltd., submitted its report with further recommendation of investigation into the affairs of the company. Explain the law as to the recommendation for further investigation by the registrar.

Answer: As per section 208 of the Companies Act, 2013, the Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.
Therefore, the registrar is authorised to submit in its report after conduct of inspection of the book of accounts, the recommendation for further investigation into the affairs of the company.

Multiple Choice Questions

1. Where Inspector calls for the books of account and other books and papers u/s 206, it shall be the duty of every director, officer or other employees of the company to-----

a. To produce all documents to Inspector	b. To furnish him with statements, information or explanation in such form as Inspector may require.
c. To render all assistance in connection with such inspection	d. All of the above

2. SFIO is to be established as per sec----- of the Companies Act, 2013.

a. Sec 210	b. Sec 211
c. Sec 209	d. Sec. 212

3. SFIO shall submit Investigation report to whom on completion of Investigation?

a. Central Government	b. Director of SFIO
c. Tribunal	d. None of the above

4. SFIO shall be headed by -------

a. Director	b. Member
c. CFO	d. Expert

5. NCLT may by order direct that the Securities shall be subject to such restriction as it may deem fit for such period not exceeding------ period as may be specified in the order.

a. 1 year	b. 2 years
c. 3 years	d. 4 years

6. The tribunal may on an application made by not less than ------ or members holding not less than one tenth of the total voting power, in case of a company having a share capital conduct an investigation into the affairs of the company.

a. 100	b. 500
c. 50	d. 1000

7. Qualification of director of SFIO is not below rank of ------ to Government of India & having knowledge in -------

a. Joint Secretary; corporate affairs	b. Joint Secretary; Taxation
c. Additional Director; Corporate affairs	d. Secretary; Forensic Audit

8. Legal advisor to any company shall be bound to disclose ---- to the tribunal/CG

a. Confidential Information	b. Name and address of client
c. Both of the above	d. None of the above

9. Under section 218, if Company does not receive approval within ---- days of making the application , then company -----to take action against the employee

a. 30 days; may proceed	b. 60 days; may proceed
c. 30 days; shall not	d. 30 days; shall not

10. Investigation may be ordered by CG u/s 210 on which basis?

a. SR passed by Company	b. Report of Inspector u/s 208
c. In public Interest	d. All of the above

11. The provisions of Chapter XIV of Companies Act, 2013 consisting of sections 206 to 209 shall-----

a. Not apply to foreign companies	b. Apply to foreign companies
c. Apply so far provisions are consistent	d. None of these

12. A copy of the report of the Inspector may be obtained from the Central Government.

a. Members	b. Creditors
c. Any person whose interest is likely to be affected	d. Any/ All of these

13. The Tribunal is empowered to make an order that the removal, transfer or disposal of funds, assets, properties of the company shall not take place or may take place subject to such conditions and restrictions as the Tribunal may deem fit. The period during which assets shall be subject to freeze shall be specified in the order of the Tribunal which shall not exceed------

a. 3 Months	b. 6 Months
c. 1 year	d. 3 years

14. Any person who is arrested by the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall within ----- be taken to a Judicial Magistrate or a Metropolitan Magistrate.

a. 24 hours	b. 48 hours
c. 72 hours	d. 1 week

15. The appointment of Director of the Serious Fraud Investigation Office shall be made by ------

a. The Central Government	b. Registrar
c. Inspector	d. The Tribunal

16. The registrar is entitled to enter, search and seize books and papers only after obtaining an order from -----

a. The Central Government	b. The Special Court
c. The Tribunal	d. Any of these

17. The turnover of a company was Rs. 120 crore. The amount of security deposit required to be made along with an application seeking an order of Investigation shall be -----

a. Rs. 10,000	b. Rs. 15,000
c. Rs. 20,000	d. Rs. 25,000

18. Where the purpose of the Investigation is to determine the true persons who are or have been financially interested in the success or failure of a company, such investigation is termed as------

a. Investigation into affairs of related companies	b. Investigation into membership of a company
c. Investigation into affairs of the Company	d. None of these

19. An investigation into the affairs of a company may be initiated even if------

a. An application has been made u/s 241	b. Any proceeding for winding up of the company is pending before the Tribunal
c. Either (a) or (b) or both	d. None of these

20. During the course of Investigation, the Inspector is entitled to take into his custody the books and papers produced before him for a maximum period of how many days?

a. 30 days	b. 90 days
c. 60 days	d. 180 days

21. Ultra Ltd. was incorporated on 13th May 2019. After one year of its incorporation the shareholders of company came to know that some transaction inside the company was not in accordance with the provision of Companies Act and also prejudicial in the interest of company and its members, so some shareholder decided to make application to Central Government to conduct investigation into affairs of the company by appointing inspector under the provision of Companies Act, 2013.
Does application of shareholder can be acceptable under the provision of Companies Act, 2013

a. No, shareholder didn't have right to make application under Section 210 of Companies Act, 2013.	b. Yes, shareholder after passing special resolution can make application to Central government to conduct the investigation under section 210 of Companies Act, 2013.
c. Yes, shareholder can make application without special resolution as company business is not in interest of company and member.	d. No, shareholder even after passing special resolution cannot make application under Section 210

Answer to MCQs

1	(d)	6	(a)	11	(b)	16	(b)
2	(b)	7	(a)	12	(d)	17	(b)
3	(a)	8	(b)	13	(d)	18	(b)
4	(a)	9	(a)	14	(a)	19	(c)
5	(c)	10	(d)	15	(a)	20	(d)
21	(b)						

Case Scenario MCQS

Quality Wines Ltd. is a public company engaged in the manufacturing of bears and wines. Its factory premises and registered office, situated at Industrial Area of Jaipur. It supplies the wines to the retails merchants, who have license to operate and sale of wine from the respective State Governments.

However, the company was not maintaining the transparency in its production and turnover of wine business and fabricated figures were being recorded in the books of accounts and annual return submitted to the Registrar. Many a times the company transported some cartons without invoicing them to other States and in the midway, were caught red-handed by the Police and next day became prominent headlines for news papers and TV Channels.

At the Rajasthan Gujarat Border, the Police searched and seized 10 trucks carrying wines without invoice, within a period of one month. In the mean time, the Excise Department also got altered.

This mal-practices came in to the knowledge of the Registrar. The Registrar after observing the appropriate formalities along with the police force, entered in to the premises and seized the books and relevant papers.

The income tax returns filed by the company during the last 3-4 years revealed that the company is continuously showing losses in the books of accounts, on account of the decline the sales volume. However, the other companies in the similar business were showing an increasing trend.

One of the person who was earlier an employee in the company in the account department made a written complaint directly to the Central Government about the mal-practices prevailing in the company such as scaling up the number of employees whereas no actual recruitment was done, not paying the excise duty on the production of wines by fabricating the production volume and other financial irregularities. The Central Government assigned the investigation into the affairs of the said company to the Serious Fraud Investigation Office (SFIO).

The Registrar, who have earlier seized the books of the company was asked to submit all such records to SFIO.

Based on the above scenario, answer the following questions:

1. When the Registrar can exercise the right of search and seizure
   a) The Registrar do not have the right of search and seizure
   b) Where the Registrar have reasonable ground to believe that the books and papers of a company are likely to destroyed by the company.
   c) Where the Registrar have reasonable ground to believe that the books and papers of a company are likely to be destroyed by the company and after obtaining an order from the Special Court for the seizure of such books and papers can enter in the premises and seize such books and papers.
   d) The Registrar can enter and seize the books and papers without obtaining permission of any court.

2. In the given case the Registrar can keep the seized books and papers with him for the period:
   a) Not later than 45th day
   b) Not later than 90th day
   c) Not later than 135th day
   d) Not later than 180th day

3. When an investigation into the affairs of the Quality Wines Ltd. can be made by SFIO:
   a) When the Police seized the trucks carrying cartons of wines without invoice
   b) When the ex-employee of the company made a written complaint on the financial irregularities.
   c) When there was loss of revenue
   d) The Central Government may assign the task of investigation of any company to SFIO, if it is in the public interest.

4. Can SFIO demand from the Registrar to hand over all the books so seized from the company:
   a) The Registrar has initiated first, hence he will retain the books till his investigation is over.
   b) The Registrar and SFIO will carry out the investigation simultaneously.
   c) Once the case has been assigned by the Central Government to the SFIO, not other investigating agency of Central or State Government shall process with the investigation and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.
   d) The SFIO may demand only the photo copies of the documents so seized by the Registrar.

5. Whether SFIO can gather information from the Registrar:
   a) The Registrar shall not part with any information with the SFIO.
   b) Any investigating agency shall provide all the relevant information or documents to the SFIO in respect of such offence.
   c) The Registrar before providing any information to such offence, shall first inform the company.
   d) Since the information may be confidential and competitions may take undue advantages, hence the sharing of information should be avoided.

1	(c)
2	(d)
3	(d)
4	(c)
5	(b)

Compromises, Arrangements and Amalgamation

List of Relevant case laws

Hindustan Lever Employees' Union v Hindustan Lever Ltd. / Tata oil Mills ltd	Leasehold assets and properties held under license were excluded from valuation. Such assets, the court said, were neither transferable nor heritable.
Hindustan Lever Employees' Union v Hindustan Lever Ltd	When Valuation confirmed by Auditors and majority of members. Objection by small group of shareholders can't be sustained.
Nokes vs Doucaster Amalgamated Collieries ltd	workers are not furniture and their services cannot be transferred without their consent
United Bank of India v United India Credit & Development Co. Ltd	amalgamation is a power to amalgamate and not an object of a company

Class Questions

Section 230-

1. PQR Limited is a listed company engaged in hospitality business (a five star hotel). Due to the current pandemic situation and frequent lockdowns, business was in a bad shape. They are on the verge of liquidation due to drastic fall in the number of customers, non-happening of banquet events, lesser room occupancy etc. The management proposed one last arrangement between the vendors and the company wherein the Annual maintenance Contract (AMC) vendors (only creditors for the company) need to let go 50% of the rate mentioned in the contract. This led to protest among some of the vendors who were not in favour of this arrangement. Total value of AMC vendors amounts to Rupees 15 crores. Value of protesting vendors amounts to Rupees 80 Lakhs. Discuss whether the company can proceed with the arrangement irrespective of protest from few vendors.

Answer: In accordance with Section 230 of Companies Act, 2013. Where a compromise or arrangement is proposed between a company and its creditors, the tribunal may, on the application of the company or creditor, call a meeting in such manner as it may think fit.
The company shall make an application to the tribunal all material facts relating to the company like the latest financial position of the company, latest auditor's report. If the Tribunal decides to hold a meeting, notice of the same shall be send to the company & its creditors individually at the address registered with the company.
Advertisement of the notice shall be put up in the website of the company and since PQR Ltd is a listed company, notice & other documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the company are listed. It shall also be published in the newspaper.
The recipient of notice shall cast their vote either by themselves or through proxies or postal

ballots to the adoption of the compromise or arrangement within one month from the date of receipt of such notice Any objection can be raised only by persons not holding less than 10% of the shareholding or having outstanding debts amounting to not less than 5% of the total outstanding debts as mentioned in the latest audited Financial Statement. Here total outstanding of vendors is Rs. 15 crores. 5% is Rupees 75 Lakhs. In the case of PQR Ltd, it is Rupees 80 Lakhs.

Where a meeting is held, majority of persons representing 3/4th in value of the creditors, (here 3/4th of Rupees 15 crore = Rupees 11 crore 25 Lakhs) agree to the compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company & the creditors.

Hence to conclude, PQR Ltd. can go forward with the arrangement of 50 % payment to vendors irrespective of protest from few vendors.

2. A meeting of members or a company was convened under the orders of the Tribunal to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares in aggregate. 70 members holding 4,00,000 shares voted for the scheme. The remaining members voted against the scheme.

Answer: As per Section 230, a scheme of arrangement between the company and members must be approved by more than 50% of the number of members who hold at least 3/4th of the value shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but abstaining from voting are not to be considered.

The scheme has been approved by members holding 4,00,000 shares. Thus, the requirement of approval of the scheme by the members representing 3/4th in the value of members present and voting at the meeting (i.e. members holding 3, 75,000 or more shares, in this case) has been satisfied.
The scheme has been approved by 70 members only. Thus, the requirement of approval of scheme by the majority of number of members, present and voting at the meeting (i.e. 101 or more members, in this case) has not been satisfied.

For approval by members , both conditions of 'majority of number of members' and 3/4th in the value of members' are to be satisfied. Accordingly, the scheme has not been approved by the requisite majority, and therefore, this scheme shall not be sanctioned by the Tribunal.

3. A meeting of members of Jaora Agricultural Equipments Limited was convened under the orders of the Tribunal for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares. 70 members holding 4,00,000 shares in the aggregate voted for the scheme. 120 members holding 90,000 shares in aggregate voted against the scheme. 10 members holding 10,000 shares abstained from voting

Answer: As per Section 230, a scheme of arrangement between the company and members must be approved by more than 50% of the number of members who hold at least 3/4th of the value shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but abstaining from voting are not to be considered.
The scheme has been approved by members holding 4,00,000 shares. Thus, the requirement of

approval of the scheme by the members representing 3/4th in the value of members present and voting at the meeting (i.e. members holding 3,67,500 or more shares, in this case) has been satisfied.

The scheme has been approved by 70 members only. Thus, the requirement of approval of scheme by the majority of number of members, present and voting at the meeting (i.e. 96 or more members, in this case) has not been Satisfied.

For approval by members , both conditions of 'majority of number of members' and 3/4th in the value of members' are to be satisfied. Accordingly, the scheme has not been approved by the requisite majority, and therefore, this Scheme shall not be sanctioned by the Tribunal.

4. A meeting of members of ABC Limited was convened as per the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent to 1000 members holding in aggregate 500000 equity shares. The meeting was attended by 800 members holding 350000 shares. 450 members holding 240000 shares voted in favour of the scheme; 200 members holding 60000 shares voted against the scheme. The remaining 150 members abstained from voting. Explain with reference to the provisions of the Companies Act, 2013, whether the scheme is approved by the requisite majority

Answer: As per Section 230, a scheme of arrangement between the company and members must be approved by more than 50% of the number of members who hold at least 3/4th of the value shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but abstaining from voting are not to be considered.

The scheme has been approved by members holding 2,40,000 shares. Thus, the requirement of approval of the scheme by the members representing 3/4th in the value of member present and voting at the meeting i.e. members holding 2,25,000 or more shares, in this case) has been satisfied.
The scheme has been approved by 450 members. Thus, the requirement of approval of scheme by the majority of number of members, present and voting at the meeting (i.e. 326 or more members, in this case) has also been satisfied.

The requirements or approval by members in terms of 'majority of number of members' as well as '3/4th in the value of members' have been satisfied, the scheme has been approved by the requisite majority, and therefore, the Tribunal may exercise its discretionary power to sanction the scheme.

5. A meeting of members of DEF Limited was convened under the orders of the Tribunal for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

Answer: As per Section 230, a scheme of arrangement between the company and members must be approved by more than 50% of the number of members who hold at least 3/4th of the value shares. It is to be noted that members or creditors not present in the meeting or present

in the meeting but abstaining from voting are not to be considered.

The scheme has been approved by members holding 7,00.000 shares. Thus, the requirement of approval of the scheme by the members representing 3/4th in the value of members present and voting at the meeting (i.e. members holding 6,75,000 or more shares, in this case) has been satisfied.
The scheme has been approved by 120 members only. Thus, the requirement of approval of scheme by the majority of number of members, present and voting at the meeting (i.e. 131 or more members, in this case) has not been satisfied.

For approval by members , both conditions of 'majority of number of members' and 3/4th in the value of members' are to be satisfied. Accordingly, the scheme has not been approved by the requisite majority, and therefore, this scheme shall not be sanctioned by the Tribunal.

6. A meeting of members of ABC Limited was convened under the orders of the Tribunal to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 600 members holding in the aggregate 25,00,000 shares. The meeting was attended by 450 members holding 15,00,000 shares. 210 members holding 11,00,000 shares voted in favour of the scheme. 180 members holding 3,00,000 shares voted against the scheme. The remaining members abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme is approved by the requisite majority.

Answer: As per Section 230, a scheme of arrangement between the company and members must be approved by more than 50% of the number of members who hold at least 3/4th of the value shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but abstaining from voting are not to be considered.

The scheme has been approved by members holding 11,00,000 shares. Thus, the requirement of approval of the scheme by the members representing 3/4th in the value of members present and voting at the meeting (i.e. members holding 10,50,000 or more shares, in this case) has been satisfied.
The scheme has been approved by 210 members. Thus, the requirement of approval of scheme by the majority of number of members, present and voting at the meeting (i.e. 196 or more members, in this case) has also been satisfied.

The requirements of approval by members in terms of 'majority of number of members' as well as '3/4th in the value of members' have been satisfied, the scheme has been approved by the requisite majority, and therefore, the Tribunal may exercise its discretionary power to sanction the scheme.

7. Surya Ltd., wants to reorganise the company' share capital by the consolidation of shares of different classes and passed a resolution to this effect in the Board meeting and thereafter made an application to the Tribunal. The Tribunal ordered that a meeting of the members be called. The company sent notices to all the members. In the meeting, some of the members made objections to such arrangements. However, the majority of the members were interested in the resolution proposed by the company. Tribunal after scrutinising the minutes of the meeting, sanctioned the proposed arrangement. Examine in the light of the given facts, that in order to give effect to the arrangement which prescribes the

reorganisation of company' share capital by the consolidation of shares of different classes, mention the requirements on the execution of the said arrangement under the Companies Act, 2013.

Answer: Section 230(1) of the Companies Act, 2013 provides that where a compromise or arrangement is proposed—
(a) between a company and its creditors or any class of them; or
(b) between a company and its members or any class of them,
The Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Here the term, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

Any compromise or arrangement needs the order of sanction by the Tribunal and the Tribunal may on an application made by the company, order the company to call the meeting of the shareholders, pass such resolution in the meetings and then forward the minutes to the Tribunal for its order. The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

Section 232

8. In the context of judicial rulings in the matter of merger, answer the following: Whether transferor company is justified in excluding assets held on lease and license arrangement, from those transferred to the transferee company?

Answer: Leasehold property (LHP) is neither a transferable right nor an inheritable right. Hence it must be excluded in the Valuation of Assets and Shares.
Case Law: Hindustan Lever Employees' Union v Hindustan Lever Ltd.

9. ABC Limited was amalgamated and merged in XYZ Limited. Some workers of ABC Limited refuse to join as workers of XYZ Limited and claim compensation for premature termination of service. XYZ Limited resists the claim on the ground that their services are transferred to XYZ Limited by the order of amalgamation and merger and, therefore, the workers must join service of XYZ Limited and cannot claim any compensation. According to the provisions of the Companies Act, 2013, examine whether the workers' contention is correct.

Answer: An order under section 232 of the Companies Act, 2013 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service, which are in their nature, incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and

the transferee company on the other.

Also, workers are not furniture and their services cannot be transferred without their consent [As established in the case law of Nokes vs Doucaster Amalgamated Collieries ltd]

In compliance with section 232(1) and (2), the tribunal may by order make a provision for the transfer of the employees of the transferor company and the transferee company. And provisions shall also be made for any persons who dissent from the compromise or arrangement scheme. According to the above provisions, the workers/employees and their services cannot be transferred without their consent. Tribunal may by order safeguard the interest of the employees/ workers.

Therefore, the workers of ABC Ltd. (Transferor) will succeed against XYZ Ltd.

10. At the time of filing of the petition for amalgamation, the object clause of both the transferor and transferee companies does not contain power to amalgamate. With reference to the provisions of the Companies Act, 2013, examine the validity of the scheme of amalgamation.

Answer: The memorandum of association lays out the scope of operations of a company beyond which the company cannot go. Anything done by the company outside the objects clause of memorandum is ultra-vires the company.
However, to amalgamate with another company is a power of the company, and not an object of the company. Therefore, no power to amalgamate is required in the memorandum of a company before making an application to the Tribunal for effecting amalgamation. Also, the power to amalgamate has been given by the statute under Section 232. Since there is a statutory provision dealing with amalgamation of companies, no special power in the objects clause of the memorandum is necessary for its amalgamation with another company. Section 232 is a complete code which gives full jurisdiction to the Tribunal to sanction amalgamation of companies, even though there may be no power in the objects clause of memorandum.
[United Bank of India v United India Credit & Development Co. Ltd]

SEC 233

11. ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Examine on the validity of the contention made by Company Secretary as per law?

Answer: As per section 233 (1), notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- ✓ 2 or more small companies
- ✓ a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit.
- ✓ such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not

a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

SEC 234

12. M/s. Unicorn Rubber Sheets Limited is incorporated and registered in the United Kingdom. M/s. Artha Rubber Sheets Manufacturing and Trading Limited is an Indian Company incorporated and registered under the provisions of the Companies Act, 2013. A scheme of compromise between the above two companies provided for an amalgamation of the English Company with the Indian Company. The CFO of the Indian Company is of the opinion that the companies being amalgamated must be companies registered in India and therefore an amalgamation with a company registered outside India is not possible. Explaining the relevant provisions of the Companies Act, 2013, examine whether the contention of the CFO is correct that the companies being amalgamated must be companies registered in lndia?

Answer: As per Section 234, a merger of an Indian company and a foreign company may be effected by-
(a) complying with the provisions of Sections 230 to 232;
(b) obtaining prior approval of Reserve Bank of India; and
(c) complying with the Rules prescribed by the Central Government in this behalf.

However, a merger of an Indian company and a foreign company may be effected only if the foreign company has been incorporated in the jurisdictions of any such country as has been notified by the Central Government in this behalf.
Also, the transferee company shall-
(a) ensure that valuation is conducted by valuers who are members of a recognized professional body in the jurisdiction of the transferee company;
(b) ensure that such valuation is in accordance with internationally accepted principles on accounting and valuation; and
(c) file a declaration along with the application made to Reserve Bank of India for obtaining its approval.

SEC 235

13. A Ltd. (transferee) decides to acquire B Ltd. (transferor) by acquiring its shares via a process of takeover u/s 235 of the Companies Act, 2013. A Ltd. prepared a scheme by which an offer was made to the shareholders of B Ltd. The offer was made on 1st August, 2019. The offer remained open for 4 months. Such offer was approved by shareholders having 92% value of the shares. Subsequently A Ltd. gave a notice to the remaining shareholders that it desires to acquire their shares. Such notice was given on 5th January, 2019. Certain dissenting shareholders made an application to the tribunal that acquisition of their shares should not be permitted. Such application was dismissed by the tribunal. Hence A Ltd. acquired shares of 5% of the dissenting shareholders (out of balance 8%). The shareholding of balance 3% shareholders continued to remain with them. Comment on the validity of

such a takeover by A Ltd.

Answer: The basic requirements as to acquisition of shares mentioned in Sec 235 of the Companies Act, 2013 are as follows:-

- ✓ The scheme or contract involving the transfer of shares in a company (transferor company) to another company (transferee company) has been approved by the holders of not less than 9/10th(90%) in value of the shares whose transfer is involved.
- ✓ The approval of 9/10th shareholders in value shall be received within 4 months after making of an offer in that behalf by the transferee company.
- ✓ The transferee company shall express his desire to acquire the remaining shares of dissenting shareholder in 2 months after the expiry of the said 4 months and shall give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- ✓ The transferee company shall be entitled as well as bound to acquire the shares of the dissenting shareholders where no application is made by any dissenting shareholders to the tribunal in 1 month of receipt of notice of acquisition of shares or where an application is made by any dissenting shareholder but such application is dismissed by the tribunal.

In the given case since application made by the dissenting shareholders has been dismissed by the tribunal hence A Ltd is entitled and bound to acquire all the shares of the dissenting shareholders i.e. entire 8% shareholding.
Since A Ltd only acquired 5% shareholding of the dissenting shareholders hence this is in contravention of Sec 235 of the Companies Act, 2013. Hence the takeover is invalid.

SEC 237 AND SEC 239

14. CPR ltd and TJC ltd are wholly owned by Government of Tamil Nadu. As a policy matter, the Government issued administrative orders for merging TJC ltd with CPR ltd in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013. Also, state the provisions governing preservation of Books and Records of TJC ltd after merger under the said Act.

Answer: According to section 237 of Companies Act, 2013- Where the Central Government is satisfied that it is essential in the public interest that 2 or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company.
Thus, In the given situation of merger between 2 wholly owned Government companies there is no specific authority with whom the application for merger is required.

Section 239 of Companies Act, 2013 provides for Preservation of books and records of amalgamated companies. The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall NOT be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

SELF PRACTICE QUESTIONS

1. How the compromise or arrangement scheme is adopted by the companies entering into any contract under the companies Act, 2013?

Answer: Section 230 of the Companies Act, 2013 deals with the powers of the Tribunal on the filing of application for the compromise or arrangement. According to the contract, where a compromise or arrangement is proposed between a company and its creditors or any class of them; or a company and its members or any class of them, the Tribunal may, on the application of the company, creditor, member of the company, or liquidator, may order a meeting of the creditors/class of creditors, or of the members/class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. Where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent.
Further section 230(4) provides that a notice shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.
Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement. Where, at a meeting held, majority representing three-fourths in value of the creditors/class of creditors, or of the members/class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors/class of creditors, or of the members/class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, "and the contributories of the company.

2. Long Lasting Ltd. applied to the Tribunal for the approval of proposed merger scheme. State the process to be complied with for the approval of the proposed merger scheme drawn by the directors of the Long Lasting Ltd. under the Companies Act, 2013.

Answer: Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.: Where an application is made to the Tribunal under section 230 of the Companies Act, 2013 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—
(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed: As per section 232(2) where an order has been made by the Tribunal as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, -
(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
(b) confirmation that a copy of the draft scheme has been filed with the Registrar;
(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promotors and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
(d) the report of the expert with regard to valuation, if any;
(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

3. At the meeting of the members of QRS Limited, a scheme of compromise and arrangement was approved by requisite majority. The National Company Law Tribunal (NCLT) after complying the provisions, issued an Order, approving the scheme of compromise and arrangement. List out the matters to be provided in the Order issued by NCLT under Section 230(7) of the Companies Act, 2013. When shall the Order be filed with ROC?

Answer: According to section 230(7) of the Companies Act, 2013, an order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—
(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
(b) the protection of any class of creditors;
(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48
(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order. [Section 230(8)]

4. A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 10,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

Answer: As per section 230 (6),of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting. In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of DEF Limited is not approved as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.

Multiple Choice Questions

1. A compromise or arrangement may be proposed between company and whom?

a. All Creditors or any class	b. All members or any class
c. Either (a) or (b) or both	d. None of these

2. A member or creditor may vote on a scheme of compromise or arrangement----

a. Himself	b. Proxy
c. Postal Ballot	d. All of the above

3. Where the Tribunal sanctions a compromise or an arrangement, it shall have power to---

a. Supervise implementation of scheme	b. Give directions and make modifications in compromise or arrangement
c. Order winding up	d. All of the above

4. An application proposing compromise may be made to Tribunal by -----

a. The Company	b. Any Creditor or member of Company
c. The liquidator in case company is being wound up	d. Any of the above

5. Any objection to compromise may be made by------

a. Persons holding not less than 5% of the shareholding	b. Person having outstanding debt amounting to not less than 10% of the total outstanding debt

c. Either (a) or (b)	d. None of these

6. A scheme of merger or amalgamation between two or more companies may be entered into in accordance with the provisions of section 233, only if-----

a. They are small companies	b. One company is a holding company and other is a wholly owned subsidiary
c. Such companies belong to such class of companies as may be prescribed	d. Either (a) or (b) or (c)

7. Where a scheme of merger or amalgamation is proposed in accordance with the provisions of section 233, a notice shall be issued by the transferor company and the transferee company to-----

a. Registrar	b. Official liquidator
c. Both (a) and (b)	d. Central Government

8. A scheme of merger proposed u/s 233 is required to be approved by majority representing ---- of creditors of transferor company and transferee company.

a. 9/10th in value	b. 2/3rd in Value
c. 3/4th in value	d. None of the above

9. Prior approval of ----- shall be required for merger of a foreign company into a company registered under this Act or vice-versa.

a. Reserve Bank of India	b. Central Government
c. The Tribunal	d. All of the above

10. The transferee company is entitled to give a notice to any dissenting shareholder of the transferor company to acquire his shares within ------ of expiry of the period during which the offer was open.

a. 4 months	b. 6 months
c. 2 months	d. 1 month

11. A notice is sent by the transferee company to some dissenting shareholders of the transferor company to acquire their shares. No dissenting shareholder makes any application to the Tribunal within till the time allowed for making such application. As a consequence, the transferee company shall be ------ to acquire shares of the dissenting shareholders.

a. Entitled	b. Bound
c. Entitled as well as bound	d. None of the above

12. The terms and conditions of the scheme of merger of a foreign company into a company registered under this Act or vice-versa may provide that consideration to the shareholders of the merging company shall be paid-----

a. In cash	b. In Depository receipts
c. Partly in cash and partly in depository receipts	d. All of the above

13. Where an acquirer becomes registered holder of ------ of the issued equity share capital of a company, he shall notify ------ of his intention to buy remaining equity shares.

a. 75% or more; Tribunal	b. 90% or more; Company
c. 90% or more; Central Government	d. 75% or more; Central Government

14. Where section 236 applies, the majority shareholders shall make an offer to minority shareholders of the company to buy equity shares held by minority shareholders at ------

a. Market price	b. Price determined on the basis of valuation by registered valuer in accordance with prescribed rules
c. Fair value to be determined by Tribunal	d. Fair value to be determined by Central Government

15. Who is empowered to order the amalgamation of 2 or more companies, if it is satisfied that such amalgamation is essential in public interest.

a. Central Government	b. Tribunal
c. Registrar	d. None of the above

16. Prior permission of whom shall be required for disposal of books and papers of a company which has been amalgamated with another company.

a. Central Government	b. Liquidator
c. Tribunal	d. Registrar

17. In relation to every offer of a scheme or contract involving transfer of shares or any class of shares in the transferor company to the transferee company u/s 235, the directors of the ------ shall prepare a circular which shall be addressed to ------

a. Transferor company; members of transferor company	b. Transferor company; members of transferee company
c. Transferee company; members of Transferor company	d. Transferee company; members of transferee company

18. In relation to every offer of a scheme or contract involving transfer of shares or any class of shares in the transferor company to the transferee company u/s 235, a circular shall be issued to members----------

a. After it is presented to Registrar for registration	b. Before it is presented to Registrar for registration
c. After it is registered by Registrar	d. None of the above

19. Kiara Limited holds 77% of the shares of Sunny Limited. Kiara Limited makes an application for merger of Holding and Subsidiary Company under section 233 – Fast Track Merger of the Companies Act, 2013. The legal counsel of Kiara Limited states that company cannot apply for merger under section 233 of the said Act. He further stated that company shall have to apply for merger as per section 232 of the Act i.e. Merger and Amalgamation of Companies. State the correct statement in terms of the validity of the difference in the opinion of the legal counsel.

(a) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between only small companies.	(b) Opinion of the legal counsel of Kiara Limited is invalid as merger shall be possible only as per section 233 between Holding and Subsidiary Company.

(c) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between Holding and wholly owned subsidiary.	(d) Opinion of the legal counsel of Kiara Limited is invalid as merger of Holding and Subsidiary company is possible under both section 232 and section 233.

Answer to MCQs

1	(c)	6	(d)	11	(c)	16	(a)
2	(d)	7	(c)	12	(d)	17	(a)
3	(d)	8	(a)	13	(b)	18	(c)
4	(d)	9	(a)	14	(b)	19	(c)
5	(d)	10	(c)	15	(a)		

Prevention of Oppression, Mismanagement

Class Questions

Section 241(Application to Tribunal for Relief) & Section 244

1. There are eight shareholders in M/S Supra Private ltd. Mr. Shyam who is holding less than one-tenth of the share capital of the company seeks your advice whether he can apply to the Tribunal for relief against oppression and mismanagement. Advise.

Answer: Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
(a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
(b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders.
As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less then one-tenth of the company's share capital.

2. The issued, subscribed and paid up capital of OPM limited is Rs. 5 crores consisting of 50,00,000 equity shares of Rs. 10 each. The company has 700 members. A petition was made to the appropriate authority duly signed by 80 members holding 2,50,000 equity shares of the company seeking relief against oppression and mismanagement. Subsequently 20 of them withdrew consent. Explain with reference to the relevant provisions of Companies Act, 2013 and decided case law whether petition is maintainable.

Answer:
As per Section 244 of the Companies Act, 2013, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be the lowest of the following:
(a) 100 members; or
(b) $1/10^{th}$ of the total number of members; or
(c) Members holding not less than $1/10^{th}$ of the issued share capital of the Company.
An application which is valid when presented to the Tribunal does not cease to be maintainable by reason of any event subsequent to its presentation to the Tribunal. After an application is presented to the Tribunal, the withdrawal of consent by one or more members does not anyway affect the maintainability of the application. Accordingly, the right of the applicant to proceed with the application or the jurisdiction of the Tribunal to dispose of the application on its own merits is not affected by reason of withdrawal of consent by any member **(Rajamundri Electric Supply Corporation v Nageshwara Rao)**

3. A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one –tenth of the total paid up share capital accounting for one-fifteenth of the issued share capital.
   The main grievance of the group is the due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Tribunal.

Answer: Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as under:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders are less than 100 nor constitute 1/10th of the total number of members or hold 1/10th of the issued share capital, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.
But below judgements in this regard are to be noted to decide the case:-
As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth).
Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd).
Thus, the shareholders may not succeed in getting any relief from Tribunal.

4. M/s City Hospital pvt ltd has two groups of directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful board of directors from the possession and control of the management of the company's factory and workshop. Books of accounts and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the Tribunal u/s 241 of the Companies Act 2013. You are required to decide with reference to the provisions of the said Act, the following issues:

a) can majority of shareholders apply to Tribunal for relief against oppression by the minority shareholders.
b) Whether tribunal can grant relief in such circumstances.

Answer:

As per Section 244, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be the lower of the following:
(a) 100 members; or
(b) 1/10th of the total number of members;
or
(c) Members holding not less than 1/10th of the issued share capital of the company.

However, in case of a company not having a share capital, the application shall be valid only if it is made by at least 1/5th of total number of members.

Section 244 does not stipulate that an application shall be maintainable only if it is made by the minority.
Application to the Tribunal by majority of shareholders is valid since the right to apply to the Tribunal is not confined to minority shareholders alone. (**Re. Sindri Iron Foundry Pvt. Ltd.)**

Where the application is made by a majority of members, relief may be granted if the Tribunal is satisfied that the majority is oppressed and has been rendered completely ineffective by the wrongful acts of a minority group.

5. MNC pvt ltd is a company in which there are 6 shareholders. Mr. Srinath who is a director and also the legal representative of a deceased shareholder holding less than one-tenth of the share capital of the company made a petition to the Tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Srinath is valid and maintainable?

Answer:
As per Section 244, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be the lower of the following:
(a) 100 members; or
(b) 1/10th of the total number of members;
or
(c) Members holding not less than 1/10th of the issued share capital of the company.

There are only 6 shareholders. Not less than 1/10th of total number of members means 'not less than 1 member. Accordingly, a single member satisfies the eligibility requirement of 1/10th of total number of members. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than 1/10th of the issued share capital of the company, provided he must have paid all the calls and other sums due on his shares.

The legal representative of a deceased member is entitled to file a petition under Section 241 of the Act for relief against oppression and mismanagement, even though the name of the deceased member is still recorded in the register of members [Worldwide Agencies Pvt. Ltd. and another v Margaret T. Desor and others)

The petition made by Mr. Srinath fulfils the requirements of Section 244, and is therefore, valid and maintainable.

6. M/S DJ ltd, a listed company as per the audited financial statements as at 31st March 2018 is having issued and paid up equity share capital compromising of Rs. 10 lakh shares of Rs. 10

each and issued and paid up preference share capital of Rs. 5 lakh shares of Rs. 10 each respectively. The members of the company after complying with the provisions of section 169 of the Companies Act, 2013 removed Mr. Satish from directorship of the company on 1st august 2018 before completion of his term of office. Mr. Satish is also one of the members of the company holding 110000 fully paid-up equity shares. Mr. satish has alleged oppression on his removal and has moved the jurisdictional Hounourable NCLT u/s 241. The board of directors is of the opinion that the application is not maintainable as per the provisions of section 244 of Companies Act. Decide.
Also, state if any other recourse that is available with Mr. Satish.

Answer:
As per Section 244, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be the lower of the following:
(a) 100 members; or
(b) 1/10th of the total number of members;
or
(c) Members holding not less than 1/10th of the issued share capital of the company.

We have to combine and count both Equity shareholders and Preference shareholders together.

In the present case, the shareholding pattern of the company is as follows: Equity share capital is Rs. 1 crore divided into 10 lakh shares of Rs. 10 each. Preference share capital is Rs. 50 lakh divided into 5 Iakh shares of Rs. 10 each.

The application has been made by Mr. Satish, who holds issued share capital of Rs. 11 lakh only. The application made by Mr. Satish does not meet the eligibility criteria specified under Section 244, and therefore, his application is not maintainable in terms of Section 244.
Moreover, Mr. Satish, who is a director as well as a member, is removed from directorship. This does not amount to oppression in terms of Section 241

Mr. Satish may explore recourse to the following measures:
As per Section 169, he shall be entitled to claim compensation for loss of office of director in accordance with the terms of his appointment or contract. However, the right to compensation is subject to the restrictions imposed under Section 202 of the Companies Act, 2013.

7. A group of shareholders holding 20% of the issued share capital of DEF ltd have filed a petition before the Tribunal alleging the following:

i) Various acts of illegal, invalid and irregular transactions entered into in the name of the company.
ii) Losses incurred due to mismanagement by the Board of directors.
iii) Non-declaration of dividend despite having sufficient profits in the past years.

Answer:

i) The shareholders have alleged that the company has entered into various illegal, invalid and irregular transactions. This in itself would not constitute a ground for invoking the provisions of Section 241 unless it is proved that these acts are oppressive to the shareholders or prejudicial to the interest of the company or public interest [Seth Mohanlal

Ganpatram v Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.
Therefore, the petition of the shareholders will fail

ii) Where a company is continuously incurring losses, it cannot be regarded as an act of oppression [Ashoka Betelnut Co. P. Ltd.] Also, incurring of losses by a company does not in itself amount to mismanagement. However, if it is proved that due to mismanagement by the Board of directors, the company has been incurring losses, it would amount to mismanagement.

iii) A bonafide decision of the Board not to recommend dividend and to accumulate profits does not amount to mismanagement [Thomas Veddon (VJ) v Kuttanad Rubber Co. Ltd.]

8. In an application made to the Tribunal claiming relief against oppression and mismanagement, it is alleged that the directors of the company have misused their position in making certain inter-corporate deposits which are against the interests of the company. Will Tribunal entertain application containing such allegation in the case of a private company.

Answer: As per Section 241 read with Section 242, for obtaining relief from oppression or mismanagement, an application is required to be made to the Tribunal. After due inquiry, the Tribunal may make such order as it may deem fit, if it is of the opinion-

(a) that the affairs of the company have been or are being conducted in a manner-

- prejudicial to public interest
- prejudicial or oppressive to the member(s) making such application or any other member(s) or
- prejudicial to the interests of the company: and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

In the given case, the applicants have alleged that the inter-corporate deposits made by the company are against the interests of the company. This in itself cannot be termed as oppression or mismanagement, since the applicants have alleged that the inter-corporate deposits are against the interests of the company, but there is no evidence regarding this. Also, there is no continuity of acts, since to prove oppression or mismanagement it must be shown that there were continuous acts oppressing the minority. The act complained of does not justify the winding up of the company on just and equitable ground.

9. Whether continuation of directors in office after expiry of their tenure and where infighting continues among them amounts to mismanagement?

Answer: The directors of the company continued to act after the expiry of their term of office. Continuation of directors after the expiry or their term of office amounted to illegality and there was no valid Board. As a result of complete deadlock in the Board, there is just and equitable ground for winding the company. Therefore, it amounts to mismanagement.

10. Mutual Distrust pvt ltd has two shareholders namely A and B holding 51% and 49% respectively. Both are working as directors. Due to differences between them, A decides to hold a Board meeting on 30th April, 2014 but the same could not be held due to non-

cooperation from B and lack of quorum. Advice A about the steps that can be taken under Companies Act.

Answer: An application seeking relief from the Tribunal must make out a prima facie case that the degree of oppression or mismanagement is so severe that there is just and equitable ground for winding up of the company.

Both the directors hold almost equal shareholding and thus have good decision making powers and it appears that holding a Board meeting is not possible due to lack of cooperation which may be termed as a deadlock.

The Tribunal in such a case is empowered to make an order that either A or B shall buy the shareholding of the other at a fair price.
In case both A and B fail to buy the shareholding of the other, the Tribunal may make an order of winding up of the company under just and equitable ground **[Kishan Lal Ahuja v Suresh Kumar Ahuja].** Thus, A is advised to make an application to the Tribunal seeking such order from Tribunal.

11. Referring to the provisions of Companies Act, as contained in section 241 of the Act, examine whether the following acts of the company amounts to oppression?

a) Allotment of shares by directors of the company by which the existing majority is reduced to minority.
b) Allotment of shares by the directors by which the existing minority shareholders are made to majority.
c) A share sale agreement was executed by VC, an NRI. The shares and transfer deed were handed over to an escrow agent. The sale was subject to RBI permission. The shares were not transferred for 6 years since RBI permission was not received. VC, after waiting for a long period of time raises the issue and complains of oppression in the capacity of a member. As per the agreement the sale was unconditional. During the above period VC did not exercise any right as shareholder nor did the company treat him as a member.

Answer:
Issue of further shares amounts to oppression if it is proved that the idea of issuing further shares was to benefit one group to the detriment of the other (Piercy v Mill(s) & Co)

Based on above, we can conclude that-
a) b) Allotment of shares by the directors of the company by which the existing majority is reduced to minority or vice versa, both shall amount to oppression since the intention of directors is malafide.

C) When a share sale agreement was executed by an NRI and the scrips and Transfer deed were handed over to an escrow agent as such sale was subject to RBI permission and full consideration money was received, then such a person after lapse of about 5 years, cannot raise an issue of oppression in the capacity of a member, as the transfer remained in abeyance awaiting RBI permission, it can be said that there is no oppression.

12. M/s Continuous conflicts ltd is a company controlled by two family groups. The first family group has four directors, namely Mr. A, Mr. B, Mr. C and Mr. D on the Board of directors. The second family group has two representatives Mr. X and Mr. Y on the Board. Because of internal family troubles, the first group by virtue of its majority shareholding removed both Mr. X and Mr. Y as the directors of the company. Aggrieved by this action the second group is planning to move an application before the Tribunal. You have been approached for advice. Advise as to the eligibility restrictions regarding filing the application and the chances of getting relief from Tribunal assuming that there is no other material on record in support of oppression on the minority group.

Answer:
To constitute oppression, the conduct complained of must affect a person in his capacity as a member of the company. Oppression in any other capacity, i.e. as a director of a company is outside the purview of Section 241.
The relief is available only if it is established that oppression is so severe that there is just and equitable ground for winding up of the company.
The relief is available only when the acts complained of are shown to be continued acts of oppression.

In the given case, it has been made clear that there is no other material on record in support of oppression on the minority. Since the conditions specified in Section 241 have not been fulfilled, there is no oppression on the second family group and therefore, relief from the Tribunal cannot be claimed.

SEC 243- Consequences

13. Mr. M, a member of XYZ Ltd. filed an application before the Tribunal complaining of oppression and mismanagement w.r.t. an agreement entered by XYZ Ltd. effecting the interest of the company. Vide order passed by the Tribunal under section 242 of the Companies Act, 2013, terminated the said agreement. The agreement was entered by Mr. H and Mr. G who was managing director and the executive director of the XYZ Ltd. Mr. Rasik, with whom the XYZ Ltd entered the agreement, filed a petition claiming the loss caused due to termination of the said agreement. Also state the legal position of Mr. H and Mr. G holding their place of office in the said situation. Examine the given facts and address the issues in terms of the relevant provisions of Companies Act, 2013.

Answer:
The provision of section 243 of Companies Act 2013 states that-
Where an order made under section 242 terminates, sets aside, or modifies an agreement

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement
(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of 5 years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

In the present case, Mr. Rasik, with whom the XYZ Ltd entered the agreement, filed a petition claiming the loss caused due to termination of the said agreement, is not viable. Further, Mr. H and Mr. G, managing director and the executive director of the XYZ Ltd. who entered agreement with Mr. Rasik which was ordered to be terminated by the Tribunal, shall not act as the managing director or other director or manager of the company, for a period of 5 years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal.

14. 15 members of KUN Limited holding 15% paid-up share capital (who have paid all calls and other sums due on their shares) of the company applied to the Tribunal under Section 241 of the Companies Act, 2013 for relief from oppression on the ground that the affairs of the company are being conducted in a manner prejudicial to their interest. The Tribunal admitted the application and upon enquiry found the allegation to be genuine. There upon the Tribunal on 1st October, 2020, ordered for termination of Mr. BAP, the Managing Director of the company, with immediate effect. Mr. BAP was appointed as the Managing Director of the company for a period of 5 years with effect from 1st April, 2017 having a clause in his letter of appointment that he would be entitled for compensation for the remaining period; in case his services are terminated by the company before expiry of his stipulated term of service. Mr. BAP claimed compensation for the remaining term of 1.5 years. KUN Limited denied to pay the compensation but offered him to re-assume his office again after lapse of a period of 3 years from 1st October, 2020. Referring to and analyzing the relevant provisions of the Companies Act, 2013, decide, whether the claim of Mr. BAP is tenable and proposal of KUN Limited is valid.

Answer:
The provision of section 243 of Companies Act 2013 states that-
Where an order made under section 242 terminates, sets aside, or modifies an agreement
(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement
(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of 5 years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

The claim of compensation by Mr. BAP is not tenable since he is not eligible for it based on above provisions.

Moreover, KUN Limited's proposal offering Mr. BAP to resume his office before the expiry of a period of 3 years is also not valid since there is a restriction of a period of 5 years from the date of termination of his service.
But, with the leave of the Tribunal, Mr. BAP can be appointed, or act, as the Managing Director of the company, provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the CG and that Government has been given a reasonable opportunity of being heard in the matter

SEC 245- Class Action Suits

15. M/s Sunshine Oils limited, a listed company as at 31st March, 2018 as per the audited financial statements is having 200 depositors with Rs. 50 crores of deposit in the company.

Out of the total 200 depositors, 20 depositors of the company have formed a group and have appointed Mr. Ram (a practicing advocate who is not one of the depositors) as their representative to file an application in the National Company Law Tribunal (NCLT) to bring a class action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are being conducted in a manner which is prejudicial to the interests of the depositors being oppressive. Will the application of Mr. Ram be admitted by the Honourable Tribunal? Discuss with reference to provisions of Companies Act, 2013.

Answer:
According to section 245 of Companies Act, 2013, such number of member or members, depositor or depositors or any class of them may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking an orders, to restrain the company from committing an act which is ultra-vires the articles or memorandum of the company.
Requisite number of members to make Application under Section 245 shall be:-
(a) at least five per cent. of the total number of members/Depositors of the company; or
(b) one hundred members/ Depositors of the company, whichever is less; or
(c) In case of a listed company, member or members holding not less than two per cent. of the issued share capital of the company.

M/s Sunshine Oils Limited is a listed company having 200 depositors and deposits of Rs. 50 crores. Out of total 200 depositors, 20 depositors of the company have filed a class action application against M/s Sunshine Oils Limited by appointing Mr. Ram as their representative to file an application to the Tribunal. Based on above provisions, Required number of depositors is only 10(5% of 200) and hence this criteria is fulfilled.

Although, there is no provision under the chapter permitting Application to be filed by someone who is not an applicant ie. Member or depositor suffering from oppression but section 432 of Companies Act, 2013 provides that-
A party to any proceeding or appeal before the Tribunal may appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person.

Hence, Application may be made by person authorized Mr. Ram as all conditions are complied with.

16. A group of members holding 380 lakh issued share capital in Zolo Ltd. a listed public company having total issued share capital of 15000 lakhs as per latest financial statements alleged that company board of director is conducting an act which is ultra vires the articles or memorandum of the company without altering the memorandum or articles of the company. They make application to tribunal (NCLT) to restrain the company from doing such ultra-vires act. With reference to the provision of Companies Act, 2013 ascertain whether the application will be admitted by tribunal (NCLT).

Answer:
According to section 245 of Companies Act, 2013, such number of member or members,

depositor or depositors or any class of them may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking an orders, to restrain the company from committing an act which is ultra-vires the articles or memorandum of the company.
Requisite number of members to make Application under Section 245 shall be:-
(a) at least five per cent. of the total number of members/Depositors of the company; or
(b) one hundred members/ Depositors of the company, whichever is less; or
(c) In case of a listed company, member or members holding not less than two per cent. of the issued share capital of the company.

In above case, members holds 2.53% (380/15000*100) of issued share capital of Zolo Ltd. which is a listed company make application before tribunal (NCLT). Hence as members meet condition of 2% of issued share capital, therefore their application can be admitted by the NCLT.

SELF PRACTICE QUESTIONS

1. The issued and paid up capital of MNC Limited is Rs. 5 crores consisting of 5,00,000 equity shares of Rs. 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

Answer:
Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:
a) 100 members; or
b) 1/10th of the total number of members; or
c) Members holding not less than 1/10th of the issued share capital of the company.

The share holding pattern of MNC Limited is given as follows:
Rs. 5,00,00,000 equity share capital held by 500 members
The petition alleging oppression and mismanagement has been made by some members as follows:
(i) No. of members making the petition – 80
(ii) Amount of share capital held by members making the petition – Rs. 10,00,000

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable. The consent to be given by a shareholder is reckoned at the beginning of the proceedings.

The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [Rajamundhry Electric Corporation Vs. V. Nageswar Rao]

2. A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendancy of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013.

Answer:
The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners.
It has been held by the Supreme Court in Rajmundhry Electric Corporation vs. V. Nageswar Rao, that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition.

Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it on its merits can be affected by events happening subsequent to the presentation of the petition.

Multiple Choice Questions

1. A class application may be made by:

a. Members	b. Depositors
c. Directors	d. Both (a) and (b)

2. Who has the power to waive the requirements of eligibility while filing application u/s 241?

a. Tribunal	b. Central Government
c. Both (a) and (b)	d. Eligibility requirement can't be waived

3. A certified copy of the order of Tribunal u/s 242 shall be filed within ----- days of

a. 7	b. 30
c. 15	d. 60

4. In case of a company not having share capital, application u/s 241 may be made by-

a. 100 members or $1/10^{th}$ of total members	b. $1/5^{th}$ of total number of members
c. Higher of (a) or (b)	d. Lower of (a) or (b)

5. In case of a company having share capital, an application u/s 241 may be made by-

a. 100 members	b. $1/10^{th}$ of total number of members
c. Higher of (a) or (b)	d. Lower of (a) or (b)

6. On receiving application u/s 241, the tribunal may exercise powers vested in it u/s 242 only if it is of the opinion that-

a. The facts justify the making of winding up order	b. Order of winding up would unfairly prejudice members
c. Both (a) and (b)	d. Facts do not justify making of winding up order

7. A class application may be made to-----

a. The Tribunal	b. The Central Government
c. The Registrar	d. Any of these

8. Where an application claiming relief from oppression or mismanagement is made to the Tribunal, the Tribunal may------

a. Impose such costs as it may deem fit	b. Make order altering MOA/AOA
c. Make interim order	d. All of these

9. ------ class action applications for the same cause of action shall not be allowed

a. Two	b. More than two
c. One	d. None of these

10. Where a class action application is found to be frivolous, the Tribunal shall direct the applicant to pay to the opposite party such cost, not exceeding ------ as the Tribunal may deem fit.

a. Rs. 10,000	b. Rs. 50,000
c. Rs. 1,00,000	d. Rs. 2,00,000

11. The provisions relating to class action application shall not apply to-----

a. Banking companies	b. Insurance companies
c. Electricity companies	d. All of these

12. In case of a company having no share capital, a class action application shall be valid only if it is made by------

a. 100 members or such percentage of total number of members of issued capital as may be prescribed	b. One or more members holding not less than such percentage of issued capital as may be prescribed
c. Lower of (a) or (b)	d. Atleast 1/5th of total number of members

Answer to MCQs

1	(d)	6	(c)	11	(a)
2	(a)	7	(a)	12	(d)
3	(b)	8	(d)		
4	(b)	9	(a)		
5	(d)	10	(c)		

Law and Regulations Related to Cyber Security and Data Privacy

Self Practice Questions

Q1. What is Cyber Crime and its categories?

Answer: Cybercrime refers to all the activities done with criminal intent in cyberspace. The field of Cybercrime is just emerging and new forms of criminal activities in cyberspace are coming to the forefront with the passing of each new day.
Cybercrimes can be basically divided into 3 major categories being Cybercrimes against persons, property and Government.

Q2. Is Cyber terrorism a Crime against Government?
Answer: The third category of Cybercrimes relate to Cybercrimes against Government. Cyber Terrorism is one distinct kind of crime in this category. The growth of Internet has shown that the medium of Cyberspace is being used by individuals and groups to threaten the international governments and also to terrorise the citizens of a country. The use of hate websites and e-mails being the most popular way in doing so.

Q3. What are the objectives of IT Act, 2000?

Answer:

- ✓ legal recognition to electronic transactions by recognizing digital signatures either by general public or Govt. official or agency, including publication of rules, regulations or any other matter including gazette notification.
- ✓ facilitate electronic filing of documents and retention thereof in govt. records (public cannot insist for use of electronic mode only)
- ✓ consequential amendments to other acts
- ✓ to set up licensing, monitoring and certifying authority

Q4. Are organizations permitted to collect personal sensitive data of Public for their use? What if they don't maintain adequate security for the same?

Answer:
According to Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, Organizations may collect personal sensitive data only on compliance of following guidelines:

a) Information shall not be collected unless it is for lawful purpose, and is considered necessary for the purpose. The information collected shall be used only for the purpose for which it is collected and shall not be retained for a period longer than which is required;
b) Ensure that the person(s) providing information are aware about the fact that the information is being collected, its purposes & recipients, name and addresses of the agencies retaining and collecting the information;

c) Offer the person(s) providing information an opportunity to review the information provided and make corrections, if required;
d) Maintain the security of the information provided; and
e) Designate a Grievance Officer, whose name and contact details should be on the website who shall be responsible to address grievances of information providers expeditiously.

According to Section 43A, Whenever a corporate body possesses or deals with any sensitive personal data or information, and is negligent in maintaining a reasonable security to protect such data or information, which thereby causes wrongful loss or wrongful gain to any person, then such body corporate shall be liable to pay damages to the person(s) so affected.

Q5. Write short notes on following BI tools:
a) OLAP
b) Real Time BI
c) Embedded BI

Answer:
a) OLAP stands for Online analytical processing. These BI tools enable users to analyze data along multiple dimensions, which is particularly suited to complex queries and calculations.
b) In real-time BI applications, data is analyzed as it's created, collected and processed to give users an up-to-date view of business operations, customer behavior, financial markets and other areas of interest. The real-time analytics process often involves streaming data and supports decision analytics uses, such as credit scoring, stock trading and targeted promotional offers.
c) Embedded business intelligence tools put BI and data visualization functionality directly into business applications. That enables business users to analyze data within the applications they use to do their job. Embedded analytics features are most commonly incorporated by application software vendors, but corporate software developers can also include them in home grown applications.

Multiple Choice Questions

1. Certifying Authority get licence to operate from:

a. Ministry of IT	b. SEBI
c. Controller of Certifying Authority	d. none of the above

2. Which among the following is not an offence under IT Act.

a. tampering with computer source documents	b. hacking: destruction, deletion, alteration of nay data in any computer with an intention of damage/ injury
c. misrepresentation to controller or certifying authorities	d. making a faulty contract

3. Information Technology (Reasonable Security Practices And Procedures And Sensitive Personal Data Or Information) Rules, was notified in the year:

a. 2011	b. 2012
c. 2013	d. 2014

4. OSBI stands for.

a. Operational source Business Intelligence	b. Open source business Innovation
c. Open source Business intelligence	d. none

5. The key benefits that businesses can get from BI applications include the ability to:

a. speed up and improve decision-making;	b. optimize internal business processes;
c. increase operational efficiency and productivity;	d. all of the above

6. Decision of Cyber appellate Tribunal can be appealed to;

a. High Court	b. supreme Court
c. None of the above	d. Not appealable

7. Information Technology (Reasonable Security Practices And Procedures And Sensitive Personal Data Or Information) Rules, 2011.

a. only apply to bodies corporate and persons located in India.	b. only apply to bodies corporate and persons located out of India.
c. Apply to individuals	d. All of the above

8. Which among the following is not a Cyber crimes under the IT Act:

a. Tampering with Computer source documents	b. Hacking with Computer systems, Data alteration.
c. Publishing obscene information.	d. Sending threatening messages by email

9. Which of the following is not an cyber Offence to Public

a. Terrorism	b. Warfare
c. Piracy	d. Data alteration

10. Access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection, is called:

a. Squatting	b. Vandalism
c. Hacking	d. Trespass

Answer to MCQs

1	(c)	2	(d)	3	(a)	4	(c)	5	(d)
6	(a)	7	(a)	8	(d)	9	(d)	10	(d)

Specific Legal Provisions Related to MSME Sector

1. Balaram is school drop out but took over his father's business after his sudden death. The business, a proprietorship firm, is manufacturing and selling rubber spares and is located at remote place in the District of West Bengal. Turnover of business was Rs. 342 crore. Though not audited or evaluated, the investment in plant and machinery is around Rs. 93 lakhs. The business is not registered with DIC but with GST. He pays income tax. He wants to expand his business and wants to know:
   i) What category of industry the business is falling?
   ii) Is registration compulsory?
   iii) Where to register?
   iv) What are the benefits of registration?

Answer:

i) The business falls under micro enterprise as defined under MSME Act and Rules. Since the investment in Plant and Machinery or Equipment:
   Not more than Rs. 1 crore and Annual Turnover; not more than Rs. 5 crore.
ii) Registration is not compulsory but lot of benefits are not available to unregistered parties.
iii) Registration has to be taken in the office District Industries Centre(DIC)
iv) Registered units shall get the benefit of loan, loan repayment moratorium, tax holiday, price preference by Govt. organizations etc.

2. The buyer is liable to make payment on or before the appointed day but in case of failure or dispute, any party may move to an authority. Explain briefly about composition of such authority/Council?

Answer:

Any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council. The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction.

It shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:-

- ✓ Director of Industries, or any other officer not below the rank of such Director.
- ✓ One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
- ✓ One or more representatives of banks and financial institutions lending to micro or small enterprises; or
- ✓ one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

3. Write short note on **ECLGS or the Emergency Credit Line Guarantee Scheme**

Answer: It is a scheme launched by the Government of India as a special scheme, considering the COVID-19 crisis. The Scheme aims to provide 100% guarantee coverage to banks and NBFCs

to enable them to extend emergency credit facilities to business enterprises / MSMEs in view of COVID-19 to meet their additional term loan or additional working capital requirements.

Recently, the Government extended the ECLGS to 31st March 2022 with the purpose to provide relief to MSMEs.

100% guarantee coverage for the additional funds sanctioned under the Emergency Credit Line Scheme. The interest rate charged is capped at 9.25% for banks and 14% for NBFCs. A maximum tenure of 4 years from the date of disbursement is stipulated under the Scheme. The moratorium period on the principal amount is 12 months.

4. What is appointed day?

Answer: means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

"the day of acceptance" means,-

(i) the day of the actual delivery of goods or the rendering of services; or

(ii) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

"the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

Multiple Choice Questions

1. NSIC stands for:

a. National Social Institute Corporation	b. National Small Institute Corporation
c. National Scheme for Industries and companies	d. National Small Industries Corporation.

2. If a unit has investment in plant an equipment of Rs. 55 crore and turnover of Rs. 300 crore. It will be classified as:

a. Micro	b. Small
c. Medium	d. none of the above

3. While calculating the value of assets for ascertaining the classification, the value of the following is excluded.

a. Land	b. furniture and fittings
c. none of the above	d. both of the (a) and (b)

4. While calculating the value of assets for ascertaining the classification, the value of the following is excluded.

a. any sales	b. domestic sales
c. exports	d. none of the above

Answer to MCQs

1	(d)	2	(d)	3	(d)	4	(c)

The Competition Act, 2002

1. An understanding has been reached among the manufacturers of cement to control the price of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings.

Examine whether the above understanding can be considered as an 'Agreement' with the meaning of Section 2(b) of the Competition Act, 2002.

Answer:
'Agreement' includes any arrangement or understanding or action in concert:
(i) Whether or not, such arrangement, understanding or action is formal or in writing or
(ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings. [Section 2(b)].

In view of the above definition of 'agreement', and understanding reached by the cement manufacturers to control the price of cement will be an 'agreement' within the meaning of section 2(b) of the Competition Act, 2002 even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

---

2. Mr. Zupi was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. P. K. against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. P. K. will succeed.

Answer:
As per section 15 of Competition Act 2002 any act or proceeding of the Commission shall not be invalidated merely on the ground of:
(a) any vacancy in, or any defect in the constitution of the Commission; or
(b) any defect in the appointment of a person acting as a Chairperson or as a member; or
(c) any irregularity in the procedure of the Commission not affecting the merits of the case.
Here in this case Mr. Zupi should have professional qualification of not less than 15 years as per section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

---

3. Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer' under the Competition Act, 2002.

Answer:
According to Competition Act, 2002"consumer" means any person who—
(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

---

4. Upon an enquiry made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Act, 2002, describe the matters which may be provided in the said order.

Answer:
The Commission, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, namely:
(a) the transfer or vesting of property, rights, liabilities or obligations.
(b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise.
(c) the creation, allotment, surrender or cancellation of any shares, stocks or securities.
(d) Omitted.
(e) the formation or winding up of an enterprise or the amendment of the memorandum of association
or articles of association or any other instruments regulating the business of any enterprise.
(f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise
may be altered by the enterprise and the registration thereof.
(g) any other matter which may be necessary to give effect to the division of the enterprise.

---

5. ABC Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment.

Answer
Debentures and shares after allotment can be considered as 'goods' within the meaning given under Section 2(i) of Competition Act, 2002

---

6. Mr. M was a member of The Competition Commission of India. He retired on 31st March 2012. He was offered the post of Chairperson in White Ltd. with appropriate remuneration and perquisites. Discuss whether he can accept the job. What will be the position if Mr. M joins Gail Ltd., a Government company with effect from 1st April 2013

Answer:
According to Section 12 Competition Act, 2002, The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or be connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission, other than employment in Government or Government Organisation /Companies.

MR. M cannot join White LTD. However, there is no restriction for him to join GAIL on 1st April 2013 as it is a government company.

---

7. An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of the Competition Act, 2002.

Answer
According to Section 2(b) This arrangement can be considered as an agreement.

---

8. The association of Truck Operators of India by agreement insisted that members of the association shall not deal with non-members in transportation of goods. The association claims that this agreement is entered for the welfare of trade and not for any other purpose. Would this agreement be under the purview of the Act? Will the answer be different if the association attempts to control the provisioning of services rendered by its members?

Answer:
Agreement is horizontal anti-competitive, hence void and control or provisioning of services is also void, sec. 3(3)(b).

---

9. The orange producers from Kashmir have formed an association to control production of oranges. Examine whether it will be considered as a cartel within the meaning of sec 2© of the Competition Act, 2002.

Answer
"cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services
The association that has been formed is that of orange producers. It clearly falls within the definition of „cartel" as given under Sec 2(c) of Competition Act, 2002.

10. Mr. A was a member of the Competition Commission of India. On the basis of information that he had acquired such financial interest as was likely to affect prejudicially his functions as a member of the Commission, the Central Government appointed an officer to hold an inquiry. On the basis of report of the said officer the Central Government issued an order of removal of Mr. A. Decide whether the action of the Central Government is in order under the provisions of the Competition Act, 2002?

Answer:
Yes, Sec. 11 empowers CG to remove the Chairperson or any member of the Commission on various grounds

Laws related to Insurance Sector (Including Insurance Act, IRDA Act, 1999)

1. "life Policy cannot be questioned after the expiry of 2 years from the date on which it was effected". Explain with reference to Section 45 of the act.

Answer:
Inaccurate or false particulars: An insurer shall not call in question a Life .Insurance Policy after the expiry of 2 years from the date on which it was effected on the ground that –
(a) a statement made in the proposal for insurance. Or
(b) in any report of a Medical Officer. or Referee, or Friend of the insured. or in any other document leading to the issue of the policy, was inaccurate or false. [Sec. 45]

Exception: The above provision does not apply if the Insurer shows that such statement was on
a) A material mailer or suppressed facts which it was material to disclose and
b) That it was fraudulently made by the policy-holder and
c) That the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose. Only the insurer can repudiate - LIC Vs. G.M.Chennabasamma.

LlC challenged a policy after 2 years after its issue. It was in evidence that the assured fraudulently suppressed facts . "was held that the LlC was not liable - Mithoolal Vs_ LlC (SC 1962).

Held that "If a period of 2 years has expired from the date on which the policy of life insurance was effected, that policy cannot be called in question by on insurer on the ground that a statement mode in the proposal tor insurance or on any report of a medical officer or referee, or a friend of the insured, or in any other document leading to the assure of the policy, was inaccurate or false." - LIC Vs. Janaki Ammal (Mad HC 1968).

Note:
(a) Policies issued in India shall be subject 10 law in force in India.
(b) The insurer can notify the Policyholder of the options available to him in case of non-payment of premiums.
(c) The Life Policy Holders have the right to seek for Medical Reports procured by the Insurer.

2. Explain briefly the powers of the Central Government to issue directors to the IRDA, as per IRDA Act 1999.

Answer:
The provisions of section 18 of IRDA Act 1999 may be explained as follows:
1. Nature of directions and their binding effect [Section 18(1)]
Without prejudice to the foregoing provisions of this Act, The Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative mailers, as the Central Government may give in writing to it from time to time:
Opportunity to Authority before giving directions [Proviso to Section 18(1)] . The Authority shall, as for as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

2. 'Question of policy or not' to be decided by the Central Government [Section 18(2)1
The decision of the Central Government, whether a question is one of policy or not, shall be final.

---

3. Whether appointment of Controller of Insurance is Compulsory? Explain.

Answer:
The provisions relating to appointment of Controller of Insurance is explained as below:
1. Appointment on supersession of IRDA [Section 2B(1)]
If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act. 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under section 19(3) of the said Act

2. Factors to be considered at the time of appointment of Controller of Insurance [Sec 28(2)]
In making any appointment of Controller of Insurance, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualification.

---

4. What shall be the composition of the Insurance regulatory and development authority?

Answer:
The composition of the Authority may be explained as follows:

Chairperson and Members [Section 4(1)1]
The Authority shall consist of following members namely:

(a) a Chairperson:
(b) not more than 5 whole time members:
(c) not more than 4 part-time members,
to be appointed by the Central Government from amongst persons of ability, integrity and standing who. Have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government be useful to the Authority.

Requirement as to specialised areas [Section 4(2)]
The Central Government shall, while appointing the Chairperson and the whole-time members. ensure that atleast one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

---

5. Explain the Provisions relating to transfer of assets and liabilities of Interim Insurance Regulatory Authority.

Answer:
The provisions relating to transfer of assets and liabilities at Interim Insurance Regulatory Authority, as contained in section 13, are as follows: On the appointed day, -

(a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority.
Explanation:- The assets of the Interim Insurance Regulatory Authority shall be deemed 10 include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of. such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same: and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind
(b) Without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all mailers and things engaged to be done by, "with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done with orjer, the Authority
(c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority: and
(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

---

6. Section 14(2) of the Insurance Regulatory and Development Authority Act, 1999 specifies the powers and functions of the Insurance Regulatory and Development Authority, list out those powers and functions of the Authority.

Answer:
The powers and functions of the Insurance Regulatory and Development Authority shall include,-

(i) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration.
(ii) Protection of the interests of the policy-holders in mailers concerning assigning of policy, nomination by policy-holders insurable interest. settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance:
(iii) Specifying code of conduct of the Surveyors.
(iv) Determining qualifications and training aspect of agents and intermediary.
(v) Levying fees and charges for their work.
(vi) Conducting investigations and enquiries relating to issues concerning insurance business.
(vii) Regulating and controlling business not controlled by Tariff Advisory committee under section 64 of Insurance Act 1938.
(viii) Regulatory investment funds by the Insurance Companies.
(ix) Regulating maintenance of margin of solvency.
(x) Adjudicating and settling disputes between intermediaries and insurers.
(xi) Supervising the functioning of Tariff Advisory Committee.

---

7. M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe.

Answer:
Given problem is based on the section 2CB of the Insurance Act, 1938. Said section deals with the Indian properties not to be insured with foreign insurers. According to the section, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the IRDAl.
In the given case, act of registration of aircraft of M/s Samrat which is an Indian property, with an insurer in Europe, is an invalid act.

---

8. Which principle of insurance is related to the following statements?
(I) The cause for loss must be related to the purpose of insurance.
(II) The insured should not be allowed to make any profit by selling damaged or in the case of lost property being recovered.

Answer:
(I) Principle of Causa Proxima
(II) Principle of Subrogation

9. Is there any maximum limit on shareholding by the promoter in an Indian Insurance company, as per Insurance Act, 1938?

Answer
Maximum limit is 26% or such other percentage as may be prescribed, of the paid-up equity capital in an Indian Insurance company. [section 6AA]

Laws related to Banking Sector (Including Banking Regulation Act, SARFAESI)

1. The Board of Director of ABC Ltd., a banking Company incorporated in India, for the accounting year ended 31-3-2010 transferred 15% of its net profit to its Reserve Fund. Certain Shareholder of the Company objects to the above act of the Board of Directors on the ground that it is violative. Examine the provision of Banking Regulation Act, 1949 and decide -

i. Whether contention of the Shareholder is tenable?

ii. Would your answer be still the same in case the Board transfers 30% of the Company's Net Profits to Reserve Fund?

Answer

i. The objection made by the shareholders is valid since the minimum amount to be transferred to the reserve fund is 20% of profits according to Section 17 of Banking Regulation Act, 1949.

ii. The Board is free to transfer to reserve anything over and above 20% of net profits.

---

2. Soft Banking Company Limited has advanced a sum of `25.00 lacs to Mr. A, a director of the company, to meet his personal liabilities but due to some adverse conditions, Mr. A is not in a position to repay the loan. The Board of directors of the company is considering to remit a sum of `10.00 lacs. The Board of Directors seeks your advice.

Answer

Prior approval of RBI is required (Section20A)

---

3. Accounts and Balance Sheet along with auditor's reports has been filed with Reserve Bank of India after nine months from the end of the period to which these relate. Comment on the validity based on Banking Regulation Act, 1949.

Answer:

Section 31 provides for publication of the Profit & Loss Account, Balance Sheet and the Auditor's report in the prescribed manner as well as for the submission of three copies thereof as returns to the Reserve Bank within a period of three months which may be extended up to six months.

Hence, it amounts to contravention of section 31 of the Banking Regulation Act, 1949.

---

4. PQR Bank Limited is not managing its affairs properly. Employees as well as depositors of the bank have complained to the Central Government from time to time about such mismanagement and requested the Central Government to acquire the undertaking of the Banking Company. Explain the powers of the Central Government in this regard under the Banking Regulation Act, 1949.

Answer
According to section 36AE, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company

---

5. What measures can a securitization or reconstruction company adopt for the purpose of asset reconstruction?

Answer:
According to Section 9, an asset reconstruction company may for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:
(a) the proper management of the business of the borrower, by change in or takeover of, the management
of the business of the borrower;
(b) the sale or lease of a part or whole of the business of the borrower;
(c) rescheduling of payment of debts payable by the borrower;
(d) enforcement of security interest in accordance with the provisions of this Act.
(e) settlement of dues payable by the borrower;
(f) taking possession of secured assets in accordance with the provisions of this Act;
(g) conversion of any portion of debt into shares of a borrower company.

SEBI Regulations

Self Practice Questions

1. Write a small note on differential pricing.

   Answer:

   An issuer may offer equity shares and convertible securities at different prices, subject to the following condition:

   (a) The retail individual investors/shareholders or employees entitled for reservation making may be offered equity shares at a price which is not lower than 10% the price at which net offer is made to other categories of applicants.

   (b) In case of a book built issue, the price of the equity shares and convertible securities offered to an anchor investor cannot be lower than the price offered to other applicants.

   (c) In case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.

   (d) Face value may be less than 10 but not less than Rs. 1 if the issue price is Rs. 500 or more per share. If issue price is less than Rs. 500 the face value shall be Rs. 10 per share.

2. What do mean by "lock in period"?

   Answer:

   Lock-in period refers to the number of years in which investors cannot withdraw or sell the funds they have created.

   (a) minimum promoters' contribution is locked-in for a period of 3 years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later.

   (b) promoters' holding in excess of minimum promoters' contribution is locked-in for a period of 1 year. However, excess promoters' contribution in a further public offer are not subject to lock-in.

3. Define "unpublished price sensitive information".

   Answer:

   "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

   (i) financial results;
   (ii) dividends;
   (iii) change in capital structure;
   (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions

(v) changes in key managerial personnel.

4. Discuss in detail, the book building process.

Answer:
Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities.
(a) In an issue made through the book building process, the allocation in the net offer to public category is made as follows:
(1) Not less than 35% to retail individual investors.
(2) Not less than 15% to non institutional investors i.e. investors other than retail individual investors and qualified institutional buyers.
(3) Not more than 50% to Qualified Institutional Buyers; 5% of which would be allocated to mutual funds;
provided that in addition to 5% allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

In an issue made through the book building process under sub-regulation (2) of regulation 6, the allocation in the net offer to public category shall be as follows:
(1) not more than 10% to retail individual investors;
(2) not more than 15% to non-institutional investors;
(3) not less than 75% to qualified institutional buyers, 5% of which shall be allocated to mutual funds:
In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified.

(b) In an issue made other than through the book building process, allocation in the net offer to public category will be made as follows:
(1) minimum 30% to retail individual investors, and
(2) remaining to individual applicants other than retail individual investors and other investors including corporate bodies or institutions, irrespective of the number of equity shares and convertible securities applied for.
(3) the unsubscribed portion in either of the categories specified above (point 1 and 2) may be allocated to applicants in the other category.
If the retail individual investor category is entitled to more than 50% on proportionate basis, the retail individual investors will be allocated that higher percentage.

5. What are the requirements of a company which wants to make public issue for the first time?

Answer:
An issuer may make an initial public offer only in following cases
(1) The issuer has net tangible assets of at least Rs. 3 crores in each of the preceding 3 years (of 12 months each) of which not more than 50% are held in monetary assets. If more than 50% of the net tangible assets are held in monetary assets, then the issuer has to make firm commitment to utilize such excess monetary assets in its business or project. The 50% criteria will not apply in case of IPO entirely through offer for sale.
(2) It has a minimum average pre-tax operating profit of Rs. 15 crores, calculated on a restated and consolidated basis, during the 3 most profitable years out of the immediately preceding 5

years.
(3) The issuer company has a net worth of at least Rs. 1 crore in each of the preceding 3 full years (of 12 months each).
(4) In case of change of name by the issuer company within last one year, at least 50% of the revenue for the preceding 1 year should have been earned by the company from the activity indicated by the new name.

Multiple Choice Questions

1. Maximum days for keeping an issue open is;

a. 7	b. 8
c. 9	d. 10

2. At the time of IPO, the issuer has to have a:

a. CFO	b. MD
c. Designated Compliance Officer	d. Atleast one Independent Director

3. Which of the flowing do not require prospects

a. Rights Issue	b. Bonus Issue
c. IPO	d. FPO

4. Minimum Face value of shares can be-

a. 10	b. 5
c. 1	d. 15

5. Takeover means

a. buying few shares	b. acquiring 10%
c. acquiring shares which will give control over the management.	d. none of the above

6. The purpose of the SEBI Act is to provide for the establishment of a Board called Securities and Exchange Board of India (SEBI). The Preamble to the Act provides for the establishment of a Board to:

a. Protect the interests of investors in securities	b. Promote the development of the securities market
c. To regulate the securities market	d. All of these

7. SEBI has three functions rolled into one body. Which of the following is not the function of SEBI?

a. Quasi-legislative	b. Quasi-judicial
c. Quasi-executive	d. Quasi-official

8. For the appointment, reappointment, remuneration and removal of the director of a banking company, prior approval of ..... should be obtained.

a. Chairman	b. RBI
c. Managing Director	d. Finance Secretary

Answer to MCQs

1	(d)	6	(d)
2	(b)	7	(d)
3	(c)	8	(b)
4	(c)		
5	(c)		

State True or False

1) SEBI regulations normally apply to public issues.
2) Promoters contribution is locked in for 3 years
3) Only Company secretary can be compliance officer.
4) Information relating to change in capital structure comes under "unpublished price sensitive information" under Insider Trading Regulation
5) SEBI (SAST) regulation and takeover code is same.

Fill in the blanks

1) In case of IPO, the minimum promoters contribution shall be……percent of the post issue capital
2) When promoters of the target company voluntarily transfers shares, it is called……..takeover
3) In case of open offer, the account where payable amount to shareholders are kept is called……
4) Identified date means …… .working days after closure of the offer.
5) Minimum subscription is ….. percentage of the issue size.

Answer to True/False

1	True
2	True
3	False
4	True
5	True

Answer to Fill in the Blanks

1	20
2	Friendly
3	Escrow Account
4	10
5	90

Foreign Exchange Management Act, 1999

Residential Status

1. Printex Computer is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its headquarters in Pune. It has a branch in Dubai which is controlled by the headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai branch?

Answer:
Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)].
Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi).
Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'
However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

2. Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:
   i) MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2004.
   ii) WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.
   iii) WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.

   Answer:
   Therefore, residential status of MKP Limited as well as the New York branch of MKP under FEMA shall be determined for each of them separately.
   i) MKP Limited is incorporated in India. Therefore, it is a 'person resident in India'. MKP Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of MKP Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India' and so the New York branch is a 'person resident in India'.
   ii) WIP Ltd. as well as Chandigarh branch of WIP Ltd. is a 'person'. WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India. The Chandigarh branch of WIP Ltd. is a 'person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident

outside India'.

iii) The Singapore branch of WIP Ltd., though not owned, is controlled by the Chandigarh branch. The Singapore branch is a person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

3. Mr. X resided in India during the financial year 2000-2001 for less than 183 days. He came to India on 1st April, 2001 for employment. What would be his residential status during the financial year 2001-2002 under FEMA, 1999?

Answer:
The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. X resided in India for less than 183 days in the financial year 2000-01. Therefore, for the financial year 2001-02 he is a 'Person resident outside India'

4. Mr. Kishore resided in India during the Financial Year 2009-2010 for less than 182 days. He came to India on 1st April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Years 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999.

Answer:
The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year.
Residential status of Mr. Kishore for financial year 2010-2011
For the financial year 2010-11, Mr. Kishore is a 'Person resident outside India' since he did not reside in India for more than 182 days in the preceding financial year, viz. 2009-2010.

Residential status of Mr. Kishore for financial year 2011-2012
Mr. Kishore resided in India for more than 182 days in the preceding financial year, viz. 2010-2011. Also, he came to India for the purpose of business. Therefore, he became a person resident in India. However, he left India for employment outside India on 30thJune, 2011, and so he ceased to be a person resident in India.

Thus, Mr. Kishore was a person resident in India only up to 30thJune, 2011 and not for the entire financial year 2011-2012.

Current Account and Capital Account Transactions

5. Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:
(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
(ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.
Advise him whether he can get Foreign Exchange and if so, under what conditions?

Answer:
Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards

some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

6. Under the auspices of the Foreign Exchange Management Act, 1999, (the Act) examine whether the given situations fall under "Current Account Transactions" or not as defined in the Act?

   (i) Mr. S. a resident in India, imports machinery from a vendor in UK for installing in his factory.

   (ii) An Indian resident, imports machinery from a vendor in US for installing in his factory on a credit period of 3 months. An Indian resident, transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York.

Answer:

Current Account Transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:

- ✓ Payments due in connection with foreign trade , other current business, services, and short-term banking and credit facilities in the ordinary course of business
- ✓ Payments due as interest on loans and as net income from investments.
- ✓ Remittances for living expenses of parents, spouse and children residing abroad, and
- ✓ Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

i) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

ii) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. Under FEMA, it is a liability outside India. However, under definition of Current Account Transaction ."short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is a Current Account Transaction.

iii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The

funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction.

7. State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:
   (i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.
   (ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

   Answer:
   Approval to the following transactions under FEMA, 1999:
   i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.
   ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

8. Lifesys Limited, a billion-dollar, Indian company wishes to create a chair in a reputed university in the US. This chair is for the department of computer science. The company wishes to obtain your advice in regard to the following with reference to the FEMA, 1999.
   (i) Is such "chair" creation permissible?
   (ii) What is the maximum amount that can be denoted for such chair?
   (iii) Any formalities to be complied with?

   Answer:
   The following remittances exceeding the limits mentioned below shall require prior approval of the RBI-
   Donations exceeding Lower of:
   (a) 1% of their foreign exchange earnings during the previous 3 financial years or
   (b) USD 5,000,000 for-
   - ✓ creation of Chairs (Paying faculty's salary) in reputed educational institutes.
   - ✓ contribution to funds (not being an investment fund) promoted by educational institutes; and
   - ✓ contribution to a technical institution or body or association in the field of activity of the donor Company.

   (i) In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is permissible.
   (ii) Maximum amount that can be donated for such chair will be 1% of their foreign

exchange earnings during the previous 3 financial years or USD 5,000,000, whichever is less without prior approval of the RBI.

(iii) In case where donations exceed 1% of their foreign exchange earnings during the previous 3 financial year or USD 5,000,000, it shall require prior approval of RBI.

9. Mr. Bandha, a software Engineer, Indian Origin took employment in USA. He is a resident of USA for a long time. He desires
   (i) to acquire a farmhouse in Munar (Kerala).
   (ii) to make investment in KLJ (Nidhi) Ltd., registered as Nidhi Company.
   (iii) to make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township.
   Whether there are any restrictions in respect of the transactions desired by Mr. Bandha.

Answer:

According to Regulation 4 of the FEM (Permissible Capital Account Transaction) Regulations, 2015, No person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage:

(a) in the business of chit fund.
(b) as Nidhi Company.
(c) in agricultural or plantation activities.
(d) in real estate business, or construction of farmhouses.
(e) in trading in Transferable Development Rights (TDRs).

Hence, in view of above,

(i) Mr. Bandha, cannot acquire a farmhouse in Munnar (Kerala).
(ii) Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd.
(iii) Mr. Bandha can make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township because "real estate business" shall not include development of townships.

10. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
   (i) M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.
   (ii) P requires U.S. $ 2,000 for payment related to call back services of telephones.

Answer:

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

i) Accordingly, It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose.

11. Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1st June 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for Rs. 60 lacs in September 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for Rs 65 lacs. Mr. Henry Benjamin's that was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are capital Account transactions and whether these transactions are permissible.

Answer:
Capital Account Transaction means a transaction which alters The assets or liabilities, including contingent liabilities, outside India of Persons Resident in India [PRI] or Assets or liabilities in India of Persons Resident Outside India [PROI].
Subject to the provisions of Sec 6(2) & 6(2A), any person may sell or draw foreign exchange to or from an Authorized person for a capital account transaction.
In the given case, there are 2 Capital Account Transactions.

- ✓ Purchase of immovable property in India by Mr. Ram [PROI].
- ✓ Giving of Guarantee by Mr. Ram [PROI] on behalf of Mr. Gopal [PRI] to the Housing Finance Company

and both of them are Permissible

12. Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?
    Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

    Answer:
    According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

    Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period' RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

    Mr. Suresh will be treated as person resident in India for Financial Year 2014-2015 as he resided in India in preceding FY 2013-2014.
    However, during the Financial Year 2015-2016 , Mr. Suresh will not be considered as resident as he left India on 15th July 2014. He is determined to be person resident outside from 16th July 2014 for the financial year 2015-2016.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May , 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

13. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restrictions in respect of the following: A person who was resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by companies in U.S.A.?

Answer:

As per Section 6(4), a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Hence, the USA Resident shall be entitled to hold the foreign securities even after he becomes a person resident in India.

14. Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Answer:

According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of

expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment. Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

15. Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:
(A) US$ 120,000 for studies abroad on the basis of estimates given by the foreign university.
(B) Gift Remittance amounting US$ 10,000.
Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Answer:
Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.
Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

Multiple Choice Questions

1. The Foreign Exchange Management Act came into force on ----------.

a. 1st May, 1999	b. 1st June, 1999
c. 1st October, 1999	d. 1st June, 2000

2. The objective of the Act is to ---------- and for promoting the orderly development and maintenance of foreign exchange market in India.

a. Facilitating external trade and payments	b. Promote the orderly development of foreign exchange market in India
c. Promote the maintenance of foreign exchange market in India	d. All of these

3. Authorised person means ----------.

a. An authorised dealer	b. Money changer
c. Off-shore banking unit	d. All of these

4. A transaction shall be a capital account transaction if ----------.

a. It alters the assets or liabilities in India of persons resident outside India	b. It alters the assets or liabilities outside India of persons resident in India
c. Either (a) or (b)	d. None of these

5. 'Current account transaction' means a transaction ----------.

a. Other than a capital account transaction	b. Which is permitted only after obtaining specific permission of RBI
c. Both (a) and (b)	d. Which is not permitted under FEMA

6. 'Currency' includes ----------

a. Currency notes, cheques, drafts, bills of exchange and promissory notes	b. Postal notes, postal orders, money orders, travellers' cheques, letters of credit
c. Such other instruments, as may be notified by the Reserve Bank	d. All of these

7. Remittances for living expenses of parents, spouse and children residing abroad is ----------.

a. A capital account transaction	b. A current account transaction
c. Either (a) or (b)	d. None of these

8. 'Repatriate to India' means bringing into India the realised foreign statement and the holding of realised amount in an account with an authorised person in India ---------.

a. Without any limit	b. Upto the limit contained in the Act
c. Upto the limit prescribed in the Rules	d. To the extent notified by the Reserve Bank

9. While determining as to whether a person is a resident in India or not, the period for which he has resided in India in the is to be considered.

a. Current financial year	b. Current calendar year
c. Preceding financial year	d. Preceding calendar year

10. No person shall deal in or transfer any foreign exchange or foreign security to any person not being ---------.

a. An authorised person	b. A person resident in India
c. A person resident outside India	d. All of these

11. Automatic route in FDI means.

a. Prior permission of RBI not required	b. Prior permission of Central Govt. not required
c. Prior permission of neither RBI nor Central Govt.is required	d. None of the above

12. For investment in market securities, FIIs are to be registered with:

a. Ministry of Corporate Affairs	b. RBI
c. SEBI	d. None of the above

13. DPIIT comes under:

a. Industry and Commerce	b. Finance
c. Corporate Affairs	d. None of the above

14. Sale of shares from a resident to non resident is::

a. current account transaction	b. Capital Account Transaction
c. Any of the above	d. None of the above

15. FDI is prohibited in the which of the following sectors:

a. Lottery Business including Government/ private lottery, online lotteries.	b. Gambling and betting including casinos.
c. Chit funds	d. All of the above

16. Individuals can avail of foreign exchange facility for the following purposes within the LRS limit on financial year basis for the following:

a. Private visits to any country (except Nepal and Bhutan)	b. Gift or donation Going abroad for employment
c. Emigration	d. All of the above

17. Eligible borrower can raise up to ……..million US$ through ECB in automatic route.

a. 500	b. 750
c. 1000	d. 1250

18. Total maximum remittance during a financial year under LRS scheme is:

a. US $ 1,00,000	b. US $ 1.25.000
c. US $ 1,50,000	d. US $ 2,50,000

19. The following remittance is prohibited

a. Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/ sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.	b. Remittance from India for margins or margin calls to overseas exchanges/overseas counterparty.
c. Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.	d. All of the above

20. Zenith Ltd. is accompany registered in UK, issues shares to citizen of UK. Under the Indian law, the shares are;

a. Foreign Security	b. Indian Security
c. Any of the above	d. None of the above

21. FEMA……foreign currency transaction.

a. encourages	b. prohibits
c. restricts	d. None

Fill in the Blanks

a. FEMA has replaced……
b. Security issued by any foreign entity is a……..security.
c. A resident Indian purchasing a house in London is a…….account transaction.
d. FEMA is regulated by……
e. WOS stands for……..
f. In case of FEMA, Master directors are issued by…….
g. Any foreign exchange transaction which is not categorized as capital accounts is a…… account transaction.
h. In Case of FCCB, the bond is converted into equity shares of the……..company.
i. FPI stands for……
j. RFC account denotes……

Answer to MCQs

1	(d)	6	(d)	11	(c)	16	(d)	21	(c)
2	(d)	7	(b)	12	(c)	17	(b)		
3	(d)	8	(d)	13	(a)	18	(d)		
4	(c)	9	(c)	14	(b)	19	(d)		
5	(a)	10	(a)	15	(d)	20	(d)		

Answer to Fill in the blanks

a	FERA
b	Foreign
c	Capital
d	RBI
e	Wholly owned subsidiary
f	RBI
g	Current
h	Indian
i	Foreign Portfolio Investment
j	Resident Foreign Currency Account

Case Study (Self Practice Questions)

Modern Technologies, an unlisted Indian company, having a capital of Rs. 23 crores are negotiating with foreign investor for 20 % stake in the company by issue of fresh shares at a price to be negotiated. The Company is in high tech area where there no limit on foreign investment. You are the CFO of the company. Please prepare a note for directors, whether the issue is possible and if so, the steps to be taken.

Solution
Note for Directors.
Our Company, Modern Technologies, is an unlisted company and SEBI regulations do not apply. However, Company has to comply with FEMA regulations.

As per present FDI regulation, no Govt. approval is required. Neither one requires prior approval of RBI.
2. The investment is within limit. Once the remittance is received, RBI has to be given intimation.
3. The shares certificates have to be issued in dematerialised mode. There is no restriction on repatriation of dividend, subject to tax, as per Indian laws.
4. The shares shall have same voting and other rights.

Prevention of Money Laundering

Class Questions

1. Explain the meaning of the term "Property" under the Prevention of Money Laundering Act, 2002. Mr. Raja was arrested for Counterfeiting 2,000 Notes. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Answer:
Property means any property or assets of every description, whether
(i) corporeal or incorporeal,
(ii) movable or immovable
(iii) tangible or intangible and includes
(iv) deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

The offence involving Proceeds of crime relates to any offence specified under paragraph 2 of Part A [Offences under the Narcotic Drugs] shall be punishable with Rigorous imprisonment of Minimum 3 years and maximum 10 years and Fine

Any other case shall be punishable with Rigorous imprisonment of Minimum 3 years and maximum 7 years and Fine

In the given case Mr. Raja was arrested for Counterfeiting Rs. 2,000 Notes. This is an offence specified under Part A - Paragraph 1 of the Schedule of the PMLA, 2002. He will be punishable with Rigorous imprisonment of Minimum 3 years and Maximum years and Fine.

2. Mr. B purchased a flat out of the proceeds earned by Drug Trafficking. The flat was attached by the Director, Director of Enforcement after complying the procedures under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA, 2002). Mr 'B' got a stay from the High Court for any proceedings under the said Act. The stay was subsequently vacated. State the relevant provisions of the PMLA, 2002 for computing the period of provisional attachment including extension, if any. Whether Mr. 'C' son of Mr. 'B' can occupy the flat during the period of provisional attachment?

Answer:
Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that –
(a) any person is in possession of any proceeds of crime; and
(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.
However according to Section 5(4), Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached.

In the given case, Mr. C, son of Mr. B can occupy the flat during the period of provisional attachment if he claims to have any interest in the said property.

3. Based on the provisions of the PMLA 2002, analyse with reasons, the contentions of Adjudicating Authority with regard to the following:
   (a) Whether interest created in a property prior to event of money laundering leading up to the attachment of property, takes priority over the attachment?
   (b) Whether a mere nexus between the attached property where it did not qualify as "proceeds of crime" under the PMLA and the party accused of money laundering was sufficient for the attachment to take place?

Answer:
a) According to Section 5(4), Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached. Accordingly, an order of attachment under money laundering Act is not said to be illegal merely because a person interested had a prior interest in such property and further issuance of an order of attachment under the Act cannot, by itself, render illegal the prior statutory right of a person interested in attached property.
b) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that –

(a) any person is in possession of any proceeds of crime; and
(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed. Hence, it is necessary that the attached property should qualify as 'proceeds of crime'. Therefore, a mere nexus between the attached property where it did not qualify as "proceeds of cent to under the PMLA and the party accused of money laundering was NOT sufficient for the attachment to take place

4. SSG Bank Limited has recently started its operations. The bank approached you for your advice regarding the maintenance of records as a reporting entity in terms of the provisions of the Prevention of Money Laundering Act, 2002. Referring to and analyzing the relevant provisions of the Prevention of Money Laundering Act, 2002, advice the Bank.

Answer:
Section 12 of Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall:
a) Maintain a record of all transactions, the nature and value of which may be prescribed for a period of 5 years from the date of transaction between a client and the reporting entity.

b) Furnish information of the above transactions to the Director within the prescribed time.
c) Omitted
d) Omitted
e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients for a period of 5 years from Later of- After the business relationship between a client and the reporting entity has ended or The account has been closed,

As per the facts given in the questions, Manav Kalyan, a charitable organization opened current account with ABZ Bank on 1 July 2012 and closed the account on 30th June 2016.
ABZ Bank has to Maintain record of all transactions, for 5 years from the date of transaction between a client and the reporting entity.
ABZ Bank has to maintain record of documents evidencing identity of its clients for 5 years from Later of After the business relationship between a client and the reporting entity has ended or The account has been closed,

So, accordingly the ABZ Bank has to maintain the records relating to the account of "Manav Kalyan" till 30th June, 2021

Multiple Choice Questions

1. Every reporting entity shall maintain a record of all transactions for a period of --------- from the date of transaction between a client and the reporting entity.

a. 8 years	b. 6 years
c. 5 years	d. 3 years

2. Every reporting entity shall maintain record of documents evidencing identity of its ------- and ------.

a. Clients; beneficial owners	b. Employees; officers
c. Employees; directors	d. Directors; members

3. An appeal to the Appellate Tribunal against an order of the Adjudicating Authority may be preferred by -

a. The Director	b. Any person aggrieved
c. Both (a) and (b)	d. The Central Government

4. Where an appeal is preferred to the Appellate Tribunal, the Appellate Tribunal shall dispose of the appeal within -------.

a. 3 months	b. 6 months
c. 1 year	d. 2 years

5. Every reporting entity shall maintain record of:

a. all transactions in cash of more than Rs. 10 lakhs.	b. All series of integrated transaction below Rs. 10 Lakh per month
c. All transaction of receipt of Rs. 10 lakhs and more on its equivalent foreign currency	d. All of the above

6. FIU stands for:

a. Financial Intelligence Unit	b. Financial Issue Unit
c. Featured Intelligence Unit	d. None of the above

7. In part B of the schedule, offences involved a value of Rs. _____ is mentioned.

a. 15 Lakh	b. 50 Lakh
c. 75 Lakh	d. 1 crore

8. STR stands for-

a. Suspicious Trade Report	b. Special Trade Reserve
c. Suspicious Transaction Reports	d. Special Trade Reports

9. Reporting authority shall send the KYC data to Central Registry within _____ days.

a. 5	b. 10
c. 15	d. 20

10. The Money Launderer introduces the illegal funds into the financial systems. This is called:

a. Placement	b. Layering
c. Integration	d. None of the above

11. The cases under PMLA can be tried in:

a. Common Courts	b. High Courts only
c. Special Designated Courts	d. None of the above

Answer to MCQs

1	(c)	6	(a)	11	(c)
2	(a)	7	(d)		
3	(c)	8	(c)		
4	(d)	9	(b)		
5	(d)	10	(a)		

Fill in the Blanks

1. The authority under PMLA is……..
2. Every scheduled offence is a……..offence under the act.
3. The maximum imprisonment in money laundering case is……years.
4. FIU stands for……..
5. STR stands for ……..
6. Under PMLA, every reporting entity shall maintain record of all transactions, including record of cash transaction of more than Rs.……lakhs
7. Central KYC records Registry has been constituted in the year ……..
8. The PMLA Record Rules were introduced in the year in ……..

Answer to Fill in the Blanks

1	Directorate of Enforcement, Ministry of Finance
2	Predicate

3	7
4	Financial Intelligence Unit
5	Suspicious Transaction report
6	10
7	2015
8	2005

Self Practice Questions

1. Discuss the purpose of PMLA.

Answer:
The objects sought to be achieved under the Act are:
- ✓ To prevent and control money laundering.
- ✓ To confiscate and seize the property obtained from the laundered money. and
- ✓ To deal with any other issue connected with money laundering in India.

2. What is the function of central KYC Registry?

Answer:
Central KYC (CKYC) registry acts as a centralized KYC repository which stores information/documents pertaining to a customer who is undertaking a financial transaction or availing a financial service. A central KYC registry has been constituted in 2015 to keep centralised data which would include analysis, dissemination transforming of data. The registry will comply with the instructions issued the Regulation.

3. Write a note on Special courts under PMLA.

Answer:
For trial of offence punishable under section 4 of PMLA, 2002, the Central Government, in consultation with the Chief Justice of the respective High Courts, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications. While trying an offence of money laundering under PMLA, 2002, a Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure. An offence of money laundering punishable under Section 4 of PMLA, 2002 and any scheduled offence connected to the offence of money laundering, shall be triable by the Special Court constituted for the area in which the offence has been committed.

Case Study

There was a petition made to civil court against a senior Govt. officer on corruption for irregularities in appointment of " D" category staff in Govt. Simultaneously, a compliant was made to Director, Enforcement under PMLA. On investigation , ultimately, a huge cash was found in the residence one of the person who is indirectly related to the person against whom corruption charges have been made. The person cannot explain the sources but says that the money belongs to another person whose name he will not disclose. In your opinion , what would be the fate of the case.

What rights are available to the accused?
PMLA empowers certain officers of the Directorate of Enforcement to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering. PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties. It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND. PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial. In view of the above, If a person is accused of an offence under PMLA, the burden to prove that proceeds of crime are untainted shall be on the accused. Hence investigation may be started and thereafter he shall have the right of appeal as mentioned above.

Corporate Governance

Self Practice Questions

Descriptive Questions

1. Mention differences between:

(a) law and ethics
(b) ethics and Corporate Governance
(c) environment sustainability and corporate social responsibility

(a)

Laws refer to the set of codified norms which are enforced by the state. They act as external obligations. On the other hand, ethics refer to the set of norms which guide our internal compass and judgements.
The law is created by the Government, which may be local, regional, national or international. On the other hand, ethics are governed by an individual, legal or professional norms, i.e. workplace ethics, environmental ethics and so on.

(b)

Ethics	Corporate Governance
The values and principles considered as foundation. It relates to the inner self of an individual which reflects at the workplace.	The method of governance should be with ethical values but is the methods which are important.
Applies at all levels. A manager has to be honest at every level.	Normally applies at top level, corporate policies and procedures are made at higher level only.
Emerges naturally	Needs to be studied and experienced. There are established guidelines on these issues which have emerged in course of time
Regulations are not important	Regulations are important as it needs strict compliance. In most of the countries, corporate governance is regulated.

(c)

While environmental sustainability is usually a part of corporate social responsibility, CSR does not only focus on sustainability. For many companies, treating the environment well is important, and this value may be reflected in their CSR programs.
A sustainable business is one that works in step with societal and environmental goals, rather than at odds with them. Corporate sustainability is a business strategy for long-term growth that works in harmony with people and the planet.

2. What are three approaches to sustainable development, commonly known as triple bottom-line approach.

Answer:
Economic approach: The current decision should not impair the prospects of maintaining or improving future living standards. This also called "Profit" approach.
2. Ecological/Environment Approach: Scarce natural resources should be preserved for the future, which would include preservation of genetic diversity, water, mines, forests etc. Industries should use minimum natural resources. Any industry damaging the environment through affluent discharge should be avoided or minimised. This also called "Planet" approach
3. Social approach: The industry is for the society and shall not damage social security, values and welfare of the people. This also called "People" approach

3. How can a company identify whether its CSR activities are impactful or not?

Answer:
Any CSR project/activity should have some impact, big or small. In order to know the impact, an impact analysis study is supposed to be made, which would compare the achieved results with the desired result. In order to get real picture, it is the following issues needs consideration.
(a) Should preferably done by an independent agency
(b) Focused on the impact only
(c) Done immediately after the benefit given
(d) Should be data based

4. What parameters to be checked when CSR activity is being done through third party implementing agencies?

Answer:
When the project is being implemented by implementing agencies, , the organisation needs to evaluated, which can be done with following checks.
(a) Documentation
(b) Inspection of project site
(c) Track record of the organisation
(d) Beneficiary feedback
(e) Sponsors' feedback
(f) Interview of the persons responsible for implementation.

5. Discuss the issues in family managed companies.

Answer:
Emerging issues in CG in family managed companies in India.
(i) Separation of ownership and management: In few companies in India, the main promoter or owner have chosen to be investor and not to a part of management even as part time chairman. The whole Board of directors are non owners and are hard core professionals.
(ii) Family members acquiring professional courses from reputed institutes.
(iii) Promoters are encouraging professionals in the organisation.
(iv) Promoters are more focused on compliances to avoid loss of reputation which may result to price fall in the share market.
(v) Role and leadership clarity decided at board level
(vi) Owners are accepting and honouring opinion of managers.
(vii) Family's social and emotional issues are being satisfied by forming trusts/foundations which are separate from the business entity, without any conflict of interest.

6. There are various methods of rating a company' governance parties. However, one has to keep few issues in mind while assessing the Governing practices. Comment

Answer:
(i) Board Structure and balancing
(ii) Share holder Rights and Compensation'
(iii) Accounting
(iv) Ownership and Control
(v) Professionalism
(vi) Disclosures
(vii) Market price of shares
(viii)Compliance of law
(ix) Earnings Dividend pay-out
(x) Dealing with conflict of interest
(xi) Related party transactions
(xii) Risk management
(xiii)Investor grievances
(xiv)Customer grievances
(xv) Vendor grievances
(xvi) CSR initiatives

7. The following points relate to which theory?

a) Directors are regarded as stewards of the company's assets. They decide what is to be done and drive the people of the company

b) This theory considers wide inclusion of stakeholders, other than shareholders. Hence the directors need to keep a balance between the interests of various stakeholders.

Answer:

a) Stewardship Theory
b) Stakeholder Theory

8. Is it wise for the company to practice good governance which comes with additional cost?

Answer:

Good Governance has a lot of benefits as enumerated under:
1. Better governed company is essential for growth and stabilization
2. Reputation of the company will enhance one people know that you are a honest or good governed company.
3. Better use of funds of the company, which may be fines collected from public of the company by the managers.
4. Better management of resources which are available to the company.
5. Better governed ensures long term and steady growth.
6. Establishing stakeholders' confidence
7. Leverage of competitive advantages
8. Alliances with other companies are easy as others are interested to be associated with your company.

Good corporate governance is generally associated with publicly listed companies, the governance benefits to non-listed companies are less often talked about. However, An increase in confidence by investors and banks in the company due to robust financial management reporting will not only improve access to capital, but also minimise both cost of capital and cost of equity, resulting in an optimised capital flow and also sales margin.
So in the long run, practicing good governance will undoubtedly be cost effective and bundled with a lot of more benefits.

9. The National Guidelines on Responsible Business Conduct comprises nine thematic pillars of business responsibility that are known Principles. Enumerate.

Answer:

- ✓ Principle 1: Businesses should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable. The principle ensures ethical behaviour in all operation, functions and processes, is the basic of businesses that are guiding their governance of economic, social and environmental responsibilities.
- ✓ Principle 2: Businesses should provide goods and service in a manner that is sustainable and safe. The principle emphasises that businesses have to focus on safety and resource-efficiency in the design and manufacture of their products. These products have to be manufactured in such a way, by which it creates value by minimising and mitigating its adverse impacts in the environment and society through all stages of its life cycle, from design to final disposal. This principle encourages businesses to understand every material sustainability issues across their product life cycle and value chain.
- ✓ Principle 3: Businesses should respect and promote the well-being of all employees, including those in their value chains. The principle encloses all policies and practises that are about the equity, dignity and well-being and the provision of decent work, for every employee that who are engaged within a business or in its value chain, without any discrimination and in a way that contributes to the diversity. The principle identifies the well-being of an employee and the welfare of his/ her family.
- ✓ Principle 4: Businesses should respect the interests of and be responsive to all its stakeholders. This principle recognises the businesses operate in an eco-system that consists of some stakeholders, being shareholders and investors and their activities affect natural resources, habitats, communities and the environment. The principle brings into light that businesses have a responsibility to maximise the positive effects and minimise and mitigate the negative impacts of the products, operations and practises on their stakeholders.
- ✓ Principle 5: Businesses should respect and promote human rights. This principle identifies the human rights are rights that have to be inherent to all human beings and these guidelines are applied without discrimination. These human rights are considered to be inherent, inalienable, interrelated, interdependent and indivisible. This principle is inspired, informed and guided by the Constitution of India and the International Bill of Rights, and recognises the primacy of the State's duty to protect and fulfil human rights.
- ✓ Principle 6: Businesses should respect and make efforts to protect and restore the environment. This principle gives preference to environmental issues that are interconnected at the local, regional and global levels doing businesses to address the problems like pollution, biodiversity conservation, sustainable use of natural resources and climate change in a comprehensive and systematic manner. The principle encourages firms to adopt environmental practises and processes that minimise or eliminates the harmful effects of their operations across the value chain. Moreover, it also persuades businesses to follow the Precautionary Principle in all its actions.

- ✓ Principle 7: Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent. This principle concedes that businesses operate within a specified national and international legislative and policy frameworks that guide their growth and also provides specific restrictions and boundaries. The principle recognises the legitimacy of businesses to engage with governments for redressal of a grievance or for influencing public policy. In addition to this, the law demands that public policy advocacy has to expand public good.
- ✓ Principle 8: Businesses should promote inclusive growth and equitable development. The principle rests the challenges of the social and economic development that are faced by the country and enhances the national and development agenda according to the government policies and priorities. The principle mentioned the need for collaboration amongst businesses, government agencies and civil society in this development agenda.
- ✓ Principle 9: Businesses should engage with and provide value to their consumers in a responsible manner. The principle is based on the fact consumers that are safe to use, creating value for both. It recognises consumers having freedom of choice for the usage of goods and services, and the enterprises strive to provide the products that are safe.

Multiple Choice Questions (MCQs)

1. Three Ps of triple bottom line are:

a. planet, people and purpose	b. planet, people and profit
c. planet, profit and purpose	d. planet, profit and period

2. At which level corporate governance is more relevant in a company?

a. top level	b. middle level
c. lower level	d. all levels

3. which among the following would amount to undesirable practice by a senior executive of a company

a. using published information of the competitor for his company's benefit	b. using unpublished information of the competitor for his company's benefit
c. using un published and secret information of the competitor obtained from undisclosed and unfair source for his company's benefit	d. lure the executives of the competitor to join his company.

4. Which , out of the following would not amount to Sustainable Development activity.

a. rain water harvesting	b. paddy cultivation
c. solar energy	d. plantation of sapling for forestation

5. corporate governance practices are almost……..by companies in India.

a. formalised	b. regulated
c. accepted	d. rejected

6. The latest committee on Corporate governance was:

a. narayan Murthy committee	b. kotak committee
c. kumar Mangalam Birla committee	d. rahul Bajaj Committee

7. The ideal implementing agency of CSR projects, should be:

a. section 8 company	b. trust
c. society	d. one of the above

8. Economic approach to sustainability relates to:

a. Planet	b. Profit
c. People	d. none of the above

9. Corporate governance is more about:

a. achieving results	b. managing things
c. method of managing a company	d. fair method of managing a company

10. The items under Schedule VII of the Act, should be:

a. strictly interpreted	b. liberally interpreted
c. depends on the company	d. only a guideline

11. CG practises should target to keep balance amongst:

a. all shareholders	b. all employees
c. employees and shareholders	d. All stakeholders

12. When a company evaluates an implementing agency, first step is to :

a. local feedback	b. interviewing the officials
c. inspection of site	d. examining documents

13. Every CSR activity is ultimately for the:

a. Company	b. govt.
c. implementing agency	d. beneficiary

14. The CSR fund earmarked for on going project, needs to be spent within:

a. one year	b. two years
c. three years	d. Four years

15. Clause 49A which was the first major compliance of corporate governance by listed companies was on thebasis of recommendation of:

a. Narayan Murthy committee	b. Kotak committee
c. Kumar Mangalam Birla committee	d. Rahul Bajaj Committee

16. Corpoarate governance is close to:

a. ethical conduct of business	b. managerial conduct of business
c. target oriented business	d. none of the above

17. A foreign entity cannot be: .

a. implementing agency of CSR project in India	b. advisor
c. trainer	d. consultant

18. Some of the reasons for which companies cannot practice good governance may be:

a. narrow mind-set of the promoters	b. financial problem in the company
c. unhealthy completion in the market	d. all or any of the above.

19. A company sponsors the expenditure of a primary school of physically disabled students having 200 students. Three employees' children, being physical disabled, have also been admitted in that school:

a. the school will qualify as CSR project as admission of the employees' children is incidental	b. not qualify as CSR project as there are students who are employees' children
c. depends on how the company represents the same to the auditors	d. depends on Board of Directors

20. Which will not qualify as CSR expenditure

a. direct donation to a unrecognised charitable organisation	b. contribution to fund under schedule VII of the Act
c. any activity under schedule VII	d. Direct implementation of a CSR project by the company

21. Advantages of direct implementation of CSR activity by the company are:

a. Flexible, since, even small decisions also are taken by the company	b. Better supervision, since it is being directly implemented
c. Quick decision making	d. All of the above

22. Advantages of third party implementation of CSR prjects, are:

a. Expertise	b. Better supervision at site
c. Unbiased	d. all of the above

23. CG ratings are done by :

a. commercial banks	b. RBI
c. Credit Rating Agencies	d. SEBI

24. Audit committee can:

a. interact with statutory auditors only	b. interact with internal auditors only
c. interact with both statutory and internal auditors	d. none if the above

25. The recommendation of the Audit Committee:

a. may not be accepted by Board of Directors	b. has to be accepted by Board
c. In case not accepted, Board has to records the reasons	d. Recommendation need not go to Board meetings

26. Which of the following is the advantage of the family business over non-family business?

a. Staff recruitment	b. Raising funds for growth
c. Ownership vs. Management	d. Deep industry insight

Answer to MCQs

1	b	6	b	11	d	16	a	21	d	26	d
2	a	7	d	12	d	17	a	22	d		
3	c	8	b	13	d	18	d	23	c		
4	b	9	d	14	c	19	a	24	c		
5	b	10	b	15	c	20	a	25	c		

State True or False

1. Most of the provisions relating to corporate governance of a listed company is stipulated under LODR.
2. Stakeholders means shareholders only.
3. The chairman of CSR committee has to be an independent director
4. The signing of code of conduct by directors is optional
5. Companies having budget up to Rs. 90 lakhs in a year, need have a CSR committee

Fill in the Blanks

1. Corporate governance is to be practiced at……level of management.
2. CSR provisions apply to companies with a turnover of Rs…….crores
3. The recommendation of ……..committee was incorporated in listing agreement.
4. The CEO certification under CG relates to……..
5. ABRR relates to annual ……responsibility report.
6. A director can be member of maximum……..committees taking all companies into consideration.
7. Managerial remuneration appears under schedule …….. ……of the companies Act.
8. PRI stands for ……
9. SDG, in parlance to sustainability means……..
10. The Voluntary guidelines on CSR was issued in the year…….
11. ABRR stands for……
12. The areas of CSR is mentioned under schedule…..to Companies Act. 2013.
13. No CSR Committee is required, If the CSR Committee budget is up to Rs.`……..

Answers to True/False

1	True
2	False
3	False
4	False
5	True

Answers to Fill in the Blanks

1	Top/ higher
2	1000
3	Kumar Mangalam Birla
4	Code of conduct
5	Business

6	10
7	V
8	Principles of Responsible Investment
9	Sustainability Development Goals
10	2011
11	Annual Business Responsibility Reporting
12	VII
13	50 Lakhs

Case Study 1:

1. M/s ABC Tyres Ltd., manufactures of tyres of all types of vehicles, is a public limited company has three manufacturing units, one at Durgapur, West Bengal, Palej, Gujarat and Munnar in Kerala with corporate office at Kolkata. The company is professionally managed, the promoter being the chairman, only comes in Board meetings and does not interfere in day to day management. The other directors are independent professionals. The company has sales offices and dealers pan India.

The financial performance of the company is as follows: (Rs in Crores)

Parameters	2017-2018	2018-19	2019-20	2020-21
Turnover	700	650	920	1010
Net worth	402	42.3	480	530
Net profit	14.5	15.7	16.8	18

Questions:

1. Do the company comes under CSR obligation?
2. What would be minimum budget for 2021-22.
3. Is CSR committee required?
4. What are the other obligations for CSR under the Act?
5. What will happen if the stipulated amount is not spent within the year.
6. What will happen if a project is taken up but full allocated amount is not spent?

1. Section 135 of the Act provides for the applicability of the CSR provisions on corporates. Sub-section (1) of section lays down that every company having
   - net worth of Rs 500 Crores or more; or
   - turnover of Rs 1000 Crores or more;
   - net profit of Rs 5 Crores

   Therefore, ABC Tyres Ltd. Comes under CSR obligation.

2. Minimum budget will be Rs 2.7 lakhs for 2021-22.This 2% of average profit of last 3 financial years.
3. Yes, CSR committee is required to be formed as it comes under the purview of section 135 of the Act.
4. Other obligations are spending the amount within the financial year. The details have to be disclosed in Board's report as annexure. Form CSR 1 needs to be filed.
5. The unspent amount will have to be transferred to a special account.
6. If a project is taken up and full amount is not spent, the amount shall be kept separately for financing the which will be called as "ongoing project".