

**Mock Test Paper - Series I: August, 2024**

**Date of Paper: 17<sup>th</sup> August, 2024**

**Time of Paper: 2 P.M. to 5 P.M.**

**INTERMEDIATE COURSE: GROUP – I**

**PAPER – 2: CORPORATE AND OTHER LAWS**

**Time Allowed – 3 Hours**

**Maximum Marks – 100**

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

**PART I – Case Scenario based MCQs (30 Marks)**

**Part I is compulsory**

**Case Scenario 1**

XYZ Ltd. was incorporated on April 1, 2023. The Board of Directors, within the required timeframe, appointed Mr. A as the first auditor of the company on April 20, 2023. Mr. A was tasked with auditing the company's financial statements for the financial year 2022-23, and he held office until the conclusion of the first Annual General Meeting (AGM), which was held on September 30, 2023.

During the AGM, the shareholders decided to appoint Mr. B, a partner in the audit firm MNO LLP, as the new auditor. MNO LLP is a limited liability partnership incorporated under the LLP Act, 2008. Mr. B and his firm were appointed to hold office from the conclusion of the 1st AGM until the conclusion of the 6th AGM in 2028.

Five years later, in 2028, the company is considering whether to reappoint Mr. B and MNO LLP for another term. The shareholders are discussing the provisions of the Companies Act, 2013, and the implications of reappointing the same auditor or audit firm for multiple terms.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under: -

1. Who was responsible for appointing the first auditor of XYZ Ltd., and within what timeframe should the appointment have been made?
  - (a) Shareholders, within 60 days of registration of company
  - (b) Board of Directors, within 30 days of registration of company
  - (c) Board of Directors, within 60 days of registration of company
  - (d) Shareholders, within 30 days of registration of company
2. How long can MNO LLP, as an audit firm, hold office as the auditor of XYZ Ltd. according to the Companies Act, 2013?
  - (a) One term of five consecutive years

- (b) Two terms of five consecutive years
  - (c) One term of six consecutive years
  - (d) Three terms of five consecutive years
3. If XYZ Ltd. wants to reappoint MNO LLP for another term after 2028, what does the Companies Act, 2013, mandate?
- (a) MNO LLP can be reappointed for another term of five years.
  - (b) MNO LLP cannot be reappointed, as they have already served one term.
  - (c) MNO LLP cannot be reappointed, as they have already served two terms.
  - (d) MNO LLP can be reappointed, but the tenure must be reduced to three years.
4. What is the maximum tenure for which Mr. A as the first auditor of XYZ Pvt. Ltd., can hold office?
- (a) From the date of appointment until the conclusion of the first AGM i.e. 30<sup>th</sup> September 2023
  - (b) From the date of appointment until the conclusion of the second AGM (in 2024)
  - (c) From the date of appointment until the conclusion of the third AGM (in 2025)
  - (d) From the date of registration of company until the conclusion of the first AGM i.e. 30<sup>th</sup> September 2023
5. By what date the copy of the annual return is to be filed with the Registrar of companies in case of first AGM of XYZ Ltd.?
- (a) 29<sup>th</sup> November 2023
  - (b) 30<sup>th</sup> December 2023
  - (c) 31<sup>st</sup> January 2024
  - (d) 29<sup>th</sup> February 2024

## Case Scenario 2

In 2023, Tech Innovations LLP was established as a Limited Liability Partnership under the Limited Liability Partnership Act, 2008. The LLP was formed with two partners: Alex and Jordan, who contributed equally to the capital. Alex contributed 5,00,000, while Jordan also contributed 5,00,000. The firm was registered with the Registrar of Companies on April 1, 2023.

Tech Innovations LLP's operations focused on software development and technology consulting. As per the LLP agreement, both partners shared profits and losses equally. The LLP agreement also stipulated that any changes in the partnership, such as the addition of a new partner or transfer of interest, required the consent of both existing partners.

In June 2024, Tech Innovations LLP decided to admit a new partner, Priya, who brought in ` 2,00,000 as her capital contribution. This change was duly recorded and filed with the Registrar of Companies. Furthermore, the LLP decided to hold an annual general meeting within six months from the end of the financial year to approve financial statements and discuss business matters.

On the basis of above facts and by applying applicable provisions of the Limited liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-7 of **2 marks each**) given herein under:

6. As per the LLP Act, 2008, what is required for admitting a new partner into the LLP?
  - (a) The consent of one existing partner- Only Alex
  - (b) A majority vote of existing partners- Either Alex or Jordan
  - (c) The consent of all existing partners- Both Alex and Jordan
  - (d) Approval from the Registrar of Companies
7. When is Tech Innovations LLP required to hold its annual general meeting?
  - (a) By 30<sup>th</sup> April, 2024
  - (b) By 30<sup>th</sup> June, 2024
  - (c) By 31<sup>st</sup> July, 2024
  - (d) By 30<sup>th</sup> September, 2024

### Case Scenario 3

In 2024, Global Enterprises Ltd., a company specializing in international trade, needed to send an important notice to one of its clients, Mr. Rajiv Patel, regarding a contractual amendment. According to the company's internal regulations and the contract terms, the notice had to be served by post.

On April 15, 2024, the company's legal department prepared the notice and addressed it to Mr. Patel at his registered address. The notice was properly addressed, prepaid, and sent via registered post with acknowledgment due to ensure the highest level of confirmation for delivery.

A few days later, on April 20, 2024, the notice was returned with a stamp indicating that it was "not claimed" by Mr. Patel. The legal department recorded the return of the notice and noted the endorsement.

The company's legal advisor referred to past case laws for similar scenarios to ensure that the notice was considered legally served under Section 27 of the General Clauses Act, 1897. They reviewed the following precedents:

**United Commercial Bank v. Bhim Sain Makhija:** It was noted that merely sending a notice by registered post without the acknowledgment due did not provide sufficient legal protection for proving service.

Jagdish Singh v. Natthu Singh: This case demonstrated that if a notice sent by registered post was returned with a refusal endorsement, it was considered served.

Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh: It was established that if a notice sent by registered post to a proper address was returned with an endorsement like "not claimed", it was deemed served unless proven otherwise.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 8-10 of **2 marks each**) given herein under:

8. According to Section 27 of the General Clauses Act, 1897, what three conditions must be fulfilled for a service by post to be deemed effective?
  - (a) Properly addressed, Pre-paid, and Posting by ordinary post
  - (b) Properly addressed, Pre-paid, and Posting by registered post
  - (c) Properly addressed, Pre-paid, and Sending by courier
  - (d) Properly addressed, Pre-paid, and Hand delivery
9. In the case of United Commercial Bank v. Bhim Sain Makhija, why was the presumption of service under registered post found to be insufficient?
  - (a) Because the notice was sent by ordinary post
  - (b) Because the notice was sent by registered post but not with acknowledgment due
  - (c) Because the address was incorrect
  - (d) Because the recipient did not respond
10. What does the case of Jagdish Singh v. Natthu Singh demonstrate about the service of notice?
  - (a) Notice sent by registered post without return endorsement is invalid
  - (b) Notice sent by registered post and returned with refusal endorsement is deemed served
  - (c) Notice sent by ordinary post is deemed served if not returned
  - (d) Notice served by hand delivery is always valid

#### **Independent case scenarios**

11. XYZ Ltd., a manufacturing company, had taken a loan from ABC Bank and registered a charge on its assets on January 1, 2022. On April 1, 2024, XYZ Ltd. paid off the entire loan to ABC Bank. According to Section 82 of the Companies Act, 2013, XYZ Ltd. was required to file an intimation with the Registrar of Companies (ROC) regarding the satisfaction of the charge within 30 days from the date of the payment.

However, due to an oversight, the company did not submit the intimation until July 15, 2024. To rectify this, the company decided to take advantage of the extended period for intimation provided under the proviso to Section 82 (1),

which allows for an extension up to 300 days with the payment of additional fees.

The additional fee for late intimation was `5,000, and the company's compliance officer needed to calculate the total fee to be paid for the delayed filing.

As per the given facts, examine by how many days XYZ Ltd. was late in submitting the intimation of satisfaction of charge? What additional fee should the company pay for this delay?

- (a) 90 days , Fee = 1,000
- (b) 76 days , Fee = 5,000
- (c) 90 days , Fee = 5,000
- (d) 300 days , Fee = 10,000

**(2 Marks)**

12. Athlete Rajiv Sharma, a professional tennis player from India, achieved remarkable success by winning a prestigious international tennis tournament held in Paris, France. As a result of his victory, he received a prize money of \$150,000 from the event organizers. Rajiv was excited about his winnings and planned to use a portion of the prize money to fund his training and future tournaments abroad.

Rajiv decided to remit \$150,000 to his personal account in France to manage his finances and cover his training expenses. However, before proceeding, he needed to ensure that the remittance complied with the Foreign Exchange Management Act (FEMA), 1999, specifically concerning the remittance of prize money or sponsorship of sports activities abroad.

Under FEMA regulations, individuals other than international, national, or state-level sports bodies are subject to specific guidelines when remitting amounts exceeding \$100,000. Rajiv was aware that the amount involved in his case exceeded this threshold and sought advice on the necessary steps and compliance.

Enumerate in the given instance, according to FEMA regulations, what must Rajiv Sharma do if he wishes to remit prize money exceeding US \$100,000 abroad?

- (a) Remit the amount directly without any additional requirements.
- (b) Obtain approval from Paris Government before remitting the amount
- (c) Only provide proof of winning the prize
- (d) Require prior approval of Ministry of Human Resource Development (Department of Youth Affairs and Sports)

**(2 Marks)**

13. Kite Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25<sup>th</sup> year of its operation, a cricket tournament (akin to the format of T-20) is being organized by Kite Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD

40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by Kite Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:

- (a) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
- (b) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Reserve Bank of India.
- (c) For remittance of the prize money of USD 51,000, Kite Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
- (d) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs). **(2 Marks)**

14. A Ltd. is incorporated on 3rd January, 2023. As per the Companies Act, 2013, what will be the financial year for the company:

- (a) 31st March, 2023
- (b) 31st December, 2023
- (c) 31st March, 2024
- (d) 30th September, 2024 **(2 Marks)**

15. A charge was created by Cyprus Limited on its office premises to secure a term loan of ` 1 crore availed from ABM Bank Limited through an instrument of charge executed by both the parties on 16th February, 2023. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:

- (a) 27th April, 2023
- (b) 17th April, 2023
- (c) 2nd May, 2023
- (d) 16th June 2023 **(2 Marks)**

**PART – II Descriptive Questions (70 Marks)***Question No.1 is compulsory.**Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and `50 crore to the trust. He appoints New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way? **(5 Marks)**
- (b) The Government of India is holding 51% of the paid-up equity share capital of Surya Ltd. The Audited financial statements of Surya Ltd. for the financial year 2023-24 were placed at its annual general meeting held on 1<sup>st</sup> August, 2024. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 29<sup>th</sup> September, 2024 whereat the accounts were adopted. Thereafter, Surya Ltd. filed its financial statements relevant to the financial year 2023-24 with the Registrar of Companies on 20<sup>th</sup> October, 2024. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Surya Ltd. has complied with the statutory requirement regarding filing of accounts (unadopted and adopted) with the Registrar? **(5 Marks)**
- (c) Mr. A, an Indian National desires to obtain Foreign Exchange for the following purposes:
  - (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
  - (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.
 Advise him whether he can get Foreign Exchange and if so, under what conditions? **(4 Marks)**
2. (a) What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013. **(5 Marks)**
- (b) What is the mode of service of documents to Registrar or members, as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. **(4 Marks)**
3. (a) Navni Ltd. has accumulated a significant amount in its securities premium account. The company is considering different ways to utilize these funds. Advise the directors of the company on the application of the securities premium account as per the provisions of the Companies Act, 2013. **(5 Marks)**

- (b) KMN Ltd. scheduled its annual general meeting to be held on 11<sup>th</sup> March, 2024 at 11:00 A.M. The company has 900 members. On 11<sup>th</sup> March, 2024 following persons were present by 11:30 A.M.
- (1) P1, P2 & P3 shareholders
  - (2) P4 representing ABC Ltd.
  - (3) P5 representing DEF Ltd.
  - (4) P6 & P7 as proxies of the shareholders
- (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
  - (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
  - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
  - (iv) What happens if there is no Quorum in the Adjourned meeting?
- (5 Marks)**
- (c) Write short note on:
- (i) Provisio
  - (ii) Explanation,
- with reference to interpretation of Statutes, Deeds and Documents.
- (4 Marks)**
4. (a) The Board of Directors of Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of Avni Ltd., taking into account the consequences, if any, of accepting this proposal? **(5 Marks)**
- (b) Define the term 'Body Corporate' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (c) Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? **(4 Marks)**
5. (a) M/s Sulbha LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Sulbha which is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Sulbha LLP is liable to change its name under the provisions of Limited Liability Act, 2008? **(5 Marks)**
- (b) CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory



auditors of Liberal Ltd. (a listed company) for past ten years as on 31<sup>st</sup> March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31<sup>st</sup> March, 2027) for SM & Company? **(5 Marks)**

- (c) A Ltd. declares a dividend for its shareholders in its AGM held on 27<sup>th</sup> September, 2024. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice, the dates during which A Ltd. is required to pay the dividend? **(4 Marks)**
6. (a) The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting. **(5 Marks)**

**OR**

- (a) Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? **(5 Marks)**
- (b) Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India.
- As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India. **(5 Marks)**
- (c) Explain the meaning of term 'Foreign Exchange' as per the provisions of the Foreign Exchange Management Act, 1999. **(4 Marks)**

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**INTERMEDIATE COURSE: GROUP – I**

**PAPER – 2: CORPORATE AND OTHER LAWS**

**ANSWER TO PART – I CASE SCENARIO BASED MCQS**

1. (b)
2. (b)
3. (a)
4. (a)
5. (a)
6. (c)
7. (d)
8. (b)
9. (b)
10. (b)
11. (b)
12. (d)
13. (c)
14. (c)
15. (b)

**ANSWERS OF PART – II DESCRIPTIVE QUESTIONS**

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

Following are the exceptions to the above rule:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation New Ltd. can hold shares in Old Ltd.

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

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

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

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

- (c)** 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. A cannot withdraw Foreign Exchange for this purpose.
  - (ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. A can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

2. (a) Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.

Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

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

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

According to section 82 (4), section 82 shall not be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company *i.e.* even if no intimation is received by him from the company.

**Information to affected parties:** According to section 83 (2), the Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

**Issue of Certificate:** As per Rule 8 (2) of the Companies (Registration of Charges) Rules, 2014, in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

- (b) Save as provided in the Companies Act, 2013 or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by:

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

6. by such electronic or other mode as may be prescribed.

However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

**(c) Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:**

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (1) **Publish of proposed draft rules/ bye- laws:** The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) **To publish in the prescribed manner:** The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) **Notice annexed with the published draft:** There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) **Consideration on suggestions/objections received from other authorities:** The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) **Notified in the official gazette:** The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

**3. (a) Application of Premium received on Issue of Shares**

The provisions of the Companies Act, 2013, allow the companies to apply securities premium account for:

- 1) Issue of fully paid bonus shares;
- 2) Writing off the preliminary expenses;
- 3) Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);
- 4) Premium payable on the redemption (of any preference shares or of any debentures); or

- 5) Buy-back (purchase of its own shares or other securities under section 68).
- (b)** According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

- (i) (1) P1, P2 and P3 will be counted as three members.
- (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

- (c) (i)** Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not

interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

- (ii) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

4. (a) According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

- (b) **Body Corporate:** According to section 2(1)(d) of the Limited Liability Partnership Act, 2008, body corporate means a company as defined in section 2(20) of the Companies Act, 2013 and includes:

- (i) a LLP registered under the Limited Liability Partnership Act, 2008;
- (ii) a LLP incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include—

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a limited liability partnership as defined in the Limited Liability Partnership Act, 2008), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(c) Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

5. (a) Section 15 of Limited Liability Partnership Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

- (a) that of any other LLP or a company; or
- (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Sulbha LLP need not change its name even it resembles with the name of partnership firm.

(b) Section 139(2) of the Companies Act, 2013, provides that no listed company or a company belonging to prescribed classes of companies, shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

The proviso to section 139(2) provides that an audit firm which has completed its terms, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.



Further, it provides that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

In the given question, SM & Company has also completed its two terms of 5 years (i.e. 10 years in total). Thus, ML & Co. cannot be appointed as statutory auditor of Liberal Ltd. during cooling period because CA. Mudit was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2032. After 5 years, Liberal Ltd. is free to appoint ML & Co. as its statutory auditors.

- (c) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

In the given instance, A Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27<sup>th</sup> September 2024. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28<sup>th</sup> September 2024 to 27<sup>th</sup> October 2024. In this series of 30 days, 27<sup>th</sup> September 2024 will be excluded and last 30<sup>th</sup> day, i.e. 27<sup>th</sup> October 2024 will be included. Accordingly, A Ltd. will be required to pay dividend within 28<sup>th</sup> September 2024 and 27<sup>th</sup> October 2024 (both days inclusive).

6. (a) According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

**OR**

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

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

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

- (i) every director and the manager, if any;
  - (ii) every other key managerial personnel; and
  - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

- (b)** As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

- (c)** According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:
- (i) deposits, credits and balances payable in any foreign currency,
  - (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
  - (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.