



BUSINESS LAWS AND ETHICS Question Bank VOLUME 1

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**TOTAL NO OF QUESTIONS= 337
TO NO OF MCQ'S= 839**



1. INCORPORATION AND OPC

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec 2015]

[2 Marks]

1. Define the term "Body Corporate" as per Section 2(11) of the Companies Act, 2013

Answer.

As per Section 2(11) of Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include:

- A co-operative society registered under any law relating to co-operative societies; and
- Any other body corporate (not being a company as defined in this Act), which the CG may, by notification, specify in this behalf.

[PP. June 2016, Dec 2018, MTP Dec 2018]

[5 Marks]

2. Define the term Small Company' as contained in the companies Act, 2013.

Or

Write short note on: Small Companies

Answer.

As per Section 2(85) of Companies Act, 2013, means a company, other than a public company:

Particulars	Paid up share capital &	Turnover
Not exceeding or	₹50 lakhs (₹4 crores)	₹2 crores (₹40 crores)
Higher amount	₹10 crores	₹100 crores

Turnover shall be as per profit & loss account for immediately preceding financial year:

EXCEPTIONS: This section shall not apply to:

- ♦ A holding company; or
- ♦ A subsidiary company;
- ♦ A company registered under section 8; or
- ♦ A company or body corporate governed by any Special Act

The figures in brackets are as per amendment on 15-09-2022.



[PP. June 2017, MTP Dec 2017/18]

[5 Marks]

3. What are the conditions stipulated in the Companies Act, 2013 in formation of One Person Company?

Answer.

- It is a private limited company.
- It has ONLY 1 member.
- Only an N- natural R-resident I- individual can incorporate an OPC. (Rule 3 of Companies (Incorporation) Rules, 2014)
- It may have 1 director.
- It has 1 nominee who in case of death or incapacity of subscriber will become the member.
- A nominee should be an N- natural R- resident I- individual. (Rule 3 of Companies (Incorporation) Rules, 2014).
- A nominee can be nominated in 1 OPC only
- If the nominee is operating his own OPC, then in case of death of member of which he is nominee, he will have to elect which OPC to continue.
- MINOR Cannot become member or nominee
- An OPC cannot be incorporated or converted into section 8 company
- An OPC cannot carry out Non-Banking Financial activities.
- An OPC cannot carry out investment activities in securities of any body corporate.
- No voluntary conversion until expiry of 2 years from incorporation.
- Compulsory conversion within 2 years of incorporation, if PUC > 50 lakhs OR AVERAGE ANNUAL TURNOVER > 2 Crores.

[PP. June 2018, MTP Dec 2022]

[7 Marks]

4. Discuss the procedure for conversion of private company into One Person company.

Answers

As per Rule 7(1) of Companies Rules, 2014, a private company other than Section 8 company having:

- Paid up share capital of ₹50 lakh or less; and
- Average annual turnover during the relevant period is ₹2 crores or less may convert Before passing such resolution, the company shall obtain 'No Objection Certificate' in writing from the members and creditors

The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

The company shall file an application along with fees for its conversion into OPC in Form No. INC-6.

Following documents are to be attached:

- The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that provisions of Rule 7(1) have been complied with.
- The list of members and creditors;
- The latest Audited Balance sheet and the Profit and Loss Account;
- The copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

[PP. Dec 2021]

[6 Marks]

5. What are the benefits of One Person Company?

Answer.

The concept of One Person Company is quite revolutionary:

- It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.
- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.
- Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.
- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc.
- Also rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers.
- The new concept would also boost the confidence of small entrepreneurs.



[PP July 2023/ MTP June 2020, Dec 2017/June 2018/2019]

[9 Marks]

6. Examine the procedure to be followed for the incorporation of a company under section 7 of the Companies Act, 2013.

Answer:

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company

- The promoter of the company shall submit the following documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration.
- Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
- A declaration in the prescribed form by an Advocate, a Chartered Accountant Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and rules made thereunder in respect of registration;
- A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that -(Form No. INC-9)
 - He is not convicted of any offence in connection with the promotion, formation or management of any company; or
 - He has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years; and
 - That all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- The address for correspondence till registered office is established;
- All particulars of every subscriber to the memorandum along with the proof of identity;
- The particulars of the persons mentioned in the articles as the first directors of the company;
- The consent to act as directors of company in such form as may be prescribed.

7. Sec 3: Formation of Company; Sec 3A: Members severally Liable in Certain Cases

What is the minimum number of persons required to form a Private company and a Public company. Explain the consequences when the number of members falls below the minimum prescribed limit.

Answer:

Sec 3 Number of Persons required in Formation of a Company

A company may be formed for any lawful purpose by-

- (a) 7 or more persons (Public Company);
- (b) 2 or more persons (Private Company);
- (c) 1 person (One Person Company).

Sec 3 A: Members severally Liable in Certain Cases

Shortfall from Minimum Requirement of Members for a Company Formation

- (A) If at any time the number of members of a company is reduced below 2/7, (in the case of a private company, below 2, and in the case of a public company, below 7, and
- (B) the company carries on business for more than 6 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 6 months and
- is cognizant of the fact that it is carrying on business with less than 2/7 members, shall be SEVERALLY LIABLE (personally liable) for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.



CA AKASH AGARWAL

INCORPORATION & OPC



QUESTION BANK



CASE STUDIES

[PP Dec 2013]

[3 Marks]

8. A Company was incorporated on 6th October, 2013. The certificate of incorporation of the company was issued by the Registrar on 25th October 2013. The company entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of Companies Act, 2013, whether the company can be exempted from the said contractual liability.

Answer.

As per Section 7(2) of Companies Act, 2013, upon the registration of the documents filed for incorporation of a company, the Registrar of Companies shall issue certificate of incorporation in prescribed form to the effect that the company is incorporated under this Act.

This certificate of incorporation is conclusive evidence as to all administrative acts relating to the incorporation and as to the date of incorporation.

The date in certificate is the birth date of company. If the certificate was issued later, that does not side rule the fact that the company didn't get itself registered.

In given case, the company was incorporated on 06-10-2013 & the certificate was issued on 25/10/2013.

The company signed a contract on 10-10-2013. Applying the above principles, the contract issued prior to certificate of incorporation is valid. It is immaterial that the/certificate of incorporation was issued at a later date. Since the company came into existence on the date of incorporation stated on the certificate, it is quite legal for the company to enter into contracts.

The contention of the company is not tenable.

[PP June 2014]

[3 Marks]

9. The MOA of a Company was signed by 2 adult members and by a guardian of the other 5 minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a certificate of incorporation. The plaintiff contended that (a) conditions of registration were not duly complied with, (b) that there were no 7 subscribers to the MOA. Will the Court uphold his contention?

Answer.

As per Section 7(2) of Companies Act, 2013, upon the registration of the documents filed for incorporation of a company, the Registrar of Companies shall issue certificate of incorporation in

prescribed form to the effect that the company is incorporated under this Act. This certificate of incorporation is conclusive evidence as to all administrative acts relating to the incorporation and as to the date of incorporation. In given case, the MOA was subscribed by 2 adults & by guardian of 5 minors separately for each minor. The Registrar also issued certificate of incorporation against it. Although the conditions were not duly fulfilled but as certificate is issued by Registrar makes it valid. Thus, the Court will not uphold his contention.

[MTP June 2018]

10. Mr. Jadav floated an OPC, but he does not want to provide any nominee. Is nomination compulsory under OPC. If so what would be the procedure and regulations.

Answer.

The proviso to Section 3(1) provides that the memorandum of OPC shall indicate the name of the other person as nominee in Form No. INC.2. The prior written consent of the other person shall be obtained in the Form No. INC.3. The other person in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with Memorandum and Articles of the Company. The other person may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal. He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3. The company shall within 30 days of receipt of the notice of the withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name another person nominated by the sole member in Form No. INC.4 along with the fee prescribed along with the written consent of such other person so nominated in Form No. INC-3. The subscriber or member of OPC may change the name of such other person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee. He may nominate another person after obtaining the prior consent of such other person in Form No. INC 3. The company shall, on receipt of such intimation, file with the Registrar, a notice of such change in Form No. INC-4 along with the fee and with the written consent of new nominee in Form No. INC-3 within 30 days of such receipt of intimation of change.

Where the shareholder of OPC ceases to be the member in the event of death or incapacity to contract, his nominee becomes the member of such OPC. Such new member shall nominate within 15 days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company. The company shall file with the Registrar an intimation of such cessation and nomination in Form No. INC-4 along with the fee within 30 days of the change in membership with the prior written consent of the person so nominated in INC-3.



11. Foreign company -2(42)

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

Or

Suman Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.

Answer:

Section 2(42)-Foreign Company

"Foreign Company" means any company or body corporate incorporated outside India which-

(a) Has a place of business in India

- whether by itself or
- through an agent,
- physically or
- through electronic mode; and

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

Note- When the business is conducted in India through electronic mode, i.e., e-commerce, then there is no requirement of a physical place in India.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Conclusion

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

Note- When the business is conducted in India through electronic mode, i.e., e-commerce, then there is no requirement of a physical place in India.

12. Officer who is in Default - 2(60)

ABC Limited goes for Public issue of its shares. The issue was over subscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013.

Examine who will be considered in default in the instant case?

Answer:

"Officer who is in Default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely

(i) WTD - Whole-Time Director;

(ii) KMP - Key Managerial Personnel;

(iii) Specified Director or All Directors - where there is no Key Managerial Personnel, such Director or Directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the Directors, if no Director is so specified; [GNL-3]

(iv) Charged Person- any Person who, under the immediate authority of the Board or any Key Managerial Personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; [GNL-3]

(v) Instructional Control- any Person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) Aware but takes no Action (Indirect Default)- every Director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) Merchant Bankers, etc.- in respect of the issue or transfer of any shares of a company, the Share Transfer Agents, Registrars and Merchant Bankers to the issue or transfer.

Conclusion

In the given case, as stated ABC Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act.

Therefore, in such situation, all the directors of the company may be treated as officers in default.



13. Private Company-2(68)

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

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

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

OR

JKL Limited is a registered public company having the following:

i.	Directors and their relatives	18
ii.	Employees	26
iii.	Ex-Employees (Shares were allotted during employment)	15
iv.	Members holding shares jointly (7 x 2)	14
v.	Other Members	137

The Board of Directors of MNP Limited proposes to convert the company into a private limited company.

Referring the provisions of the Companies Act, 2013, advise:

(i) Whether the company can be converted into a private company?

(ii) Whether existing number of members need to be reduced for the proposed private company?

Answer:

"Private Company" means a company having a minimum paid-up share capital as may be prescribed, and which by its ARTICLES Limits the number of its members to 200.

Joint Shareholders treated as 1 member

Provided that where 2 or more persons hold 1 or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

Following persons are excluded from the limit of 200

(A) Current Employees: Persons who are in the employment of the company; and

(B) Previous Employees: Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

Conclusion

In the instant case, WNS Limited may be converted into a private company only if the total members of the company are limited to 200. Total Number of members

(a)	Directors and their relatives	50
(b)	5 couples (5 x 1)	5
(c)	Other	145
	Total	200

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

14. Small Company-2(85)

XYZ Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of ₹ 2 crores and turnover of 60 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

- Whether the XYZ Private Ltd. can avail the status of small company?
- What will be your answer if the turnover of the company is 30 crore?

Answer:

"Small Company" means a company, other than a public company-

(i) Paid-Up Share Capital of which does not exceed ₹ 4 crores or such higher amount as may be prescribed which shall not be more than ₹ 10 crores

AND

(ii) Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ₹ 40 crores or such higher amount as may be prescribed which shall not be more than ₹ 100 crores.

Provided that nothing in this clause shall apply to

- a holding company or a subsidiary company
- a company registered under section 8 or
- a company or body corporate governed by any Special Act

Conclusion

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

(ii) If the turnover of the company is 30 crore, then both the criteria will be fulfilled and XYZ Ltd. CAN avail the status of small company.

15. Subsidiary Company- 2(87)

The paid-up share capital of **TATA Private Limited** is ₹1 crore, consisting of

- (A) 8 lacs Equity Shares of 10 each, fully paid-up and
(B) 2 lacs Cumulative Preference Shares of 10 each, fully paid-up.

PJ Private Limited and **MARA Private Limited** are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in TATA Private Limited.

PJ Private Limited and MARA Private Limited are the subsidiaries of MI Private Limited.

(i) With reference to the provisions of the Companies Act, 2013 examine whether TATA Private Limited is a subsidiary of MI Private Limited?

(ii) Would your answer be different if MI Private Limited has 8 out of 9 Directors on the Board of TATA Private Limited?

Answer:

"Subsidiary Company" or "Subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company-

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

Explanation -For the purposes of this clause-

(a) The Subsidiary of the subsidiary will also be treated as the Subsidiary of the holding company: A company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or (ii) is of another subsidiary company of the same holding company.

(b) Control the composition of Board: The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can APPOINT or REMOVE, all or a MAJORITY of the directors.

Answer(i)

In the present case, PJ Pvt. Ltd. and MARA Pvt. Ltd. together hold less than one half of the total share capital. Hence, MI Private Ltd. (holding of PJ Pvt. Ltd. and MARA Pvt. Ltd.) will not be a holding company of TATA Pvt. Ltd.

Answer (ii)

However, if PJ Pvt. Ltd. has 8 out of 9 Directors on the Board of TATA Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (MI Pvt. Ltd.) will be treated as the holding company of TATA Pvt. Ltd.

16. Death of All Members

BAJAJ Pvt. Ltd. is a Private Company Having 5 members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

Answer:

Company cannot end automatically

- The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization.
- In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law.
- Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

Transmission of shares

The provision for transferability or TRANSMISSION of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

Conclusion

In the present case, BAJAJ Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law. Therefore, even with the death of all members (i.e. 5), BAJAJ (Pvt) Ltd. does not cease to exist.

17. Steps of Incorporation-Section 7 & SPICe+ procedure

5 friends desirous of starting garments business want to incorporate a company for this purpose. You being a Practicing CA have been approached for advice.

OR

Mr. P and Q are partners in a firm PQ & Co. since the last 10 years. Now their business has crossed ₹20 crores and they want to form a private limited company to take over the firm's business and to expand it at large scale. They approached their auditor to assist to incorporate a company in the name of PQ Trading Private Ltd. Explain in brief what documents are required to be filed with the Registrar of Companies?

Answer:

Step 1- Reservation of Name (Rule9)

Reserve a Unique Name for 20 days by using the SPICe +(INC-32) Application on MCA website (mca.gov.in), which may either be APPROVED or REJECTED, as the case may be, by the Registrar,



Central Registration centre after allowing re-submission of such web-form within 15 days for rectification of the defects, if any.

Step 2-File the following information

File the following information within next 20 days in Part-B of the web service SPICe+.

#	Form No.	Description
(a)	INC- 32 (SPICE+)	Incorporation certified by CA/CS/CMA/Advocate.
(b)	INC- 33	e-Memorandum of Association(e-MOA)(Based on Table-A)
(c)	INC- 34	e-Articles of association (e-AOA) (Based on Table-F)
(d)	INC- 35 (AGILE-PRO- S)	AGILE-PRO-S (Application for GSTIN, ESI plus EPF, P. Tax Registration & Opening of Bank a/c and Shops and Establishment Registration)
(e)	INC - 9	Declaration shall be submitted by each of the <u>subscribers</u> to the memorandum and each of the <u>first directors</u> named in the articles.
(f)	DIR- 12 and DIR- 2	Particulars of <u>first director</u> of the company and his interest in other firms or bodies corporate along with his <u>consent</u> to act as director of the company shall be filed.
(g)	Registration fees	Pay Registration fees electronically.
(h)	INC- 22	Filing of Registered Office Address A company may furnish verification of its registered office: 1) In Form INC-32 (SPICE+) at the time of incorporation or 2) In Form INC-22 within 30 days of incorporation.

All Incorporation related documents shall be kept at the registered office only.

Step 3-Issue of COI by Central Registrar (CRC)

The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention:-

- PAN of the company where if it is issued by the Income-tax Department.
- CIN of the company allotted by Registrar.

18. Challenging the Registration/Incorporation-Section 7

Though 6 out of 7 signatures to the Memorandum of Association of a company were forged, the company was registered and the Certificate of Incorporation was issued. Can the registration of the company be challenged subsequently on the ground of forged signatures?

Or

The Memorandum of Association of a company was signed by two adult members and by a guardian of the other 5 minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a Certificate of Incorporation. The plaintiff contended that (a) conditions of registration were not duly complied with, and (b) that there were no 7 subscribers to the Memorandum. Will the Court uphold his contention?

Answer.

- Once the Certificate of Incorporation has been issued, it shall be deemed that all the formalities required for incorporation has been duly complied with. (Deeming Fiction). Nobody can now challenge the incorporation of the company. A separate legal entity has now come into legal existence.
- However other consequences shall follow. Wrongdoers (Subscribers/ Professionals) shall be liable to punishment u/s 447.
- Also, the NCLT may
 - Pass such orders, as it may think fit, for regulation of the management of the company including changes in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - Direct that liability of the members shall be unlimited; or
 - Direct removal of the name of the company from the register of companies; or
 - Pass an order for the winding up of the company; or
 - Pass such other orders as it may deem fit.

Provided that before making any order under this sub-section,-

- The company shall be given a reasonable opportunity of being heard in the matter, and
- The tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Conclusion

Once the Certificate of Incorporation has been issued, it shall be deemed that all the formalities required for incorporation has been duly complied with. Nobody can now challenge the incorporation of the company. A separate legal entity has now come into legal existence.

However other consequences shall follow as described above



19. Penalty & Other Consequences for providing False Information to Registrar - Section 7
BRITANIA limited was incorporated by furnishing false information's. As per Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard. (5 Marks) (Nov 2019)
OR
Mr. SWATI and Mr. ASMITA , the promoters of SA Private limited have provided false information to ROC for incorporating the said company. What penalties have they exposed themselves to? What are the other consequences of providing false information to Registrar?

Answer.

Section 7 Penalty & other Consequences for providing False Information to Registrar

- (1) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under Section 447.
- (2) Also, the NCLT may
- Pass such orders, as it may think fit, for regulation of the management of the company including changes in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - Direct that liability of the members shall be unlimited; or
 - Direct removal of the name of the company from the register of companies; or
 - Pass an order for the winding up of the company; or
 - Pass such other orders as it may deem fit.

Provided that before making any order under this sub-section,

- The company shall be given a reasonable opportunity of being heard in the matter; and
- The tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Conclusion

So, the subscribers/professional will suffer the consequences described above for providing false Information to Registrar.

20. One Person Company Rule 3 & 4

Navneet incorporated a "One Person Company" making his sister Nikita as the nominee. Nikita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

- (A) If Nikita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
- (B) If Nikita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Answer.

Rule 3-Eligibility for being a Member/Nominee

- Only a natural person
- who is an Indian citizen,
- whether resident in India or otherwise

shall be eligible to be a MEMBER or NOMINEE of the OPC.

Explanation For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of ≥ 120 days during the immediately preceding FINANCIAL YEAR.

Rule 4-Withdrawal by Nominee and new appointment

The person nominated by the subscriber or member of a OPC may, withdraw his consent by giving a notice in writing to such sole member and to the OPC.

Conclusion

Note: I have written the amended answer below based on the Amendments in Company Law. You will still find that many books are not updated and are continuing with old answer which is wrong. So please Follow the New Amended Answer given below.

- (A) If Nikita is leaving India permanently, it means she will no longer be a resident of India. That is not a problem because the New Rule 3 says "resident in India or otherwise". The main issue is that she will lose her citizenship status based on the Foreign laws of the Foreign Country where she is settling abroad. So, it is mandatory for Nikita to withdraw her nomination in the said OPC as she is leaving India permanently.
- (B) If Nikita maintained the status of Resident of India after her marriage by staying in India for a period of not less than 120 days during the immediately preceding financial year, then obviously she will also not lose her citizenship status. In that case, Nikita can continue her nomination in the said OPC.



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INCORPORATION & OPC



QUESTION BANK



21. One Person Company- Rule 3 & 4

Mr. Raj along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raj formed a single person economic entity in the form of One Person Company with his brother Mr. Tanmay as its nominee. On 4th May 2022, Mr. Tanmay withdrew his consent as Nominee of the One Person Company. Can he do so undertake provisions of the Companies Act, 2013?

Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2022 under the above said Act.

- Mr. Ram, son of Mr. Raj who is 15 years old as on 5th May 2022.
- Ms. Shalini an Indian Citizen, sister of Mr. Raj stays in Dubai and India. She stayed in India during the period from 2nd January 2021 to 16th August 2021. Thereafter she left for Dubai and stayed there.
- Mr. Satish, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

Answer.**Rule 3 - Eligibility for being a Member/Nominee**

- Only a natural person
- who is an Indian citizen,
- whether resident in India or otherwise

shall be eligible to be a MEMBER or NOMINEE of the OPC.

Explanation For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of ≥ 120 days during the immediately preceding FINANCIAL YEAR.

Minor

No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

Number of memberships/nominee ships

A natural person shall **NOT** be MEMBER of more than a OPC at any point of time and the said person shall **NOT** be a NOMINEE of more than a OPC.

Rule 4-Withdrawal by Nominee and new appointment

The person nominated by the subscriber or member of a OPC may, withdraw his consent by giving a notice in writing to such sole member and to the OPC.

Conclusion

Note: I have written the amended answer below based on the Amendments in Company Law. You will still find that many books are not updated and are continuing with old answer which is wrong. So please follow the New Amended Answer given below.

Therefore, in terms of the above law, Mr. Tanmay, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

- As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Ram, being a minor is not eligible for being nominated as Nominee of the OPC.
- The Amended Rule 3 says "resident in India or otherwise". Also, the term "resident in India" means a person who has stayed in India for a period of ≥ 120 days during the immediately preceding FINANCIAL YEAR. Here Ms. Devaki is an Indian Citizen who resided between 1st April 2021 to 16th August 2021 in India which is more than 120 days. So, she is eligible for being nominated as nominee of the OPC.
- As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.

Mr. Satish, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

22. 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.

Answer.

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 cognizant 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.

23. Mr. Jadav floated an OPC, but he does not want to provide any nominee. Is nomination compulsory under OPC. If so what would be the procedure and regulations.

Answer.

The proviso to Section 3(1) provides that the memorandum of OPC shall indicate the name of the other person as nominee in Form No. INC.2. The prior written consent of the other person shall be obtained in the Form No. INC.3. The other person in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with Memorandum and Articles of the Company.

The other person may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal. He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3. The company shall within 30 days of receipt of the notice of the withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name another person nominated by the sole member in Form No. INC.4 along with the fee prescribed along with the written consent of such another person so nominated in Form No. INC-3.

The subscriber or member of OPC may change the name of such other person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee. He may nominate another person after obtaining the prior consent of such another person in Form No. INC-3. The company shall, on receipt of such intimation, file with the Registrar, a notice of such change in Form No. INC-4 along with the fee and with the written consent of new nominee in Form No. INC-3 within 30 days of such receipt of intimation of change.

Where the shareholder of OPC ceases to be the member in the event of death or incapacity to contract, his nominee becomes the member of such OPC. Such new member shall nominate within 15 days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company. The company shall file with the Registrar an intimation of such cessation and nomination in Form No. INC-4 along with the fee within 30 days of the change in membership with the prior written consent of the person so nominated in INC-3.

24. Listed Company - 2(52)

Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

- (i) XYZ Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- (ii) MNO Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- (iii) PQR Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction (FOREIGN Stock Exchanges) as specified in sub-section (3) of Section 23 of the Companies Act, 2013

Answer.

"Listed Company" means a company which has any of its securities listed on any recognised stock exchange.

Newly Inserted [The Companies (Amendment) Act, 2020]

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI (Securities and Exchange Board of India), shall NOT be considered as listed companies.

The CG has notified that the following companies shall NOT be considered as Listed Company for the purpose of compliance with provisions of Companies Act 2013: -

- (1) PUBLIC Companies which have NOT listed their Equity Shares on a recognized Stock Exchange BUT have listed their :-
 - (a) Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis.
 - (b) Non-Convertible Redeemable Preference Shares (NCPS) issued on Private Placement basis.
- (2) PRIVATE Companies which have listed their Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis on a recognized Stock Exchange.
- (3) PUBLIC Companies which have NOT listed their Equity Shares on a recognized Stock Exchange in India BUT whose Equity Shares are listed on FOREIGN Stock Exchanges.

Answer (i)

XYZ Limited is an unlisted company.

Answer (ii)

MNO Limited is an unlisted company

Answer (iii)

PQR Limited is an unlisted company.



25. One Person Company - Rule 3 & 4

Chhavish, an Indian citizen and resident of India formed "Ekta Readymade Garments (OPC) Private Ltd." as One Person Company on 1st April 2023 with his wife Mrs. Jyoti as nominee. The authorized and paid-up share capital of the company is 3 crores. He got in touch with a readymade garments buyer and was expecting to receive a substantial order by August 2023 where final delivery will be completed by December 2023. To expand the production capacity, the decided to invest an additional capital of 1 crore in plant and machinery. As a result, the company's authorized and paid-up share capital is now 4 crores. Promoter of the company seeks your advice.

Considering the case and referring the provisions of the Companies Act, 2013, advice:

- (A) Who is eligible to act as a member of OPC?
 (B) Whether "Ekta Readymade Garments (OPC) Private Ltd." can convert into any other kind of company as on 1st December 2023?
 (C) If the company increases its paid-up share capital to 5 crores in December, 2023, can it be converted in any other kind of company immediately

Answer:**Answer (A)**

The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

Only a natural person who is an Indian citizen whether resident in India or otherwise

- (a) shall be eligible to incorporate One Person Company (OPC);
 (b) shall be a nominee for the sole member of One Person Company (OPC).

Answer (B)

The earlier restriction on voluntary conversion for 2 years after incorporation has been removed after Amendment.

Therefore, the OPC can voluntarily convert into any other kind of company as on 1st December 2023.

Answer (C)

The earlier limits on the Paid-up share capital and Turnover of OPC have been removed after Amendment.

Therefore, there is no compulsory conversion of OPC into any other kind of company due to increase in Paid up share capital. The conversion is solely the choice of the OPC.

26. Sec 2(76): Related Party

ABC Private Ltd. has 2 wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

Answer:**Section 2(76): Related Party**

According to Section 2(76) (viii) of the Companies Act, 2013, Related party, with reference to a company, means anybody corporate which is -

- (A) a holding, subsidiary or an associate company of such company;
 (B) a subsidiary of a holding company to which it is also a subsidiary; or
 (C) an investing company or the venturer of the company.

Conclusion

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B) above D Private Limited and E Private Limited are related parties.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to Section 188 to a private company, though being a related parties.

27. Sec 9: Effect of Registration; Sec 10: Effect of Memorandum and Articles

Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

Answer:**Section-9 Effect of Registration****Section-10 Effect of Memorandum and Articles**

As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company: -

- (1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.
- (2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.
- (3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.



(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

OBJECTIVES

CH NO. 1,2,4 & 5 MCQ'S ARE COVERED HERE

1. In Which of the following cases the approval of central govt is not required
 - (a) conversion of public Ltd to private Ltd
 - (b) only change in name of the company is only deletion, addition of the word private
 - (c) A & B
 - (d) none of these
2. State the circumstances under which the Central govt forces for a compulsory change
 - (a) If the name is identical with or too nearly resembles the name by which a company in existence had been previously registered
 - (b) On an application by a registered proprietor of a Trademark that the name is identical
 - (c) If the name resembles a company which is coming to existence
 - (d) A & B
3. When can a private company commence business?
 - (a) at any time
 - (b) after applying for registration
 - (c) after obtaining the certificate of incorporation
 - (d) after obtaining certificate of commencement
4. If after reservation of name, it is found that the name was applied by furnishing wrong or incorrect information, then, the effects for incorporated company shall be
 - (a) Reserved name shall be cancelled
 - (b) Change name or strike off the name
 - (c) Action subject to penalty up to 1 lakh
 - (d) none of the above
5. If after reservation of name, it is found that the name was applied by furnishing wrong or incorrect information, then, the effects for company has not been incorporated shall be
 - (a) Reserved name shall be cancelled & Penalty up to 1 lakh
 - (b) Change name or strike off the name
 - (c) Make a petition for winding up of the company
 - (d) All of the above
6. Companies are now allotted a in addition to their name
 - (a) Permanent Account Number
 - (b) Solution Invite Number
 - (c) Personal Index Number
 - (d) Corporate identity Number

7. Which of the following is not an advantage of company incorporation?
 (a) There is transparency in business operations
 (b) There is difficulty in control & management
 (c) The company can have property in its own name
 (d) A&C
8. Which of the following is a disadvantage of company incorporation?
 (a) The legal formalities and related expenses are very simple
 (b) It has great public accountability
 (c) It act against public interest
 (d) The privacy of a company can be ensured
9. Which companies are exempted to add Ltd or Pvt Ltd at the end of their name
 (a) private
 (b) government
 (c) defunct
 (d) association not for profit
10. _____ is the conclusive evidence in case of company that statutory requirements have complied with
 (a) certificate of incorporation
 (b) certificate of commencement of business
 (c) Both
 (d) none of these
11. Private company can start its business immediately after the issue of
 (a) certificate of commencement of business
 (b) certificate of incorporation
 (c) Both
 (d) None of these
12. _____ conceives the idea of business
 (a) promoter
 (b) Director
 (c) agent
 (d) none of these
13. _____ are the contracts entered into by promoter on behalf of a prospectus company
 (a) provisional contract
 (b) pre incorporation contract
 (c) preliminary contract
 (d) Both A & B
14. Contracts are made after incorporation but before the grant of certificate of commencement of business _____
 (a) provisional contract
 (b) pre incorporation contract
 (c) preliminary contract
 (d) Both A & B
15. In which of these following cases the name of a Company is undesirable
 (a) if it attracts the provisions of section 3 of Emblems and Names Act, 1950
 (b) the proposed name is only a general one
 (c) the propose name is similar to any ordinary person of the country
 (d) both A & B
16. The basic condition for formation of company
 (a) subscribing of MOA
 (b) complying with the requirements of the act
 (c) both A & B
 (d) A or B
17. Which of the following is not a duty of the promoter
 (a) submission of profit
 (b) to disclose all material facts
 (c) to make secret profit
 (d) a & b
18. As regards to ratification of promoter's contracts the view taken in the case of _____ was that the company cannot ratify the contract made by the promoter before its incorporation.
 (a) BSN v. Janardan Mohandas Pilai
 (b) Commissioner of Income Tax v. Meenakshi Mills Ltd
 (c) Kelherv. Baxter LR
 (d) Connors Bros. v. connors
19. A certificate of Incorporation given by the registrar in respect of any association shall be _____ evidence
 (a) conclusive
 (b) persuasive
 (c) mandatory
 (d) None of the above
20. On incorporation of a company registrar of companies in addition to the certificate of incorporation, issues a unique identification number called.
 (a) unique corporate number
 (b) corporate identification number
 (c) company identification number
 (d) unique identification number
21. contracts made after incorporation of public company, but before issue of the certificate of commencement of business are
 (a) provisional contracts
 (b) post incorporation
 (c) preliminary contracts
 (d) contracts in normal course of business
22. The applicant for the availability of name of the proposed company can have an option to give maximum _____ alternative names
 (a) 3
 (b) 4
 (c) 5
 (d) 6
23. Pre-incorporation contract is also known as
 (a) Provisional
 (b) Preliminary
 (c) illegal
 (d) legal



24. The application for registration of a company should be presented to the registrar of the state in which the ___ of the company is to be situated
- Manufacturing plant
 - First branch
 - Business office
 - Any of the above
25. No of documents to be submitted by a public Ltd company to the registrar while applying for incorporation of the company is
- 3
 - 2
 - 7
 - 50
26. Among the following which documents are not mandatory to be submitted to the Registrar along with incorporation application by a company
- Address of registered office & undertaking
 - Undertaking & statement of capital
 - Statement of capital & list of directors
 - List of directors & statement of capital
27. Documents filed with ROC are ___ documents.
- Public documents
 - Private documents
 - Secret documents.
 - Hidden documents.
28. How can a company ensure transparency in business operations?
- By filing documents with ROC.
 - By mobilising huge amounts through Public issue.
 - By owning property in its own name.
 - By owning property in its shareholders name.
29. How is there an ease in control & management of a Company?
- By filing documents with ROC.
 - By undertaking all sorts of business ventures.
 - By electing representatives of members from the shareholders of the company.
 - By filing documents with NCLT.
30. Why do we say that upon registration there will be a total loss of privacy?
- All documents filed with ROC become public.
 - All documents filed with ROC become private.
 - All documents filed with ROC remains as a secret.
 - All documents filed with ROC become private & remains as a secret.
31. For which of the following companies, the word "National" is permissible?
- Govt company.
 - Public company.
 - Private company.
 - Registered company.
32. If a company has changed its name during the last ___ yrs, it shall paint or affix or print along with its name, the former name so changed.
- 3yrs.
 - 2yrs.
 - 1yr.
 - 5 yrs
33. What is the consequence of not painting, printing, of a company name on the outside of every office or place in which its business is carried on?
- Fine of Rs 1000 for every day during which the default continues.
 - Fine of Rs100 for every day during which the default continues.
 - Fine of Rs 1000 for every day during which the default continues/10 Lakh whichever is less
 - Fine of Rs10,000 for every day during which the default continues
34. The number of days for which an ROC may reserve the name of a company in Form No.INC.1 is
- 30days.
 - 40days.
 - 50days.
 - 60days.
35. Name the centre constituted by CG, which has a territorial jurisdiction all over India to process applications for reservation of name in e-Form No.INC-1.
- Government Registration Centre.
 - Central Registration Centre.
 - Regional Registration Centre.
 - Kendra Registration Centre.
36. is not the conclusive evidence of that all the objects of the company, as set out in the MOA as legal.
- Compliance declaration.
 - Affidavit.
 - Share certificate.
 - Certificate of Incorporation.
37. Once all the formalities of conversion of a Sec.8 Company into a company of any other kind is done, How will the ROC confirm that conversion?
- By issuing certificate of incorporation
 - By issuing Certificate of commencement of business
 - Altering MOA
 - Altering AOA
38. Which of the following professionals be considered as promoters?
- An accountant valuing assets of a business to be purchased.
 - solicitor who drafts MOA/AOA.
 - A&B.
 - A professional who renders more than the professional assistance.
39. Contracts entered by agents/trustees on behalf of a prospective company before its existence is termed as
- Provisional contracts.
 - Preliminary contracts.
 - Incorporation contracts.
 - Pre incorporation contracts.



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QUESTION BANK



40. The time limit given to a company to change its name if its name resembles the registered trademark of another company
- Within 6 months from the issue of direction by CG.
 - Within 3 months from the issue of direction by CG.
 - Within 12 months from the issue of direction by CG.
 - Within 9 months from the issue of direction by CG.
41. The time limit within which a company should produce notice of change of ROC along with the order of CG is
- within 5 days from the date of such change.
 - within 15 days from the date of such change.
 - within 10 days from the date of such change.
 - within 20 days from the date of such change
42. Name the company to which the words Pvt Ltd & Ltd are not applicable.
- Dormant company.
 - Company limited by guarantee having no share capital
 - Association not for Profit.
 - Company limited by guarantee having share capital.
43. The correct step by step procedure for change in Registered office within jurisdiction of ROC, but out side local limit.
- Pass a special resolution.
 - Give notice of new location to ROC.
 - File a copy of Special Resolution.
 - Convene a general meeting of shareholders.
- 1,2,3,4.
 - 4,1,3,2.
 - 4,3,2,1.
 - 1,4,2,3.
44. The document which should not be enclosed in an application to CG for change of registered office from one state to another is
- Copy of Power of Attorney.
 - Affidavit verifying application.
 - Copy of the notice convening the General Meeting.
 - Copy of Special Resolution in form No. MGT. 14.
45. When is a company said to have been registered?
- When it files the memorandum of association with the registrar of companies.
 - When it gets the certificate of incorporation
 - When it gets the certificate of commencement of business
 - When it actually starts its business
46. A promoter is a person who.
- is a director.
 - is a relative of the company
 - is a wellwisher of the company
 - takes part in the company's incorporation.
47. Which one of the following is NOT an advantage of the incorporation of the company?
- perpetual succession
 - limited liabilities of members.
 - capital contribution forming part of the joint stock of the company.
 - Freedom to do any business
48. On incorporation of a company, the Registrar of Companies in addition to the Certificate of Incorporation, issues a unique identification number called as:
- Unique corporate number
 - Corporate identification number
 - Company identification number
 - Unique identification number
49. Where the registrar strikes off the register the name of a company as a defunct one, the court has the power to order restoration of name with in:
- 5 years
 - 7 years
 - 10 years
 - 20 years
50. Pre incorporation contracts are those contracts which are entered into by_
- Agents.
 - Trustees.
 - Agents/Trustees.
 - Agents & Nominees.
51. Which of the following is a promoter?
- Solicitor.
 - Banker.
 - Accountant.
 - Person drawing up the MOA.
52. Suraj has formed a 'One Person Company (OPC)' with his wife Pariniti as nominee. For the last two years his wife Pariniti is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Raju who could be made nominee or his (Suraj) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife?
- Since blood relation can only be appointed as nominee in case of OPC, Suraj needs to appoint his son Rakshak.
 - Suraj can appoint his friend Raju as nominee in his OPC
 - Pariniti is not agreeable to the proposal of Suraj and hence, Suraj cannot change her as the nominee
 - Either Rakshak or Mr. Raju can be appointed as nominee



53. Shobha formed a 'One Person Company (OPC) on 15-10-2022 with her husband Sundar as nominee and 10 lacs as Authorised and paid-up share capital. In the month of April 2023 she got in touch with a foreigner and is expecting to receive a substantial export order by May 2023 whose final delivery must be completed by December 2023. She is contemplating to convert her OPC into a private limited company before she receives the export order in May 2023

- (a) Since Shobha is the sole member of OPC she is having full discretion to voluntarily convert it into a private limited company any time after 15-10-2022.
- (b) Shobha can voluntarily convert her OPC into a private limited company only after the expiry of first financial year by which the accounts are closed (i.e. after 31-3-2023 without any restriction.)
- (c) Shobha can voluntarily convert her OPC into a private limited company only after she delivers duly audited first financial statements and Annual Return to the concerned Registrar of Companies by due date and without making payment of any additional fee.
- (d) Shobha can voluntarily convert her OPC into a private limited company only after expiry of two years from 15-10-2022 (i.e. on 15-10-2024 or thereafter).

54. Sahil along with his wife paumima is running successfully a trading business, His friend Kailas has suggested him to form a 'One Person Company (OPC) whose striking feature is "limited liability. Sahil is all convinced to get incorporated OPC but he is in a dilemma as to how to depict the name of such OPC in the Memorandum. Select the best option for him.

- (a) Sahil-&-paru (One Person Company) Trading Private Limited
- (b) One Person Company- Sahil-&-Paru Trading & Co.
- (c) Sahil-&-Paru Trading (One Person Company)
- (d) Sahil-&-Paru Trading Private Limited (One Person Company)

55. Kailas got incorporated 'One Person Company with his sister Kruti as the nominee and about three years have passed satisfactorily. From time to time Kailas does a number of charitable works and is attached with three NGOs undertaking such assignments. In the meantime his business under his OPC has also flourished. Now he is contemplating to convert the OPC either as a Section 8 company (i.e. formation of companies with charitable objects) or as a private or public company. Select the best option for him.

- (a) Since OPC belongs to Kailas, he has full discretion to convert the OPC either as a Section 8 company or as a private or public company

- (b) Since OPC was formed as a private company, the only option available with Kailas is to get it converted into a private limited company. Moreover, there is specific prohibition on converting OPC into a public limited company
- (c) There is specific prohibition on converting OPC into a Section 8 company, otherwise it can be converted into a private or public company without any hindrance.
- (d) Since Kailas does a lot of charitable works there is no prohibition if he converts his OPC into a Section 8 company (companies formed with charitable objects).

56. Kush is the owner of a grocery store. In March 2023, he got the idea of forming a 'One Person Company' and convinced his sister Ruchi, an Indian citizen who resides in London but visits India from time to time, to become nominee in his OPC. In the year 2022, Ruchi first came to India on 10th January and left for London on 26th February. Thereafter, she again visited India on 7th June and remained here till 10th October and boarded an evening flight for London on the same day. From then onward she did not visit India in the year 2022 but on 2nd January 2023 she came to India for a short duration and left for London on 14th February, 2023. Is it possible for Kush to appoint Ruchi as nominee?

- (a) Ruchi can be appointed as nominee by Kush because she is a natural person, an Indian citizen and resided in India for more than 90 days during the year 2022.
- (b) Ruchi can be appointed as nominee by Kush because she is a natural person, an Indian citizen and resided in India for more than 182 days during the years 2022 and 2023 i.e. prior to March 2023 when Kush contemplated to form his OPC
- (c) Kush cannot appoint Ruchi as nominee in his OPC because she did not reside in India for 182 days or more during the year 2022 though she is a natural person and also an Indian citizen
- (d) Since Kush is the sole member of his OPC who will look after all its affairs and the appointment of nominee is just a formality, a visit to India during 2022 for any number of days would make Ruchi eligible to be appointed as nominee.



CA AKASH AGARWAL

INCORPORATION & OPC



QUESTION BANK



57. Shalu, is the sole member of his OPC and he has appointed Vishal (his dear friend) as his nominee. Now, Vishal is leaving India permanently and has set up his own business in Italy. Due, to this fact, he has withdrawing his consent to continue as nominee in the said OPC

- (a) Vishal cannot withdraw his consent to act as a nominee of the OPC
- (b) Only Shalu has a right to remove Vishal as a nominee Vishal can withdraw his consent to act as a nominee of the OPC by giving proper notice
- (c) Vishal can withdraw his consent to act as a nominee of the OPC by giving proper notice
- (d) Vishal cannot withdraw his consent only when he is disabled but not due to the reason that he has set up his own business.

58. Kush and Ragini have formed a Section 8 company, date of incorporation being 18.02.2023 and they being the directors and also the shareholders. During June, 2023 it transpired that two unsuitable articles were required to be altered for smooth functioning of the company. Advise

- (a) Since articles regulate the internal management of the company, both Kush and Ragini being directors and shareholders are themselves capable of altering the articles.
- (b) In case of Section 8 company, articles can be altered only if the company shows profits consecutively for two years.

- (c) In case of Section 8 company, prior approval of the Central Government is required to be obtained before its articles are altered.
- (d) In case of Section 8 company, at least one year must elapse from the date of its incorporation before its articles are altered but there is no need to obtain prior permission of the Central Government

59. Amar made an application, his wife Abhilasha being other proposed subscriber and got reserved a name for incorporation of a private limited company but the Registrar of Companies, Delhi and Haryana, much before the incorporation, found that the name was applied by furnishing wrong information.

- (a) The reserved name shall be cancelled by the ROC because the name was applied by furnishing wrong information and Amar who made the application shall be liable to a penalty up to one lac
- (b) The reserved name, after seeking explanation from Amar and after he pays a penalty of one lac shall be allotted by the ROC and the company shall be incorporated by this name.
- (c) The reserved name shall be cancelled by the ROC but Amar shall not be liable to pay any penalty because cancellation of name in itself is a penalty
- (d) Besides cancellation of the reserved name Amar and Abhilasha shall be debarred from making an application for reservation of name for one year

from the date on which cancellation letter was issued by the ROC.

60. Sapan and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Sapanjay Softwares Private Ltd. on 6th July, 2018. In how many days, necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

- (a) Within 10 days from the date of approval
- (b) Within 20 days from the date of approval
- (c) Within 45 days from the date of approval
- (d) Within 60 days from the date of approval

61. Vivek is in trading business whereby he supplies handmade gloves and socks to many charitable trusts who supports the elderly people. Vivek now wants to expand his business and wants to reap the benefits of company form of organisation by opening his business as an OPC registered under section 8 of the Companies Act, 2013. Advise Vivek

- (a) Vivek cannot form an OPC as he is in trading business
- (b) Vivek cannot form an OPC to be registered under section 8 of the Companies Act, 2013

(c) Vivek can form an OPC to be registered under section 8 of the Companies Act, 2013

(d) Vivek can form an OPC as a private company and then convert it into a section 8 company.

62. Rukmani, a fresh science graduate, wants to make available the farmers good quality seeds and manure. For her business she is contemplating to form a company and is weighing various options. Sometimes before, she came to know that a 'one person company' has minimum one member and one director whereas a private company has minimum two members and two directors. As regards a public company, she has vague idea that there should be minimum three directors but she does not know about the minimum members required in this case. Advise.

- (a) When there is requirement of minimum three directors, the public company can be formed by minimum three persons.
- (b) There should be minimum five persons for formation of a public company though requirement of minimum directors shall remain three
- (c) There should be minimum seven persons for formation of a public company though requirement of minimum directors shall remain three.
- (d) There should be minimum nine persons for formation of a public company though requirement of minimum directors shall remain three.



CA AKASH AGARWAL

INCORPORATION & OPC



QUESTION BANK



63. Kush is the owner of a grocery store. In March 2018, he got the idea of forming a 'One Person Company and convinced his sister Ruchika, an Indian citizen who resides in London but visits India from time to time, to become nominee in his OPC. In the year 2017, Ruchika first came to India on 10th January and left for London on 26th February. Thereafter, she again Visited India on 7th June and remained here till 10th October and boarded an evening flight for London on the same day. From then onward she did not visit India in the year 2017 but on 2nd January 2018 she came to India for a short duration and left for London on 14 February, 2018. Is it possible for Kush to appoint Ruchika as nominee?

- (a) Ruchika can be appointed as nominee by Kush because she is a natural person, an Indian citizen and resided in India for more than 90 days during the year 2017.
- (b) Ruchika can be appointed as nominee by Kush because she is a natural person, an Indian citizen and resided in India for more than 182 days during the years 2017 and 2023 i.e. prior to March 2023 when Kush contemplated to form his OPC.
- (c) Kush cannot appoint Ruchika as nominee in his OPC because she did not reside in India for 182 days or more during the year 2022 though she is a natural person and also an Indian citizen

(d) Since Kush is the sole member of his OPC who will look after all its affairs and the appointment of nominee is just a formality, a visit to India during 2022 for any number of days would make Ruchika eligible to be appointed as nominee.

64. Jatin is desirous of forming a 'One Person Company (OPC)' for which he wants to nominate his wife Jasmin who in the event of his death shall become the member of OPC. However, he is not aware of as to which document should contain the name of the nominee. Advise him in the matter.

- (a) Name of the nominee should be mentioned in the Articles of Association after the names of the directors.
- (b) Name of the nominee should be mentioned in the Memorandum of Association
- (c) Either Articles of Association or Memorandum of Association may contain the name of the nominee.
- (d) There is no need to mention the name of the nominee in either Articles of Association or Memorandum of Association, a simple consent letter obtained from the nominee and kept in the records is sufficient.

65. Priyank and Priyanka, got reserved a name and thereafter a private limited company was formed using the reserved name on 1st June, 2018. Later on, a registered proprietor of a trade mark noted that the name of this private limited company was identical to the trade mark he had earlier got registered under the Trade Marks Act, 1999. Advise as to latest by which date, the proprietor of the registered trade mark can move an application to the Central Government against this anomaly.

- (a) Latest by 30th November, 2018, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
- (b) Latest by 30th May, 2019, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
- (c) Latest by 30th May, 2020, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
- (d) Latest by 30th May, 2021, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.

66. Mr. Pushkar wishes to start his own venture with an idea of recycling of plastic waste. He approaches you for your advice so as to decide on which type of entity he should incorporate mainly based on the aspects of taxation, capital funding and other monetary benefits to the promoters. Kindly suggest a suitable form of entity from the following

- (a) Limited Liability Partnership,
- (b) Private Limited Company,
- (c) Section 8 Company,
- (d) Producer Company.

67. Seven Hospitality Limited ("Company") was incorporated in 2018. Company run resorts and hotels nearby Mumbai. In 2023, Central government received an application from Mr. X ("proprietor") who has registered trademark for word "Seven". In ideal situation, what will be the Central Government's stand?

- (a) Central Government will ask to take permission from Registrar, as he have approved this name in first place
- (b) Central Government will ask them to mutually agree to use the word "Seven",
- (c) Central Government will direct the Company to change its name,
- (d) Central Government will deny his application



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INCORPORATION & OPC



QUESTION BANK



68. Swastik Pvt Ltd passed a special resolution to change its name to Swastik Darshan Pvt Limited on 30th May, 2022. Relevant MCA filing was done on due time and then Company got its new stationery printed on 1st, July, 2022. However, there was a delay in issue of certificate and Company received new certificate on 20th August, 2022 which was issued on 10th August, 2022. Company wants to enter into a lease agreement for new premise. When they can do such agreement in new name of the Company?
- 30th may, 2022
 - 1st, July, 2022
 - 20th August, 2022
 - 10th August, 2022
69. The Financial Statement of which of the following Companies does not include a Cash Flow Statement.
- OPC.
 - Private company.
 - Public company.
 - Scheduled company
70. In the case of an OPC, how many directors should sign it's Financial Statement?
- 2 directors
 - 3 directors.
 - 1 director
 - 4 directors.
71. The type of resolution to be passed by Sec.8 company to convert itself into a company of any other kind.
- Ordinary Resolution.
 - Written Resolution.
 - Special Resolution.
 - Oral Resolution.
72. The type of company to which the provisions relating to independent directors shall not apply.
- Dormant company.
 - OPC.
 - Sec 8 company.
 - Public company
73. The document to be filed by the Sec 8 company to convert into a company of any other kind is
- Certified true copy of the special resolution.
 - Certified true copy of the ordinary resolution.
 - Altered MOA/AOA.
 - Copy of objection letter of secured creditors.
74. Who among the following cannot become member or Nominee of OPC?
- Minor
 - Non Resident Indian
 - Both A & B
 - None of these
75. The no: of days within which a copy of the special resolution shall be filed with ROC for conversion of a company limited by guarantee into company limited by shares.
- 40 days
 - 20 days
 - 10 days
 - 30 days
76. A private company is to become a public company if its average turnover in the previous three years exceeds____
- 4 crore.
 - 8 crore
 - 10 crore
 - 50 crore.
77. The Registrar issued on 8th January, a Certificate of Incorporation dated 5th January. An allotment of shares was made on 5th January. The allotment is void as it was made before the Company was incorporated.
- True
 - False
78. All seven signatures on a Memorandum of Association were forged by a single person and a Certificate of Incorporation was obtained. This is a valid Certificate.
- True
 - False
79. A Firm may be a Member of a Company licensed u/s 8, but its Membership shall cease on dissolution of the Firm.
- True
 - False
80. The particulars of -can be filled in INC32 SPICE, for allotment of DIN.
- maximum of 3 Directors
 - Minimum of 3 Directors
 - maximum of 2 Directors
 - minimum of 2 Directors.
81. When the Applicant has already applied for reservation of a name and which has been approved, he may fill in INC-32 SPICE -as the proposed name of the Company.
- Reserved name
 - Reserved Name + New name
 - 3 proposed Names allowed
 - 1 proposed Name allowed
82. On examining e-form INC-32, if the ROC finds it necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the Applicant to remove the defects and re-submit the e-form from the date of such intimation



83. A second opportunity of ----- shall be given to remove defects and resubmission, if the defects remain after the first re-submission.
- 2 days
 - 5 days
 - 15 days
 - 7 days
84. Certificate of Incorporation shall be issued in Form No--
- Form no.INC-10
 - Form no.INC-11
 - Form no.INC-12
 - Form no.INC-9
85. When an individual, being a Member of a OPC becomes a Member / Nominee in another OPC, he shall ensure compliance with the Rule as to single OPC, within ____
- 210 days
 - 90 days
 - 120 days
 - 180 days
86. Voluntary Conversion of OPC (without Paid Up Capital or Turnover Condition) into Private or Public Company is possible only after expiry of --- from the date of incorporation of OPC.
- atleast 2 years
 - atleast 1 year
 - atleast 3 years
 - atleast 5 years
87. What is the quorum for the Board Meeting of Sec.8 company?
- 8 members.
 - 25% of total strength.
 - 8 members /25% of total strength.
 - 8 members /25% of total strength whichever is lower.
88. BMCD Limited representing first alphabet of the name of the Promoter like Bharat, Mahesh, Chandan and David is that a Desirable name as per Rules?
- No, Abbreviated names not allowed
 - Yes, name of the promoter allowed
89. Delhi Paper Mills Limited can get a Joint Venture or Associate Company as
- DPM Papers Limited
 - DPM Limited.
 - DPM state limited
 - None of the above
90. If a company exists with a name, Anbu Gear Private Limited Company, then the names which is the valid name for proposed company
- ANBU Gear Private Limited Company
 - Anbu-Gear Pvt. Ltd Company
 - Anbu-Gear Private Limited Company
 - None of the above
91. Businessmen or industrialists take initiative to form new companies. Their main function is to manage the company after its promotion, they are known as:
- Particular Promoters
 - Occasional Promoters
 - Professional Promoters
 - General Promoters
92. Under Companies (Registration Offices and Fees) Rules, 2014, every foreign company shall file with the Registrar of Companies along with the financial statement in form _____ which belong to the list of all the places of business established by the foreign company in India
- FC 4
 - FC 2
 - FC 1
 - FC 3
93. Which of the following is not a category of company?
- Inactive company
 - Assistant company
 - Dormant company
 - Producer company
94. The registered office shall be opened within from the date of incorporation of the company:
- 15 days
 - 60 days
 - 90 days
 - 30 days
95. As per section 3 of the Companies Act, 2013 the one person company is a:
- Small company
 - Public limited company
 - Private limited company
 - Section 8 company
96. _____ means a company in which that other company has significant influence but which is not a subsidiary company of the company having such influence and includes a joint venture.
- Associate company
 - Holding company
 - Small company
 - Foreign company



CA AKASH AGARWAL

INCORPORATION & OPC



QUESTION BANK



Q.2 True or False

1. A one person company means a company which has only one person as a member.
2. Shareholders and Stake holders are synonyms.
3. Trustee bank means a banking company as defined in the Banking Regulation Act, 1949.
4. The concept of Producer Company in India was introduced to allow co Operatives to function as a corporate entity.

Q.3 Fill in the blanks.

1. The registered office shall be opened within 30 days from the date of _____ of the company.
2. Where the paid up share capital of an One Person Company exceeds _____ or its average annual turnover during the relevant period exceeds _____ it shall cease to be entitled to continue as a One Person Company.
3. A company whose principal business is the acquisition of shares, debentures or other securities is termed as _____ company.
4. Before incorporation of a company, the promoter has to select _____ for the company
5. The registered office shall be opened within 15 days from the date of _____ the company

ANSWER KEY

1. C	2. D	3. C	4. B	5. A	6. D	7. B	8. B	9. D	10. A
11. B	12. A	13. D	14. C	15. D	16. C	17. C	18. C	19. A	20. B
21. A	22. D	23. B	24. C	25. C	26. A	27. A	28. A	29. C	30. A
31. A	32. B	33. A	34. D	35. B	36. D	37. A	38. D	39. D	40. A
41. B	42. C	43. B	44. D	45. B	46. D	47. D	48. B	49. B	50. C
51. D	52. B	53. D	54. D	55. C	56. C	57. C	58. C	59. A	60. B
61. B	62. C	63. C	64. B	65. D	66. C	67. D	68. D	69. A	70. C
71. C	72. C	73. A	74. C	75. D	76. C	77. B	78. A	79. A	80. A
81. A	82. A	83. C	84. B	85. D	86. A	87. D	88. A	89. A	90. D
91. D	92. C	93. B	94. D	95. C	96. A				

TRUE OR FALSE

1.	TRUE
2.	FALSE
3.	TRUE
4.	TRUE

FILL IN THE BLANKS

1.	Incorporation
2.	50 lakhs, 2 crore
3.	Investment
4.	Few Names
5.	Incorporation



2. SEC. 8 COMPANY

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. June 2016]

[5 Marks]

1. Can a non-profit organisation be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer:

Application for license:

As per Section 8(1) of Companies Act, 2013, the CG may by license & such conditions without using words Ltd. Or Pvt. Ltd.; allow a person or an association of persons to be registered as a company under the Companies Act if it has been set up:

- For promoting commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other useful object;
- It intends to apply its profits or other income in promotion of its objects; &
- The company intends to prohibit payment of any dividend to its members.

Registration with Registrar:

After getting licence from CG, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under Section 8(1)

Privileges:

As per Section 8(2) of Companies Act, 2013, a company registered under section 8(1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

No alteration of MOA or AOA:

As per Section 8(4) of Companies Act, 2013, the company cannot alter its MOA or AOA without previous approval of CG.

Revocation of license:

As per Section 8(6) of Companies Act, 2013, the licence issued by the CG is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the CG must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.

[PP. June 2017, Dec 2021, Dec 2022 & MTP Dec. 2022]

[6 Marks]

2. Write Short Notes on Revocation of license under Section 8(6) of Companies Act.

Or

What actions may be taken by CG on revocation of license of Section 8 of Companies Act, 2013
Answer:

As per Section 8(6) of Companies Act, 2013, CG may by an order revoke the licence granted to the company registered under this section if:

- The company contravenes any of the requirements of this section; or
- Any of the conditions subject to which a licence is issued are contravened; or
- The affairs of the company are conducted fraudulently or in a manner which violates the objects of the company.

As per Section 8(7) of Companies Act, 2013, CG may by an order, if it is satisfied that it is essential in public interest then directs that:

- The company be wound up under this or any other Act; or
- The company gets amalgamated with another company registered under this section & having similar objects & form single company

The CG shall direct the company to convert its status and change its name to add the words limited' or 'private limited' to its name

No such order will be passed, without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar.

The Registrar shall, without prejudice to any action taken, on application, in the prescribed form register the company accordingly.

[MQP Dec. 2023]

[7 Marks]

3. Describe the provisions relating to registration of an Association not for profit under Sec.8 of the Companies Act, 2013.

Answer:

Section 8 of the Companies Act, 2013 lays down provisions relating to companies that do not have a share capital. The section talks about the formulation of companies with charitable objects, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company –

- a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- b) intends to apply its profits, if any, or other income in promoting its objects; and
- c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow



that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section

Such a company registered under this section enjoys all the privileges and is subject to all the obligations of limited companies. A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. Also, among other provisions, the Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name.

In India, a non-profit organization can be registered as Trust by executing a Trust deed or as a Society under the Registrar of Societies, or as a private limited non-profit company under Section 8 Company under the Companies Act, 2013. A Section 8 Company is the same as the popular Section 25 of the old Companies Act, 1956, which was one of the most popular forms of Non-Profit Organizations in India.

There are many exemptions that a Section 8 company enjoys, such as, appointment of a qualified company secretary is not mandatory in such companies. Moreover, a general meeting of a Section 8 company can be held by giving 14 days' notice instead of the mandatory 21 days' notice, also, the provisions relating to appointment of directors under Section 149 regarding maximum and minimum number of directors is not applicable to such companies. Multiple compliance aspects have also been relaxed for such companies under the Companies Act, 2013.

[PP Dec. 2018 & MTP Dec. 2018]

[7 Marks]

4. What are the features of companies registered under section 8 of the Companies Act, 2013?

Answer:

Section 8 of companies Act 2013 These companies intend to promote art, commerce, sports, safety, science, research, healthcare, social welfare, religion, protection of the environment etc.

The following are the features of companies registered under Section 8 of the Companies Act, 2013;

1. Has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2. intends to apply its profit, if any, or other income in promoting its objects; and
3. intends to prohibit the payment of any dividend to its members;
4. the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
5. a firm may be a member of the company registered under this section;
6. a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government;
7. a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

[MTP Dec. 2017]

[7 Marks]

(Straight forward question asked)

5. Conversion of Section 8 Company into Company of Another Kind-Section 8

Vinci Artists Association, a Section 8 Company wants to convert itself into a Public Limited Company for distributing profits to its members from the sale of the antique paintings. You, being Practicing CMA have been approached for advice:

- (1) The procedure for conversion of Section 8 Company into Public Company.
- (2) Distributing profits to its members from the sale of the antique paintings after conversion to Public Company.

Answer:

Section 8-Conversion of Section 8 Company into Company of Another Kind

- a) **1st special Resolution:** A company registered u/s 8 which intends to convert itself into a company or any other kind shall pass a SPECIAL RESOLUTION for approving such conversion.
- b) **File MGT-14:** A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No. MGT.14.
- c) **File Application with RD for Approval:** The company shall file an application in Form No. INC.18 with the Regional Director along with a certified true copy of the Special Resolution



and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities.

- d) **Professional's Certificate of Compliance:** The company shall attach with the application a certificate from practicing CA/CS/CMA certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.
- e) **Director's Declaration for non-distribution of dividend:** The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be transferred directly or indirectly by way of dividend or bonus or otherwise to persons who have been members of the company or to any person claiming through any one of them.
- f) **Advertisement in Newspaper & Website:** The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said NOTICE shall be in Form No. INC.19 and shall be published-
- 1) At least once in a vernacular newspaper in the district in which the registered office of the company is situated and at least once in English newspaper having a wide circulation in that district; and
 - 2) On the website of the company, if any, and as may be notified or directed by the Central Government.
- g) **Copy of Notice to Government Departments for inviting objections (if any):** The company shall send a copy of the notice to the Chief Commissioner of Income Tax, Income Tax Officer, the Charity Commissioner, the Chief Secretary of the State, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within 60 days of the receipt of the notice, after giving an opportunity to the Company.
- h) **RD's Approval Order:** On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company or any other kind subject to such terms and conditions
- i) On receipt of the approval of the Regional Director,
- (i) **2 Special Resolution:** The company shall convene a general meeting of its members to pass a SPECIAL RESOLUTION for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;
 - (ii) **Filings with ROC:** The Company shall thereafter file with the Registrar within 30 days from the date of receipt of the order in Form No. INC.2
 - (a) A certified copy of the RD's APPROVAL ORDER.
 - (b) Amended MEMORANDUM and ARTICLES of the company.

(c) A DECLARATION by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

- j) **New Certificate of incorporation:** On receipt of the documents above, the Registrar shall issue the fresh Certificate of Incorporation and also adds the words "Limited or Private Limited" in the name.

Note:

Terms & Conditions of Conversion:

- i. Reversal of Privileges.
- ii. If land was acquired from Government at concessional rate, then pay the difference between Current Market Price at the date of conversion & Acquisition Price paid to Government earlier.
- iii. Surplus & Accumulated Profits should be transferred to IEPF

Answer (1)

The Section 8 Company should follow the above procedure for conversion into Public Company.

Answer (2)

Distributing profits to its member from the sale of the antique paintings after conversion to Public Company is still prohibited. Surplus Assets (Paintings) & Accumulated Profits on conversion should DE transferred to Investor Education & Protect fund (IEPF)

**CASE STUDIES****6. Meaning of a Section 8 Company- Section 8**

A Group of individuals intend to form a club namely 'Vikrant Pilots Flying Club' as limited liability company to impart classroom teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of 10 years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Answer:**Section 8(1)-Meaning of a Section 8 Company**

Section 8 Company is a company registered under this Act as a limited company which-

- a) Has in its objects the promotion of commerce (trade association), art, science, sports, education, research, social welfare, religion, charity protection of environment or any such other object.

Section 8 Company can also be incorporated for recreational activities like Clubs.

- b) Intends to apply its profits, if any, or other income in promoting its objects.
c) Intends to prohibit the payment of any dividend to its members.

Conclusion

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

7. Prohibition on Section 8 Companies- Section 8

Bitra Ltd, A Section 8 company is planning to declare dividend in the annual general meeting for the Financial year ended 31st march 2018. Mr. Khanna is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies act, 2013.

Answer:**Section 8(1)- Prohibition on Section 8 Companies**

According to Section 8(1) of the Companies Act, 2013, the companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be promoting the applied only in objects of the company.

Conclusion

Hence, in the instant case, the proposed act of Bitra Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according provisions of the Companies act 2013.

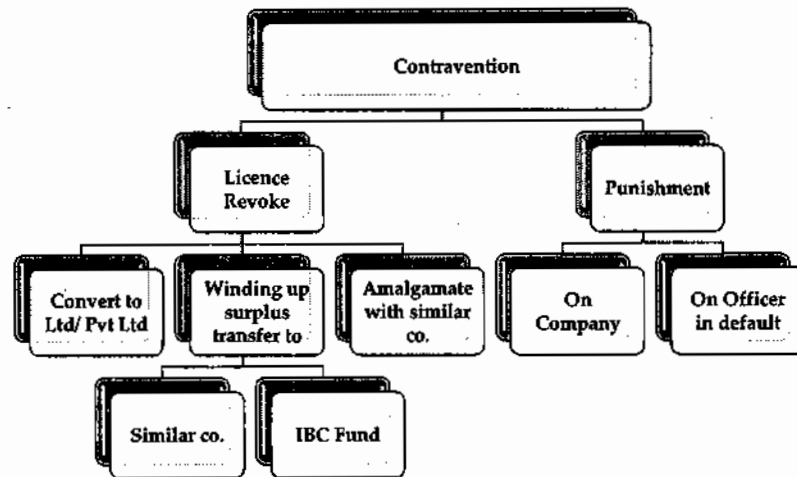
8. Contravention by Section 8 Company- Section 8

Vidyaniketan school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Vidyaniketan School, in such a case?

Or

State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Vikas, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

- Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- Whether the Company may be wound up?
- whether the State Cricket Club can be merged with M/s. Vikas Net Private Limited, a company engaged in the business of networking?

**Answer:****Section 8-Contravention by Section 8 Company****Revoke the license and convert the Company**

The Central Government may, by order, revoke the licence granted to a company registered under this section

1. If the company **contravenes** any of the requirements of this section or,
 2. If the company **contravenes** any of the conditions subject to which a licence is issued or,
 3. If **the affairs of the company are conducted FRAUDULENTLY** or in a manner violative of the objects of the company or prejudicial to public interest,
- and direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall on application, in Form No.INC.20, register the company accordingly.

Revoke the license and WIND-UP the Company

If on the winding up or dissolution of a company, there remains a Surplus/Asset, then such surplus/asset may be:-

- transferred to another company registered under section 8 and having Similar objects, subject to such conditions as the Tribunal may impose, or
- sold and proceeds thereof credited to **"Insolvency & Bankruptcy Fund [IBF]"** formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

Revoke the license and Amalgamate with similar company

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

Punishment for Contravention [CAA -2020]

Where any default is made in complying with the provisions of this section, the punishment shall be as follows :-

On Company	₹10,00,000<Fine<₹1,00,00,000
On officer in default	₹25,000<Fine<₹25,00,000

Provided that when it is proved that the affairs of the company were conducted in default fraudulently, every officer shall be liable for action under section 447.

Conclusion to 1st Question

Hence, vidya Niketan school and its officers will face the above consequences for contravention of Law.

Conclusion to 2nd Question**Answer (i)**

Hence, in the instant case, the Central Government can revoke the license given to State Cricket Club section 8 company, as the affairs of the company are conducted fraudulently, and dividend was paid members to which is in contravention to the conditions given under section 8. The provisions are described above.

Answer (ii)

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in ne public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. Hence, the stated company may be wound up.

Answer (iii)

In the instant case, State Cricket Club cannot be merged with Vikas Net Private Limited as the objects of both the companies are different and not similar.



CA AKASH AGARWAL

SEC 8 CO.



QUESTION BANK



3. MOA & AOA

PREVIOUS YEAR QUESTIONS & MOP & RTP

9. One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies. However, such alteration in the articles was opposed by Dhvaj & Co., a partnership firm which is its member that there such alteration was not valid. Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhvaj & Co. was valid and whether it can be a member in such company?

Answer:

According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).

Also, a firm may be a member of the company registered under section 3.

Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

Conclusion

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhvaj & Co. was valid. Also, section 3 allows a firm to be a member of such company and hence, Dhvaj & Co. can be its member.

[PP Dec. 2015]

[4 Marks]

1. What is the effect of the registration of the Memorandum of Association of a company on the subscribers of the memorandum and such other persons as may from time to time become members of the company.

Answer:

- The signatories (subscribers) become members of the company, their names are automatically gets entered into the register of members not being and they are bound to observe all the provisions of the Memorandum.
- Such other persons as may from time to time become members of the company are bound by the Memorandum, as if it had been signed by them, to observe all the provisions thereof.

[PP Dec. 2016, 5 Marks; June 2019]

[7 Marks]

2. State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013.

Answer:

As per Section 13 of Companies Act, 2013 read with Companies Rules, 2014, in order to shift the registered office from one state to another the company have to:

- Hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from one state to another will have to be approved;
- The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state to another.
- Publish a general notice in at least 1 regional language newspaper & 1 English language newspaper circulated in the area in which registered office of the company is situated clearly stating the substance of the petition.
- Send individual notices to all creditors/debenture holders of the company.
- A hearing may take place at the CLB office at which creditors, if any, and the representatives of the company are heard before making any order.
- Make an application to the CG in such form and manner as may be prescribed, for getting its approval.
- Where an alteration of the Memorandum results in the transfer of the registered office of the company from one state to another, a certified copy of the order of the CG approving the



alteration shall be filed by the company with the registrar of each of the states, within 30 days from date of receipt of certified copy of order.

- The registrars shall register the same. The registrar of the state where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration.
- The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

[PP June 2017, MTP DEC 2023/ 2022/2018, July 2023]

[10 Marks]

3. Discuss the procedure of alteration of memorandum of association as per the Companies Act, 2013. OR

Elaborate briefly the procedure of alteration of memorandum. OR

Demonstrate the procedure for alteration of Memorandum of Association. OR

State the procedure of alteration of Memorandum of Association as per the Companies Act, 2013?

Answer:

As per Section 13 of Companies Act, 2013, the alteration of the memorandum may be taken place in the following manner:

Common points for all types of changes:

- Hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from one state to another will have to be approved;
- The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state to another.
- Make an application to the CG in such form and manner as may be prescribed, for getting its approval.

Change in name clause:

- No approval from CG is necessary where the change in the name of the company is only the deletion there from, or addition thereto of the word 'private', on the conversion of any one class of companies to another class
- On any change in the name of the company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name leading to completion of process of change in name.

Change in registered clause:

- The CG shall dispose of the application of change of place of the registered office within a period of 60 days before passing of order. The CG may satisfy itself that
 - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - The sufficient provision has been made by the company either for the due discharge of all its debt and obligations, or
 - Adequate security has been provided for such discharge
- Filing with Registrar: A company shall in relation to any alteration of its memorandum file with the Registrar –

- The SR passed above by the company
- CG's approval, if the alteration involves any change in the name of the company.
- Filing of the certified copy of the order with the registrars of both the States: Where an alteration of the memorandum results in the transfer of the registered office of a company from one state to another, a certified copy of the order of the CG approving the alteration shall be filed by the company with the Registrar of each of the State within such time and in such manner as may be prescribed, who shall register the same.
- Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to shall issue a fresh certificate of incorporation including the alteration

Change in object clause:

- A company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless:
- SR through postal ballot is passed by the company.
- The details in respect of such resolution shall also be published in the newspaper
- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI
- Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the SR.
- Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section
- Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum in the case of a company limited by guarantee and not having a share capital intending to give any person right to participate in the divisible profits of the company otherwise than as a member shall be void.

[PP Dec. 2017]

[5 Marks]

Discuss the shifting of registered office within the same state.

Answer:

- As per Section 12(4) of Companies Act, 2013, the notice of every change of the situation of the registered office, after the date of incorporation, shall be given to the Registrar within 15 days of the change.
- As per Rule 28 of Companies Rules, 2014, an application in Form INC. 23 along with fees & prescribed documents shall be filed with Regional Director seeking confirmation for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies.



CA AKASH AGARWAL

MOA/IOA



QUESTION BANK



- As per Section 12(6) of Companies Act, 2013, the Regional Director shall communicate his confirmation to the company within 30 days of the receipt of the application.
- The company shall file such confirmation with the Registrar of Companies within 60 days.
- The Registrar shall certify the same within 30 days from the date of filing confirmation by the company.
- The certificate issued by the Registrar of Companies is the conclusive evidence that all the requirements of the Act with respect to change of the registered office have been complied with and the change shall take effect from the date of the certificate.
- The shifting of the registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending

[PP July 2023]

[10 Marks]

5. In which manner the Memorandum & Articles are to be signed on behalf of the company

Answer:

The Memorandum and articles shall be signed in the following manner:

- They shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. 1 witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.

The witness shall state that "I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details for their identification and satisfied myself of his/her/their identification particulars filled in"

- Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association.

- Where the subscriber is a body corporate, they shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.
- Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association
- Where the subscriber is a foreign national residing outside India,
 - In a country which is a part of the Common Wealth, his signatures and address on them & proof of identity shall be notarized by a Notary Public in that part of the Commonwealth.
 - In a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on them & proof identity shall be notarized before the Notary Public of the Country of his origin and be duly apostilled in accordance with the Hague Convention.

- In a country outside the commonwealth and not a party to the Hague Apostille Convention 1961, his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf

[PP Dec. 2017]

[5 Marks]

e the contents of Memorandum of Association

Answer:

- The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.
- As per Section 4(1), the memorandum of a limited company must state the following: name of the company with "Limited" as its last word in the case of a public company; and "Private Ltd" as its last words in the case of a private company; (Name Clause)

This shall not apply in case of companies registered under section 8.

Similarly, in case of government companies the name of the company shall end with the words "Limited". This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2013.

- (b) the State in which the registered office of the company is to be situated; (Situation Clause)
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof; (objects clause)
- Provided that nothing in this clause shall apply to a company registered under section 8;
- (d) the liability of members of the company, whether limited or unlimited, and also state, - (Liability Clause)

- I. in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- II. in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

- A. to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
- B. to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital, (Capital Clause)

- (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share per subscriber; and
- (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;



(f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

[RTP Dec. 2018]

7. Restrictions in alteration of Memorandum. Comment.

Answer:

- Section 13(8) provides that a company, which has raised money from public through prospectus and still has any unutilized 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. The special resolution shall 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 web site of the company, if any, indicating 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 the regulations to be specified by SEBI.
- Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.
- An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change. The meaning of the term ultra vires is simply —beyond (their) powers. The legal phrase ultra vires is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is only when the law has called into existence a person for a particular purpose or has recognised its existence- such as in the case of a limited company - that the power is limited to the authority delegated expressly or by implication and to the objects for which it was created. In the case of such a creation, the ordinary law applicable to an individual is somewhat reversed, whatever is not permitted expressly or by implication, by the constituting instrument, is prohibited not by any express prohibition of the legislature, but by the doctrine of ultra vires.
- It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [Ashbury Railway Company Ltd. vs. Riche]. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on

the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum.

- Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a —public document, it is open to public inspection. Therefore, when one deals with a company, one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

[PP Dec. 2015, 5 Marks] [MQP DEC, 2023]

[7 Marks]

8. The management of Ambika Properties Ltd., has decided to take up the business of chemical processing activity because of the downward trend in real estate business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause in the light of Companies Act, 2013.

Answer:

- As per Section 13(8) of Companies Act, 2013, a company, which has raised money from public through prospectus and still has any unutilized 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 of such resolution shall be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the office of the company is situated and shall also be placed on the website of the company, if any, indicating herein the justification for such change;
- The dissenting shareholders shall be given an exit option by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
- The Registrar shall register the alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution.
- It may be noted that no alteration with respect to objects shall have any effect until it has been registered as aforesaid even if the company is incurring losses, in real estate business it cannot switch to another business without passing SR.



[PP Dec. 2015]

[4 Marks]

9. The Articles of a Public Company clearly stated that Mr. X will be the Solicitor of the Company. The Company in its general meeting of the shareholders resolved unanimously to appoint Y in place of X as the solicitor of the company by altering the Articles of Association. Examine whether the company can do so? Give reasons.

Answer:

- As per Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively, had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and articles.
- As per Section 14(1) of the Act, subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may by a special resolution alter its Articles.
- As per Section 14(2) of the Act, the company will be required to file within 15 days the altered Articles with the Registrar along with necessary documents, such as the copy of the special resolution etc. and in such manner as may be prescribed.
- On receipt of all documents the Registrar shall register the same.
- As per Section 14(3) of the Act, any alterations in the Articles will be valid as if they were in the original Articles.
- In given case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting.
- Hence, the alteration is valid and after registration of the altered Articles the appointment of Y will stand and X will be terminated.

PP Dec. 2015]

[4 Marks]

10. 'XYZ Ltd.' is a new company which has registered its name and its Trade Mark. After two months from name registration, it comes to the notice of the Managing Director of XYZ Ltd. that the name of the company and its trade mark are identical with the already registered name and trade mark of another company 'XYZ Pvt. Ltd.', but the Managing Director does not take any steps to rectify the name or the trade mark.

(A) State the provisions relating to Name Rectification of a XYZ Ltd., when:

- (i) The Central Government is of the opinion that the name of XYZ Ltd. is identical with XYZ Pvt. Ltd.
- (ii) Registered proprietor of the trade mark of XYZ Pvt. Ltd. makes an application to the Central Government that the trade mark of XYZ Ltd. is identical with their trade mark.

(B) Mention the procedures to be followed if XYZ Ltd. changes its name or obtains a new name.

(C) What will be the consequences if XYZ Ltd. defaults in complying with any directions given by Central Government?

Answer:

(A)

(i) As per Section 16(1)(a) of the Companies Act, 2013, if through inadvertence or otherwise, XYZ Ltd. on its first registration or on its registration by a new name, is registered by a name which in the opinion of the Central Government is identical with or too nearly resembles the name by which a company in existence had been previously registered i.e., XYZ Pvt. Ltd., whether under this Act or any previous Company laws, it may direct XYZ Ltd. to change its name or new name within a period of three months from the issue of such direction, after adopting an ordinary resolution for this purpose.

(ii) As per Section 16(1)(b) of the Companies Act, 2013, on an application by a registered proprietor of a trade mark for XYZ Pvt. Ltd. that the name is identical with or too nearly resembles to a registered trade mark of XYZ Ltd. under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of XYZ Ltd, if in the opinion of the Central Government is identical with or too nearly resembles to an existing trade mark of XYZ Pvt. Ltd., it may direct XYZ Ltd. to change its name or new name within a period of three months from the issue of such direction after adopting an ordinary resolution for this purpose.

(B) As per Section 16(2), where XYZ Ltd. changes its name or obtains a new name, it shall within 15 days from the date of such change give notice of the change to the Registrar along with the order of the Central Government. The Registrar shall carry out necessary changes in the certificate of incorporation and the memorandum

(C) According to Section 16(3), if XYZ Ltd. is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to XYZ Ltd. in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.



CASE STUDIES

11. Sharma dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2021. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. One of the directors said that they cannot make a provision against the Companies Act. You are required to advise the company on this matter.

OR

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

Answer:

Section 5- Entrenchment Regulations in AOA

Insert Entrenchment Regulations (ER) in the AOA

The provisions for entrenchment referred above shall only be made either on formation of a company, or by an amendment in the articles agreed to by:

- all the members (Unanimous Resolution) of the company in the case of a private company.
- A special resolution in the case of a public company.

Notice to Registrar for entrenchment

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No INC-32 (SPICe) at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within 30 days from the date of entrenchment of the articles.

Entrenchment Regulations (E.R) - Hard to alter

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than Special Resolution, are met or complied with.

Conclusion

In the present case, Sharma dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

12. Mode of Registration/Incorporation of Companies-Section 10 & 14

The Articles of a Public Company clearly stated that Mr. X will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Y in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly.

Answer:

Section 10-Binding Effect of MOA & AOA

Binding Effect of MOA & AOA

The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

Section 14-Alteration of Articles

Alteration by special resolution

Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a **SPECIAL RESOLUTION** alter its articles.

Filing of alteration with the registrar

Every alteration of the articles shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of **15 days** in **Form MGT.14**, who shall register the same.

Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

Conclusion

(1) The Articles do not create a binding contract between the company and the solicitor. Hence, there is no contract between the company and the solicitor and the company can terminate his services.

(2) The company has altered the Articles by a unanimous resolution which is more than Special Resolution. Hence the alteration is valid.

Hence, the alteration is valid and after registration of the altered Articles, the appointment of Y will stand and A will be terminated.

13. Change of Registered Office within the city Section 12

Examine the validity of the following different decisions/proposals regarding change of office by P Ltd. under the provisions of the Companies Act, 2013: The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Answer: **Section 12-Change of Registered Office within the city**

In the given case, change of registered office within the local limits of the same city. The following procedure applies:

- Pass Board resolution. No need to obtain shareholders' approval.
- Notice of every change of the situation of the registered office in **Form INC-22** shall be given to the Registrar within **30 days of the change**, who shall record the same.

Conclusion: Said proposal is valid in terms it has been passed under the authority of Board resolution.



14. Change of Registered Office within the city-Section 12

Examine the validity of the following different decisions/proposals regarding change of office by Bajaj Ltd. under the provisions of the Companies Act, 2013:

The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

Answer:

Section 12 – Change of Registered Office within the city

In the given case, change of registered office within the local limits of the same city. The following procedure applies

- (1) Pass Board resolution. No need to obtain shareholders' approval.
- (2) Notice of every change of the situation of the registered office in Form INC-22 shall be given to the Registrar within 30 days of the CHANGE, who shall record the same.

Conclusion

In the instance case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

There is no need of Special Resolution. However, there is nothing wrong if Special Resolution had already been passed.

Also, there is no need of approval of Regional Director. Accordingly, said proposal is valid.

15. Change of Office from one ROC to another ROC within same state- Sec12 & Rule 28

The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). WTP Ltd. proposes to shift its corporate office from Pune to Mumbai. Please advise. (July 2021)

OR

WP Company Ltd. is registered in Tamil Nadu within the jurisdiction of the Registrar of Companies, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of Registrar of Companies, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office.

OR

ST Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences, the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra, but from Mumbai ROC to Pune ROC). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

Answer:

Section 12- Change of Registered Office from one ROC to another ROC within the same state [Rule 28]

Approval from RD

An application seeking confirmation from the RD shall be filed by the company in Form No.INC.23 along following documents

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;
- (c) A declaration given by the Key Managerial Personnel or any 2 directors authorized by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
- (d) A declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending.
- (e) Acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.

Approval or Rejection Order by RD

The RD shall examine the application INC 23 and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within 15 days of the receipt of application complete in all respects.

Filing RD's order with ROC

The certified copy of order of the RD, approving the transfer of registered office company within the same State, shall be filed in Form No.INC-28 with the ROC of State within 30 days from the date of receipt of certified copy of the order.

Hence, the company can change its office by following the above procedure.

16. Change of registered office from one State to other State-Section 12,13 & Rule 30.

What is the importance of registered office of a company? State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013. (8 Marks) (Nov 2015)

Answer:

Section 12-Importance of Registered Office of the Company

A company shall within 30days of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

Section 13-Change of registered office from one State to other State [Rule 30]

Application to CG

An application shall be filed with the Central Government (Reginal Director) in Form No.INC.23 along with following documents, namely:

- (a) A copy of MOA, with proposed alterations;
- (b) A copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
- (c) A copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.



(d) A latest list of creditors updated up to last 1 month shall be attached to the application.

Creditors and Retrenchment

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than 2 directors of the company, one of whom shall be a managing director, where there is one, stating that:

- (a) They have made a full enquiry into the affairs of the company and have concluded that the list of creditors and Values of dues are correct, and
- (b) no employee shall be retrenched as a consequence of shifting of office and also an application shall be filed by the company to the Chief Secretary of the concerned State Government.

Advertisement + Notice

The company shall, not more than 30 days before the date of filing the application in Form No. INC.23

- (a) Advertise in the Form No. INC.26 in one English & one vernacular newspaper. Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.
- (b) Serve, by registered post with acknowledgement due, individual notice on each debenture-holder and creditor of the company; and
- (c) Serve, by registered post with acknowledgement due, a notice together with the copy of the application to the ROC & SEBI.

Case 1: Objections not received

Where no objection has been received from any person in response to the advertisement or notice, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within 15 days of the receipt of the application.

Case 2: Objections received

Where an objection has been received,

- (A) the CG shall hold a hearing and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the CG shall pass an order approving the shifting, within 60 days of filing the application.
- (B) where no consensus is reached at the hearings, the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the CG shall pass an order confirming or rejecting the alteration within 60 days of the filing of application.

Hence, the company can change its office by following the above procedure.

17. Change of Name- Section 13

The Directors of a company registered and incorporated in the name "TATA Ltd." desire to change the name of the company entitled "Activa Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 2013?

Answer.

Section 13- Change of Name

SR + CG

(1) Pass SPECIAL RESOLUTION.

(2) An application shall be filed in Form INC-24 for the approval of the Central Government.

Filing of CG order with ROC

Order of the CG shall be filed with ROC.

ROC to issue fresh COI

The Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation in Form INC-25 with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

Defaulters are prohibited from changing name.

The change of name shall not be allowed to a company's

- (A) which has defaulted in filing its Annual Returns or Financial Statements or any Document due for filing with the Registrar or
- (B) which has defaulted in repayment of matured Deposits or Debentures or Interest on Deposits or Debentures.

Hence, the company can change its name by following the above procedure.

18. Procedure for Change in Object Clause - Section 13

The object clause of the Britannia Ltd. empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business, the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Britannia, so as to include the Food Processing Business in its objects clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

OR

Riddhi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Britannia of Association to enable the company to carry on such business. State whether its object clause can be amended? Briefly mention the procedure to be adopted for change in the object clause. **Answer.**

Section 13 – Procedure for change in Object Clause

Companies are now under liberty to alter the object clause of the memorandum of Association with just the approval of its members by a special resolution without obtaining further approval from the Central government or any other authority. The procedure of alteration in the object clause of Memorandum is as under:



- (i) Holding a **Board Meeting** for the purpose of convening the meeting of members for approving the alteration in the objects clause by a **Special Resolution**;
 (in) Approving the alteration to the objects clause by passing a **Special Resolution** in general meeting of members;
 (ii) Filing of special resolution with the **Registrar of Companies** in MGT-14;
 (iv) Registration of the alteration to be **done by the Registrar within 30 days** from the date of filing of the special resolution along with a printed copy of the memorandum as altered.
 Hence, the company can change its Objects by following the above procedure.

19. Alteration of the Articles Section 14, 15

The BOD of WP Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Please advise the company about the procedure to be followed for alteration of Articles of Association.

Answer.

Section 14- Alteration of Articles

Alteration by special resolution

Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a **SPECIAL RESOLUTION** alter its articles.

Filing of alteration with the registrar

Every alteration of the articles shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of **15 days** in **Form MGT.14**, who shall register the same.

Retrospective Effect

Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid **as if it were originally contained in the articles.**

Alteration to be noted in every copy (Sec15)

Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

Punishment for Default

If a company makes any default in complying with the above provisions, the company and every officer who is in default shall be liable to a penalty of 1,000/- for every copy of the memorandum or articles issued without such alteration.

Hence, the company can change its Articles by following the above procedure.

20. Rectification in the Name of the company- Section 16

Sanjeev and friends got registered a company in the name of Taxman advisory private limited. Taxman is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

Answer.

Section 16-Rectification in the Name of the company

When an **APPLICATION** by a **registered proprietor of a trade mark that the name is IDENTICAL** with a registered trade mark of such proprietor under the Trade Marks Act, 1999, is **made to the Central Government (Regional Director) within 3 years of incorporation of the company**, and in the opinion of the Central Government, the name of the company is identical with an existing trade mark, CG (RD) may direct the company to change its name and the company shall change its name within a period of **3 months** from the issue of such direction, after adopting an **Ordinary Resolution** for the purpose.

Conclusion

1st Part: In the given case, owner of registered trademark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

2nd Part: As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

21. Variation in terms of Contract or Objects in Prospectus - Section 13 & 27.

Ankita security equipment limited is a manufacturer of CCTV cameras. It has raised 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores 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.

Does the Companies Act allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

Answer.

Section 13-Procedure for Change in Object Clause

Companies are now under liberty to alter the object clause of the Memorandum of Association with just the approval of its members by a special resolution without obtaining further approval from the Central Government or any other authority.

Section 27: Variation in terms of Contract or Objects in Prospectus

**Approval by SR needed for varying the objects for which prospectus was issued:**

Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain the following particulars, namely:

- The original purpose or object of the Issue;
- The total money raised;
- The money utilised for the objects of the company stated in the prospectus;
- The extent of achievement of proposed objects (that is 50%, 60%, etc);
- The unutilised amount out of the money so raised through prospectus,
- The particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;
- The reason and justification for seeking variation;
- The proposed time limit within which the proposed varied objects would be achieved;
- The risk factors pertaining to the new objects; and
- Any other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

Advertisement in Form PAS-1

The advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in form pas-1 and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to

Shareholders. The notice shall also be placed on the web-site of the company, if any.

Dissenting shareholders to get an Exit option

The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price as may be specified by the SEBI

Conclusion

- So, the company can change its objects in the MOA by passing Special Resolution u/s 13.
- Also, the company can vary the objects in Prospectus and divert the issue proceeds of public issue into another object by following the procedure u/s 27 described above.

22. Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non-family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director. Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013.

Answer.

As per the provisions of sub-section (3) of section 5 of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution are met or complied with.

Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.

Manner of inclusion of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Notice to the Registrar of the entrenchment provision

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Conclusion: In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

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

Answer.



As per Section 10A of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

- (i) A declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (ii) The company has filed with the Registrar a verification of its registered office as provided in sub section (2) of section 12.

Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company

OBJECTIVES

1. Any alteration in MOA in the case of which of the following companies' purposes to give any person a right to participate in the divisible profits of the company.
 - (a) Company limited by guarantee having no share capital.
 - (b) Company limited by guarantee having share capital.
 - (c) Sec.8 Company.
 - (d) Public company.
2. Which of the following should be filed by a company to ROC to alter its name clause
 - (a) Any Resolution passed by the company u/s 10(1).
 - (b) Written Resolution passed by the company u/s 11(2).
 - (c) Ordinary Resolution passed by the company u/s 12(3).
 - (d) Special Resolution passed by the company u/s 13(1).
3. Which of the following changes in registered office of a company requires change in MOA?
 - (a) From one place to another place in the same city.
 - (b) From one city to another city in the same state within the jurisdiction of one ROC.
 - (c) From one city in jurisdiction of one ROC to another city in the jurisdiction of another ROC within the same state.
 - (d) From one state to another state.
4. Why should a limited company having share capital if its articles permit alters MOA in General Meeting?
 - (a) To increase its authorised share capital by such amount as it thinks expedient.
 - (b) To increase in no. of members by companies not having share capital.
 - (c) To declare /distribute any dividend without satisfying past debts.
 - (d) To issue certificate of incorporation in Form INC. 11B.
5. In the case of conversion of an unlimited company to a limited liability company by shares/guarantee, A Company should obtain No Objection certificate from ____ & ____ in Form No. INC-27.
 - (a) Director & ROC.
 - (b) Shareholders & ROC.
 - (c) Scrutinizer & Secured Debtors.
 - (d) Sectoral Regulator & Secured Creditors.
6. Name the document which is company's bye laws.
 - (a) AOA.
 - (b) MOA.
 - (c) Share certificate.
 - (d) Form INC-28A.
7. Alteration of AOA can be done only by_
 - (a) Ordinary Resolution.
 - (b) Special Resolution.
 - (c) Written Resolution.
 - (d) Oral Resolution.



8. A company should advertise its name of registered office from one state to another at least ____ before the hearing.
- 14 days.
 - 10 days.
 - 12 days.
 - 13 days.
9. Alteration of objects clause of MOA requires passing of ____.
- Ordinary Resolution.
 - Special Resolution.
 - Written Resolution.
 - Oral Resolution.
10. The AOA & MOA shall be signed by each to the Memorandum.
- Shareholder.
 - Equity shareholder.
 - Preference shareholder.
 - Subscriber.
11. If the subscriber to the MOA is illiterate how will he sign?
- By affixing thumb impression.
 - Mark.
 - By affixing thumb impression/mark.
 - By affixing thumb impression & mark.
12. If the subscriber to the MOA is a LLP, who should sign?
- 2 partners of the firm.
 - Any one partner of the firm.
 - 3 partners of the firm.
 - 4 partners of the firm.
13. AOA is subsidiary to
- MOA.
 - Companies Act.
 - MOA/Companies Act.
- (d) MOA Companies Act.
14. Acts beyond the scope of MOA are ____ & hence void.
- Intra vires.
 - Ultra vires.
 - Ultra vires/intra vires.
 - Ultra vires & intra vires.
15. lays down parameters for
- MOA, AOA.
 - AOA, MOA.
 - Table C, Table H.
 - Table A, Table D.
16. MOA & AOA do not constitute a contract between ____ & ____
- Members & company.
 - Company & outsiders.
 - Shareholders & company
 - Outsiders & company.
17. Any purported activity beyond the powers conferred by MOA will be ineffective even if agreed to by all the members. This rule is commonly known
- Doctrine of constructive notice.
 - Doctrine of intra virus.
 - Doctrine of ultra virus.
 - Doctrine of indoor management.
18. What is the effect of acts ultra vires the company, but done irregularly?
- They are protected.
 - Can be regularising by amending AOA.
 - Can be recovered by the company by filing a suit.
 - Can be ratified by the company in General Meeting.
19. ____ presumes that every person dealing with the Company read MOA & AOA.
- Doctrine of constructive notice.
 - Doctrine of intra virus.
 - Doctrine of ultra-virus.
 - Doctrine of indoor management.
20. Persons dealing with the company can safely presume that the internal proceedings have been observed properly. They need not inquire about internal proceedings. This is called
- Doctrine of constructive notice.
 - Doctrine of intra virus.
 - Doctrine of ultra virus.
 - Doctrine of indoor management.
21. ____ cannot be invoked in favour of a person who did not consult MOA & AOA.
- Doctrine of constructive notice.
 - Doctrine of intra virus.
 - Doctrine of ultra virus.
 - Doctrine of indoor management.
22. Which of the following can be regularised by amending AOA of a company?
- Acts intra Vires Company but ultra-virus directors.
 - Acts ultra vires articles of the company.
 - Acts intra vires the company, but done irregularly.
 - An ultra vires loan given by the company.
23. Which of the following cases requires passing of Special Resolution & Regional Director confirmation?
- From one premise to another premise in the same city.
 - From one city in the jurisdiction of one ROC to another city in the jurisdiction of another ROC within the same state.
 - From one state to another.
 - From one city to another city in jurisdiction of one ROC to another ROC within the same state.
24. Which of the following cases requires passing of Special Resolution & Central Govt confirmation?
- From one premise to another premise in the same city.
 - From one city in the jurisdiction of one ROC to another city in the jurisdiction of another ROC within the same state.
 - From one state to another.
 - From one city to another city in jurisdiction of one ROC to another ROC within the same state.
25. Which of the following cases requires passing of Special Resolution?
- From one premise to another premise in the same city.
 - From one city to another city in the same state but within the jurisdiction of the same ROC.
 - From one state to another.
 - From one city to another city in jurisdiction of one ROC to another ROC within the same state.



26. Which of the following types of changes requires passing of Board Resolution?
- From one premise to another premise in the same city
 - From one city to another city in the same state but within the jurisdiction of the same ROC.
 - From one state to another.
 - From one city to another city in jurisdiction of one ROC to another ROC within the same state.
27. The correct order of procedure in the conversion of unlimited liability company into a limited liability company by share/guarantee
- Publish a notice in newspaper & websites.
 - File an application to ROC.
 - Pass a Special Resolution in General Meeting.
 - Despatch newspaper to creditors/debenture holders.
- 3,2,4,1.
 - 3,1,4,2.
 - 1,2,3,4.
 - 2,4,1,3.
28. The meaning of "ultra vires" is
- Act beyond powers.
 - Act within powers.
 - Act outside powers.
 - Act within boundaries.
29. Ultra virus acts are
- Void ad hoc.
 - Void idem.
 - Void ad infinitum.
 - Void ab initio.
30. _____ are personally liable for the ultra-virus acts of the company.
- Directors.
 - Shareholders.
 - Equity shareholders.
 - Promoter
31. Which of the following is the treatment of an act ultra vires the articles?
- Cannot be ratified, it is null & void.
 - May be ratified by suitably altering the AOA through Special Resolution.
 - May be ratified by general body of shareholders.
 - Cannot be ratified by if the act fails within the scope of statute, MOA can be suitably altered.
32. Which of the following is the treatment of an act ultra virus the MOA?
- Cannot be ratified, it is null & void.
 - May be ratified by suitably altering the AOA through Special Resolution.
 - May be ratified by general body of shareholders.
 - Cannot be ratified by if the act fails within the scope of statute, MOA can be suitably altered.
33. Which of the following is the treatment of an act ultra vires the statute?
- Cannot be ratified, it is null & void.
 - May be ratified by suitably altering the AOA through Special Resolution.
 - May be ratified by general body of shareholders.
 - Cannot be ratified by if the act fails within the Scope of statute, MOA can be suitably altered.
34. Choose the incorrect principle which are applicable in case of alteration of objects clause
- requirement of ordinary resolution
 - Advertisement
 - notice to shareholders
 - dissent
35. A company shall change its objects for which it raised money through prospectus only if a Special Resolution is passed by the company by
- Postal Ballot
 - Advertisement
 - public announcement
 - random selection
36. A limited company having a share capital, if its article permits shall alter its MOA in its general meeting to
- increase its authorised share capital
 - division of share capital into stock
 - conversion of paid up shares into stock
 - A and C
37. An important document for a company which lays down rules & regulations for internal management
- AOA
 - MOA
 - Both A & B
 - either A /B
38. Find out the sentence is not correct in respect to AOA
- Sec 5 shall apply to the Articles of a company registered under any previous law
 - A Company may adopt all or any of the regulations contained in the Model Articles applicable to such company
 - the regulations for management of the company
 - A& C unlimited company not having share capital
39. What is the format of AOA for an unlimited company having share capital and not having share capital?
- Form J & L
 - Form G&H
 - Form H & G
 - form I&J
40. Any change in the address of the registered office must be communicated to the registrar within
- 15 days
 - 30 days
 - 1 month
 - 12 months
41. The doctrine of indoor management is an _____ to the doctrine of constructive notice
- exception
 - extension
 - alternative
 - none of the above



42. The doctrine of ____ does not apply to the Act void ab initio
(a) Ultra virus
(b) intra virus
(c) Constructive notice
(d) indoor management
43. Signature of MOA & AOA should be done by number of persons in case of public company
(a) 7
(b) 5
(c) 4
(d) none of the above
44. the signature of MOA & AOA should be done by ____ no: of persons in the case of private company
(a) 3
(b) 4
(c) 2
(d) none of these
45. In the MOA there are 6 clauses. We can alter all clauses except 1 clause
(a) Object clause
(b) Name clause
(c) Association Clause
(d) None of these
46. Address of the registered office is situated in
(a) MOA
(b) AOA
(c) Prospectus
(d) None of these
47. Which of the following need not have MOA?
(a) public company
(b) private company
(c) government company
(d) Statutory corporation
48. ____ is the charter of the company.
(a) Memorandum of Association
(b) Articles of Association
(c) Both
(d) None of the above
49. Change in the object clause can be affected
(a) For any reason
(b) For special reason only
(c) To comply with CG order
(d) None of the above
50. The capital clause of a company can be changed with the permission of
(a) Company law board
(b) Registrar
(c) Court
(d) None of these
51. Generally rights & obligations of the company are regulated in
(a) AOA
(b) MOA
(c) Partnership deed
(d) none of these
52. Under which section a private company can be converted into private company_
(a) 34
(b) 44
(c) 54
(d) 64
53. Under which section a private company can be automatically converted into public company
(a) 34
(b) 43
(c) 53
(d) 63
54. Central government permission is required in case of ____ conversion____
(a) private to public
(b) public to private
(c) both A & B
(d) none of these
55. How many members should sign the MOA in the case of public company?
(a) 1
(b) 3
(c) 5
(d) 7
56. A company registered under section 8, shall not alter the provision of its memorandum & articles except with the previous approval of ____
(a) High court
(b) Supreme court
(c) District court
(d) Central Government
57. ____ do not constitute contract between company and outsiders
(a) MOA
(b) AOA
(c) A or B
(d) A & B
58. ____ defines the limitation of the powers of a Company
(a) MOA
(b) AOA
(c) A or B
(d) none of these
59. The extent of interest required in a company for every promoter, director, manager will be to the extent of :
(a) 3% of the nominal capital
(b) 5% of the nominal capital
(c) 7% of the paid up capital
(d) 2% of the paid up capital
60. The capital authorised by MOA of a company to the maximum amount of share capital of the company
(a) authorised capital
(b) registered capital
(c) nominal capital
(d) a or b or c
61. a copy of the order of the order of the central govt approving the alteration of AOA shall be filed in ROC in
(a) form no. INC.28
(b) form no.INC.27
(c) form no.INC.25
(d) form no.INC 24
62. Find out the incorrect sentence regarding the limitation to the powers to alter the articles
(a) Alteration shall exceed the powers given by MOA
(b) Alteration should not be inconsistent with the Companies act



- (c) The altered AOA shall not include any provisions which are illegal or opposed to public policy or unlawful
(d) C and B
63. What are the major purposes of the capital clause?
(a) to state the amount of share capital
(b) to state the division of share capital
(c) to increase its authorised share capital
(d) A and B
64. Name the document which guide a limited company having share capital to alter its MOA
(a) share certificate
(b) benefited certificate
(c) AOA
(d) MOA
65. If any default is made in complying with the requirements of the Commencement of business the penalty may extend to
(a) 50,000.
(b) 70,000.
(c) 1,00,000.
(d) 30,000.
66. The document containing the AOA of a company is
(a) Business document.
(b) Mutual Non Disclosure document.
(c) Spread Sheet.
(d) Bill of Lading.
67. The document which should not be filed with ROC at the time of registration is
(a) Certificate of commencement of business.
(b) MOA.
(c) AOA.
(d) A declaration signed by an advocate.
68. The most important document of a company is its
(a) Prospectus.
(b) Annual report.
(c) Memorandum of association
(d) articles of association
69. The private company requires conversion of a public Company into a
(a) an ordinary resolution.
(b) a special resolution
(c) a special resolution and union governments approval
(d) a special resolution and company law board approval
70. The charter of company refers to its____
(a) Prospectus.
(b) memorandum of association
(c) articles of association
(d) statement in lieu of a prospectus
71. The Articles of association establishes relationship between
(a) Company and its members.
(b) Company and outsiders
(c) Company and its members and members inter se.
(d) General public company
72. Articles of Association can be altered by
(a) A resolution of the board of directors.
(b) An ordinary resolution in general meeting.
(c) A special resolution in general meeting
(d) Obtaining permission from the company law board.
73. Which of the following is not a clause included in memorandum of association?
(a) Name clause
(b) Registered office clause
(c) Object clause
(d) Dividend clause
74. The Registrar shall register any alteration of the memorandum with respect to the objects of the Company and certify the registration within a period of ____ from the date of filing of the special resolution.
(a) 30 days
(b) 60 days
(c) 90 days
(d) 6 months
75. An application along with the fee is filed with the Regional Director for Shifting of the registered office within the same state in:
(a) Form No. INC 22
(b) Form No. INC 23
(c) Form No. INC 26
(d) Form No. INC 28
76. For selecting the name of the company, an application for the reservation of name shall be made in with the fee.
(a) Form-INC-1
(b) Form-INC7
(c) Form-MGT-1
(d) Form-MGT-7



ANSWER KEY

1. A	2. D	3. D	4. A	5. D	6. A	7. B	8. A	9. D	10. C
11. C	12. D	13. D	14. B	15. A	16. B	17. C	18. D	19. A	20. D
21. D	22. B	23. B	24. C	25. B	26. A	27. B	28. A	29. D	30. A
31. B	32. D	33. A	34. A	35. A	36. D	37. A	38. A	39. D	40. C
41. B	42. D	43. A	44. C	45. B	46. B	47. D	48. A	49. B	50. C
51. B	52. B	53. B	54. D	55. D	56. D	57. D	58. A	59. D	60. D
61. B	62. A	63. D	64. C	65. C	66. A	67. A	68. C	69. C	70. B
71. C	72. C	73. D	74. A	75. B	76. A				

QUESTION BANK



4. CONVERSION OF COMPANY

PREVIOUS YEAR QUESTIONS & MQP & RTP

[MTP June 2019/ Dec 2022]

1. Discuss the procedure for Conversion from private limited company into LLP.

Answer.

Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule.

A company may apply to convert itself into a LLP if and only if-

- there is no security interest in its assets subsisting or in force at the time of application; and
- the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

The company has to apply with the Registrar by filing the following documents:

- A statement by all its shareholders in Form No. 18 and fees containing the following particulars-
- The name and registration number of the company;
- The date on which the company was incorporated; and
- Incorporation document and statement;

On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate. The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.

If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal



THEORY QUESTIONS

2. Conversion of Private to Public Company - Section 18 & Rule 33

Board of Directors of a private company decided to convert it into a public company, State the steps to be taken for such conversion in order to comply with the requirements under the Companies Act, 2013.

Answer.

Alter the MOA & AOA (Sec 18)

a) Alter MOA - Change of Name (Delete the word Private from name). Pass SR. No need to file INC-24 for CG approval for deleting the word 'Private' from the name. (Section 13)

b) Alter AOA - Removing the 3 restrictive clauses u/s 2(68) from its Articles. Pass SR. (Section 14)

Application to ROC

For effecting the conversion of a private company into a public company, the application shall be filed in Form INC-27.

Effective date of Conversion

The date when the SR is passed for altering its AOA removing the 3 restrictive clause u/s 2(68).

Extra formalities

- Increase the number of members to 7, if not already.
- Increase the number of directors to 3, if not already.

New Certificate of Incorporation

The Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the Revised Memorandum & Articles, issue a certificate of incorporation in the same manner as its first registration.

Conclusion

Hence the company can follow the above procedure for converting Private Company to Public Company.

3. Conversion of Public to Private Company - Section 18 & Rule 41

Discuss the procedure to be followed by Board of a Company to convert a public company into a private limited company.

Answer.

Alter the MOA & AOA (Sec 18)

a) Alter MOA - Change of Name (Insert the word Private in the name). Pass SR. No need to file INC-24 for CG approval for adding the word 'Private' in the name. (Section 13)

b) Alter AOA - Adding the 3 restrictive clauses u/s 2(68) from its Articles. Pass SR. (Section 14)

Application to CG (RD)

An application shall be filed with Regional Director in Form No. RD-1 within 60 days from the date of passing of SR along with the following documents: -

- a draft copy of MOA & AOA;
- a copy of the minutes of the general meeting;
- a copy of Board resolution dated not earlier than 30 days;
- declaration by a KMP that pursuant to the provisions of section 2(68), the company limits the number of its members to 200;
- declaration by a KMP that there has been no non-compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act;
- declaration by a KMP that the company was never listed in any of the Stock Exchanges.
- List of creditors & debenture-holders with Amounts due.

Advertisement inviting Objections

The company shall, at least 21 days before the date of filing of the application:

- ADVERTISE in the Form No. INC.25A, in a vernacular newspaper and in English newspaper,
- serve individual NOTICE on each Debenture Holder and Creditor of the company, by registered post with acknowledgement due; and
- serve a NOTICE to the Regional Director and Registrar and to the Regulatory Body, if any, by registered post with acknowledgement due.

Case1: No objection

- The Application may be put up for orders without hearing and the concerned RD shall pass an order approving the application within 30 days from the date of receipt of the application.
- Where the RD on examining the application, finds it necessary to call for further information or finds such application to be defective, he shall give intimation of such information called for or defects, directing the person or the company to furnish such information, or to rectify defects and to re-submit such application within a period of 15 days, in Form No. RD-GNL-5.

**Case 2: Objection is received.**

1. Where an objection has been received, **the RD shall hold a hearing** or hearings within a period **30 days** as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, **the RD shall pass an order** either approving or rejecting the application along **with reasons within 30 days from the date of hearing.**

2. In case where **no consensus** is received, RD may approve the conversion within **30 days** from the date of hearing with reasons to be recorded in writing, if he is satisfied that :

- (a) the conversion would **not** be against the interests of the company or
- (b) the conversion is **not being made** with a view to violate the Act.

Filing with ROC

RD's order shall be filed in **Form No. INC-28** within **15 days** from the date of receipt of approval.

New Certificate of Incorporation

The Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the Revised Memorandum and Articles, issue a certificate of incorporation in the same manner as its first registration.

Conclusion

Hence the company can follow the above procedure for converting Public Company to Private Company.

4. Subsidiary Company not to hold shares in its holding Company- Section 19

Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.

Answer.

- 1. No subsidiary company shall, either by itself or through its nominees, hold any shares in its holding company and,
- 2. No holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **VOID**.

3 Exceptions:

- (a) Where the subsidiary company holds such shares as the **LEGAL REPRESENTATIVE** of a deceased member of the holding company; or
- (b) Where the subsidiary company holds such shares as a **TRUSTEE**; or
- (c) Where the subsidiary company is a shareholder even **BEFORE** it became a subsidiary company of the holding company.

In clause (a) or clause (b) above the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

5. Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.**Answer.****Section 20- Service of Documents**

Serving of the document on the company

A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company:

- 1. By registered post or
- 2. By speed post or
- 3. By courier service or
- 4. By leaving it at its registered office (Hand Delivery) or
- 5. By means of such electronic or other mode (email, fax) as may be prescribed.

Serving of the document on the Registrar

A Company may serve any document on Registrar or any member by sending it

- 1. by post (Ordinary Post; Under Certificate of Posting) or
- 2. by registered post or
- 3. by speed post or
- 4. by courier or
- 5. by delivering a this office or address, or
- 6. by such electronic or other mode as may be prescribed

Note:- 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 AGM.

6. Discuss the procedure for conversion of private company into One Person Company?**Answer.**

Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of ₹ 50 lakh or less and average annual turnover during the relevant period is ₹ 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution the company shall obtain 'No Objection Certificate' in writing from the members and creditors. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in **Form No. MGT-14**.

The company shall file an application in **Form No. INC-6** for its conversion into OPC along with fees. The following documents are to be attached:



- the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is ₹ 50 lakhs or less or average annual turnover is less than ₹ 2 crores, as the case may be

CASE STUDIES

7. Subsidiary Company not to hold shares in its holding Company - Section 19

As at 31st March 2018, the paid-up share capital of M Ltd. is 1,00,00,000 divided into 10,00,000 equity shares of 10 each. Of this, N Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others.

Simultaneously, M Ltd. is holding 5% equity shares of N Ltd. out of which 1% shares are held as a legal representative of a deceased member of N Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

- Can M Ltd. make further investment in equity shares of N Ltd. during 2018-19?
- Can M Ltd. Exercise voting rights at Annual general meeting of N Ltd.?
- Can N Ltd. Allot or transfer some of its shares to M Ltd.?

Answer.

- No subsidiary company shall, either by itself or through its nominees, hold any shares in its holding company and,
- No holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **VOID**.

3 Exceptions:

- Where the subsidiary company holds such shares as the **LEGAL REPRESENTATIVE** of a deceased member of the holding company; or
- Where the subsidiary company holds such shares as a **TRUSTEE**; or
- Where the subsidiary company is a shareholder even **BEFORE** it became a subsidiary company of the holding company.

In clause (a) or clause (b) above the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Answer (i)

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

Answer (ii)

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

Answer (iii)

Therefore, N Ltd. Cannot allot or transfer some of its shares to M Ltd.

8. Subsidiary Company not to hold shares in its holding Company-Section 19

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

- the validity of holding of shares by X Ltd. in Y Ltd.
- allotment of Bonus shares by Y Ltd. to X Ltd.

Answer.

Section 19-Subsidiary Company not to hold shares in its holding Company

- No subsidiary company shall, either by itself or through its nominees, hold any shares in its holding company and,
- No holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **VOID**.

3 Exceptions:

- Where the subsidiary company holds such shares as the **LEGAL REPRESENTATIVE** of a deceased member of the holding company; or
- Where the subsidiary company holds such shares as a **TRUSTEE**; or
- Where the subsidiary company is a shareholder even **BEFORE** it became a subsidiary company of the holding company.

In clause (a) or clause (b) above the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as trustee.

Conclusion

In the given case, Y Ltd. has acquired 55% paid up share capital of X Ltd. on 10th March 2018. Whereas, X Ltd. has been holding 10% paid up share capital of Y Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above. Therefore -

- Holding of shares by X Ltd. in Y Ltd. is valid.
- Allotment of bonus shares by Y Ltd. to X Ltd. is also valid in view of the above proviso.



9. Subsidiary Company not to hold shares in its holding Company-Section 19

Shri Lata Electricals Ltd. (S) is a company in which Hanuman power suppliers Limited (H) is holding 60% of its paid-up share capital. One of the shareholder of H made a charitable trust and donated his 10% shares in H and ₹50 crores to the trust. He appoint S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold shares in its holding company in this way?

Answer.

1. No subsidiary company shall, either by itself or through its nominees, hold any shares in its holding company and,
2. No holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **VOID**.

3 Exceptions:

- (a) Where the subsidiary company holds such shares as the **LEGAL REPRESENTATIVE** of a deceased member of the holding company; or
- (b) Where the subsidiary company holds such shares as a **TRUSTEE**; or
- (c) Where the subsidiary company is a shareholder even **BEFORE** it became a subsidiary company of the holding company.

In clause (a) or clause (b) above the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Conclusion

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 S can hold shares in H.

10. Service of Documents - Section 20

The Articles of Association of Maxo Company Ltd. provides that documents may be served upon the company only through Fax. Suresh dispatches a document to the company by registered post. The company does not accept it on the ground that it is in violation of the Articles of Association. As a result Ramesh suffers loss. Explain with reference to the provisions of the Companies Act, 2013:

- (i) Whether refusal of document by the company is valid?
- (ii) Whether Ramesh can claim damages on this basis?

OR

The Articles Association of Cummins Ltd. provided that documents upon the company may be served only through E-mail. Ajay sent a document to the company by registered post. The

company did not accept the document on the ground that sending documents to the company by post was in violation of the Articles. As a result Ajay suffered loss. Decide the validity of argument of the company and claim of Ajay for damages in the light of provisions of the Companies Act, 2013

Answer.

Section 20- Service of Documents

A document may be served on a company or an officer thereof by sending it to the company or the officer

at the registered office of the company:

1. By registered post or
2. By speed post or
3. By courier service or
4. By leaving it at its registered office (Hand Delivery) or
5. By means of such electronic or other mode (email, fax) as may be prescribed.

Note

The Articles of Association of the company cannot put any restriction on the 5 modes of serving notice given in Sec 20 i.e., it cannot say that the notice should be served on it only by 1 or 2 particular modes out of 5 modes. The Company has to accept the service of notice by all 5 modes.

Answer(i)

Hence, the Company cannot refuse to accept the document merely because it was not sent by Fax/email as required by its Articles and its act of refusal is invalid.

Answer (ii)

Ramesh/ Ajay can claim damages on this basis from the Company as his loss is the direct result of such refusal by the company.

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

- (i) Whether the contention of Aakash is valid.
- (ii) Will your answer be the same if Aakash remains in U.S.A. for one month during the notice of the meeting and the meeting held?

Answer.

Section 20-Service of Documents

A Company may serve any document on Registrar or any member by sending it



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1. by post (Ordinary Post; Under Certificate of Posting) or
2. by registered post or
3. by speed post or
4. by courier or
5. by delivering at his office or address, or
6. by such electronic or other mode as may be prescribed.

Note: 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 AGM.

Answer (i)

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Therefore, the contention of Aakash is valid, for the reason that the notice was not properly served.

Answer (ii)

In the given circumstances the company is bound to serve a valid notice to Aakash by registered post at his residential address at Kanpur and not outside India

12. Chirag Electricals Limited is a leading infrastructure company. One of the directors of the company Mr. Chirag has been signing all electricals contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Chirag very well. Company has got a very important electrical contract from a renowned software company. Chirag constructions will do construction for this site in partnership with a local contractor Farhan bhai. Mr. Chirag signed partnership deed with Farhan bhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

Answer.

Section 21-Authentication (Signing) of Documents, Proceedings & Contracts

Save as otherwise provided in this Act

- (a) a document or proceeding requiring authentication by a company; or
- (b) contracts made by or on behalf of a company, may be signed by :-
- (1) any Key Managerial Personnel duly authorised by the Board in this behalf.
 - (2) an Officer duly authorised by the Board in this behalf.
 - (3) an Employee of the company duly authorised by the Board in this behalf.

Section 22-Execution of Bills of Exchange

Power of Attorney (Agent)

A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorization for execution of Bill of Exchange shall be made by 2 directors or by a director and the CS, wherever the company has appointed a CS.

Conclusion

(1) Chirag is neither a KMP, nor an authorized officer/employee of the company. So he does not have the authority to enter into contracts on behalf of the company u/s 21.

(2) Also, the company has neither given any written authority nor affixed common seal of the authority letter u/s 22. It means that Mr. Chirag is not legally entitled to execute deeds on behalf of the company.

Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.



5. EXTRA DOCTRINE

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. June 2018]

[8 Marks]

1. What do you mean by lifting of corporate veil? In which circumstances the corporate veil can be lifted by the company?

Answer:

The separate personality of company is statutory privilege but it should not be used to commit illegalities.

It states that the individual who are concerned behind illegal or dishonest use of company will not be allowed to take shelter behind the company.

The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil".

The Court will look behind the veil, search & take action take action as though no entity separate from the members existed against the culprits whether they are members or management or any other controlling person.

Particulars	Explanation	Relevant Cases
Protection of revenue	The veil will be lifted if the company is formed to evade taxes, stamp duties, etc. or outwitting the tax obligations.	Assessee made 4 fake companies to evade tax. Re. Dinshaw Maneckjee Petit
Protection of public policy	The veil will be lifted to protect & stop transactions opposed to public policy	Opposing public policy
Prevention of fraud	The veil will be lifted if the company is used for committing frauds or improper conduct	Re. Jones v. Lipman
Avoidance welfare legislation	The veil will be lifted if the company is avoiding welfare legislations like payment of bonus, gratuity, etc.	Re. Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industries Ltd.
Sham/cloak company	The veil will be lifted if the company was a gambit used for defrauding people	Bubble company to commit illegalities

Determination of enemy character of company	A company cannot be an enemy or friend. But during period of war it is necessary to lift the veil to see the persons behind it to determine the character of company	The case was between companies of Germany & England. Re. Dailmer Co. Ltd. v. Continental Tyre & Rubber Co. Ltd
Whether the company formed is acting as agent of shareholders or parent company	The veil will be lifted if there is an agreement between the company the shareholders that the company will operate as an agent of shareholders, then the business is actually if the shareholders not of company & thus will lead to unlimited liability of shareholders.	Re. Smith, Stone and Knight Ltd v. Lord Mayor, etc
Fake transfer of shares	The company transferred shares of company which actually was sale of land which the original allottee (company) was prohibited to do so.	Re. Estate Officer UT Chandigarh v. Esys Information Technologies Limited
To punish contempt of Court	The veil will be lifted if the company disobeys any direction or order of Court as company is an artificial person	

[MTP Dec. 2019]

[6 Marks]

2. Write a short note on 'Doctrine of ultra-vies'

Answer:

The meaning of the term ultra vires is simply beyond (their) powers. The legal phrase ultra vires is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is only when the law has called into existence a person for a particular purpose or has recognised its existence- such as in the case of a limited company - that the power is limited to the authority delegated expressly or by implication and to the objects for which it was created. In the case of such a creation, the ordinary law applicable to an individual is somewhat reversed, whatever is not permitted expressly or by implication, by the constituting instrument, is prohibited not by any express prohibition of the legislature, but by the doctrine of ultra vires. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [Ashbury Railway Company Ltd. vs. Riche]. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it



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EXTRA DOCTRINES



QUESTION BANK



can be restrained from carrying on a trade different from the one it is authorised to carry on. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a public document, it is open to public inspection. Therefore, when one deals with a company, one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently, he would be entitled to recover his loan to that extent from the company. An act which is ultra vires the company being void cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

CASE STUDIES

3. A chemical manufacturing company distributed ₹ 20 lakhs to scientific institutions for furtherance of scientific education and research. Referring to the provisions of The Companies Act, 2013, decide whether the said distribution of money was ultra vires the company.

Answer.

The term ultra vires means beyond powers. Here, in the given case, a chemical manufacturing company distributed ₹ 20 lakhs to scientific institutions for furtherance of scientific education and research. It is not ultra vires since it is conducive to the continued growth of the company as chemical manufacturers.

In a similar case, a company was incorporated for carrying on business of manufacturing chemicals. The objects clause in the memorandum of the company authorized the company to do "all such business and things as maybe incidental or conducive to the attainment of the above objects or any of them" by a resolution the directors were authorized to distribute £ 100,000 out of surplus reserve account to such universities in U.K. as they might select for the furtherance of scientific research and education. The resolution was challenged on the ground that it was beyond the objects clause of the memorandum and therefore it was ultra vires the power of the company. The directors proved that the company- had great difficulty in finding trained men and the purpose of the resolution was to encourage scientific training of more men to enable the company to recruit staff and continue its progress. The court held that the expenditure authorized by the resolution was necessary for the continued progress of the company as chemical manufacturers and thus the resolution was incidental or conducive to the attainment of the main object of the company and consequently it was not ultra vires. "Acts incidental or ancillary" are those acts, which have a reasonable proximate connection with the objects stated in the objects clause of the memorandum.

Thus, the distribution of money is not ultra vires.



4. Separate Legal Entity & Lifting of the "Corporate Veil" (Doctrine of Alter Ego)

What do you understand by "separate legal entity of the company?" State the circumstances where under the separate legal entity of the company can be ignored and liability can be imposed on the persons regulating the affairs of the company?

OR

Under what circumstances the law disregards the principle that a company is a separate legal entity distinct from its members?

OR

Clearly explain the meaning of Lifting the Corporate Veil, as applicable in case of companies incorporated under the Companies Act, 2013. Under what circumstances the veil of a company can be lifted by the court?

Answer:

Separate Legal Entity & Lifting of the "Corporate Veil" (Doctrine of Alter Ego)

(1) Usually, a company is regarded as a "Separate Legal Entity"

Separate Legal entity = Company has a separate identity distinct from its Members.

However, when a company is created for fraud, then the court disregards its "Separate Legal Entity Status. The Company & its Members will be regarded as "one and the same person" (alter ego)

(2) In such a case, the liabilities of the company will vest upon the members and Members' liability will become Unlimited.

Circumstances where the law disregards the "separate legal entity" & lifts the corporate veil

A. Protection of revenue (Tax Evasion)

The Courts may ignore the corporate entity of a company where it is used for tax evasion. (Juggilal V. Commissioner of Income Tax, B.F. Guzdar v. Commissioner of Income Tax Bombay)

B. Prevention of fraud (Cheating Creditors)

The legal personality of a company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. Thus where a company was incorporated as a device to conceal the identity of the perpetrator of the fraud, the Court disregarded the corporate personality (Jones v. Lipman) (Gilford Motor Co. v. Home).

C. Determination of character of a company whether it is enemy (Enemy Country)

A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company and declare the company to be an enemy company. (Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.)

D. Where the company is a sham (Dummy Company)

The Courts also lift the veil or disregard the corporate personality of a company where a company is a mere cloak or sham (hoax). (Gilford Motor Co. Ltd. v. Home).

E. Avoidance of welfare legislation (Labour Laws)

Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. (Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.).

F. Protecting public policy (Public policy represents some of the most cherished and important principles and policies of the State) The Courts invariably lift the corporate veil or a disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy. (Connors v. Connors Ltd.)

5. Separate Legal Entity & Lifting of the "Corporate Veil" (Doctrine of Alter Ego)

E, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to E as a pretended loan. This way, divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established?

Whether the legal personality of all the three companies may be disregarded?

Answer:

Separate Legal Entity & Lifting of the "Corporate Veil" (Doctrine of Alter Ego)

(1) Usually, a company is regarded as a "Separate Legal Entity"

Separate Legal entity = Company has a separate identity distinct from its members.

However, when a company is created for fraud, then the court disregards its "Separate Legal Entity Status. The Company & its Members will be regarded as "one and the same person" (alter ego)

(2) In such a case, the liabilities of the company will vest upon the members and Members' liability will become Unlimited.

Summary of Doctrine of Alter Ego

1. Court disregards "Separate Entity" Status, and
2. Liability of Members becomes Unlimited.

Conclusion

Protection of revenue (Tax Evasion) The Courts may ignore the corporate entity of a company where it is used for tax evasion. (Juggilal v. Commissioner of Income Tax, B.F. Guzdar v. Commissioner of Income Tax Bombay).

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade (a deceptive outward appearance) of the assessee himself. Therefore, the whole idea of Mr.E was simply to split his income into three parts with a view to evade tax. No other business was done by the company. Hence, the legal personality of the three private companies may be disregarded because the Companies were formed only to avoid tax liability.



6. Doctrine of Ultra Vires

Y, a Construction company distributed 20 lacs to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 2013 decide whether the said distribution of money was "Ultra vires" the company?

Answer:**Doctrine of Ultra vires**

The objects for which a company is formed are laid down in the Object Clause of the Memorandum of Association. These objects define the limits of activities of the company and as a legal entity a company cannot operate outside the ambit defined in its objects clause in the Memorandum. The objects clauses are classified into Main objects and Incidental objects. A company, therefore, is empowered to do only such acts which are:

- Main Objects:** Stated in clear terms in the objects clause in the Memorandum of Association of the company, or
- Incidental Objects:** Objects that are incidental to the attainment of its main objects, or
- Companies Act:** Which are otherwise authorized by the Companies Act. (Ex: Amalgamation u/s 232)

Meaning of 'Ultra Vires'

If the company does any act which is not covered under the above 3 categories, such acts shall be beyond the power of the company and shall be declared ultra vires the Memorandum of the Company. The term ultra vires means "beyond the powers".

Conclusion

Distribution of Rupees Twenty Lacs by a company engaged in Chemical manufacturing is not 'Ultravires' since it was conducive to the continued growth of the company as chemical manufacturers. In order for a contract to be ultra vires, it would be essential to refer to its objects clause. Restrictions of the type mentioned in the question are not an item of the Objects Clause. Hence, the issue of ultra vires does not arise to such a donation.

7. Doctrine of Ultra Vires

The object clause of the Memorandum of Association of Star Private Ltd, Lucknow authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. S and traded in steel and incurred liabilities to Mr. S. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to S. Give reasons in support of your answer.

Answer:**Doctrine of ultra vires**

The objects for which a company is formed are laid down in the Object Clause of the Memorandum of Association. These objects define the limits of activities of the company and as a legal entity a company cannot operate outside the ambit defined in its objects clause in the Memorandum. The

objects clauses are classified into Main objects and Incidental objects. A company, therefore, is empowered to do on acts which are:

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Meaning of 'Ultra Vires'

If the company does any act which is not covered under the above 3 categories, such acts shall be beyond the power of the company and shall be declared ultra vires the Memorandum of the Company. The term ultra vires means "beyond the powers".

Consequence of Ultra Vires actions

A company being an artificial legal person cannot operate outside the powers given to it in its objects clause and any contract which is ultra vires shall be void ab initio.

Implications of ultra vires Acts

- No legal enforceability:** Neither party can enforce the contract nor claim any compensation.
- Constructive Notice:** It is an established legal requirement that persons entering into contracts with the company must satisfy themselves that the terms of the same are within the powers of the company and not ultra vires.
- Liability of Fraudulent Directors:** There is no personal liability on the part of the directors of the company unless they have represented an ultra vires contract fraudulently as a permissible one.
- Clear Language on Objects Clause:** Words used in the Objects Clause should be clear and unambiguous and not vague.
- No ratification:** Ultra Vires cannot be ratified even though every member of the company may give his consent. [Ashbury Railway Carriage Company Vs Richee]

Conclusion

M/s Star Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. S. Such act cannot be treated as being within either the 'express' or implied' powers of the company. Mr. S who entered into partnership is deemed to be aware of the lack of powers of M/s Star (Pvt) Ltd. In the light of the above, Mr. S cannot enforce the agreement or liability against M/s Star Pvt. Ltd under the Companies Act. Mr. S should be advised accordingly.



8. Doctrine of Constructive Notice

Briefly explain the doctrine of "Constructive Notice" under the Companies Act, 2013. Are there any exceptions to the said doctrine?

Answer:

Doctrine of Constructive notice

In consequences of the registration of the memorandum and articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents. This is because these documents are construed as public documents.

Accordingly, if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction which is ultra vires these documents, he must do so at his peril.

This doctrine applies when an Outsider enters into an Unusual Agreement or Transaction with the Company.

An outsider entering into an unusual transaction with the company must read MOA-AOA and satisfy himself that the transaction is within the powers of the Company. In case of any dispute, Court will presume that the outsider had read MOA-AOA and was fully aware of the violation.

Note: This doctrine works against the Outsider.

Limitation of the doctrine

The outsiders dealing with the company are on their part entitled to assume that as far as the internal proceedings of the company are concerned, everything has been done properly in accordance with the Memorandum and Articles and the Act.

They are only bound to read the registered documents and satisfy themselves that the proposed dealing is not inconsistent therewith but are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum and the Articles.

This limitation of the doctrine of constructive notice is known as the 'doctrine of indoor management' or the rule laid down in the celebrated case of *Royal British Bank v. Turquand*.

9. Doctrine of Indoor Management

The role of doctrine of 'Indoor management' is opposed to that of the role of "Constructive notice". Comment on this statement with reference to the Companies Act, 2013.

OR

The person (not being members) dealing with the company are always protected by the doctrine of Indoor Management. Explain. Also, explain when doctrine of Constructive Notice will apply.

Answer:

Doctrine of indoor management

Outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.

This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of *Royal British Bank vs. Turquand*. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Basis for Doctrine of Indoor Management

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

1. **Knowledge of irregularity:** Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management.
2. **Negligence:** Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of this rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
3. **Act void ab initio:** Where the acts done in the name of a company are void ab initio, the doctrine or indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction.
4. **Acts outside the scope of apparent authority:** If an officer of a company enters into a contract with a third party and if the act of the officer is apparently beyond the scope of his authority, the company is not bound.



CA AKASH AGARWAL

EXTRA DOCTRINES



QUESTION BANK



5. Forgery:

- A. **Traditional Answer:** Traditionally, outsider does not get the benefit of Turquand Rule in case of forgery because forgery means "no acceptance" and hence no agreement.
- B. **Modern Answer:** However, in Sri Krishan v. Mondal Bros. & Co. it was held that a company may be held liable for any fraudulent Acts of its officers acting under ostensible authority. Therefore, in the instant case, company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

10. Doctrine of Indoor Management (Direct Example of this Doctrine)

The directors of Smart Computers limited borrowed a sum of money from Mr. Chinmay. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority.

Hence, the company is not bound to repay the loan to Mr. Chinmay, In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

Answer:

Doctrine of Indoor Management

Outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.

This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Basis for Doctrine of Indoor Management

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Conclusion

In the given question, Mr. Chinmay being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Chinmay.

11. Doctrine of Indoor Management (Direct Example of this Doctrine)

The Articles of Association of WNS Ltd. provides the Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. P without passing any such resolution in general meeting. Can Mr. P recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.

Answer:

Doctrine of Indoor Management [Royal British Bank vs. Turquand]

According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Royal British Bank vs. Turquand

As per the case of the Royal British Bank vs. Turquand, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Conclusion

Since the given question is based on the above facts, accordingly here in this case Mr. P can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

12. Doctrine of Indoor Management

Explain the doctrine of 'Indoor management' in brief.

The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. B wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name

OR

A Managing Director of a company borrowed a sum of money by executing a document in which he FORGED the signature of 2 other directors who are required to sign as per requirements of articles. Can the company deny liability to creditors?

Answer:

Doctrine of Indoor Management



According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Royal British Bank vs. Turquand

As per the case of the Royal British Bank vs. Turquand, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Exceptions to the doctrine

Forgery:

- (A) Traditional Answer: Traditionally, outsider does not get the benefit of Turquand Rule in case of forgery because forgery means "no acceptance" and hence no agreement.
- (B) Modern Answer: However, in Sri Krishan v. Mondal Bros. & Co. it was held that a company may be held liable for any fraudulent Acts of its officers acting under OSTENSIBLE AUTHORITY. Therefore, in the instant case, company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

Conclusion

Answer 1

This doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery. In the instant problem the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to A and thereby to B. The title of the buyer cannot be better than that of the seller (Sale of Goods Act, 1930).

Hence, 'B' will not succeed in getting the share registered in his name.

Answer 2 (Alternative Answer)

Company Secretary is a KMP u/s 2(51) i.e. an officer of the company acting under ostensible authority. In Sri Krishan v. Mondal Bros. & Co. it was held that a company may be held liable for any fraudulent Acts of its officers acting under ostensible authority. Therefore, in the instant case, company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

Hence, 'B' will succeed in getting the share registered in his name.

13. Member- 2(55)

Describe the ways to become a member of a company.

A company issued 20 partly paid equity shares and registered them in the name of the minor describing him as minor. The father of the minor signed the application on the minor's behalf. After some time company went into liquidation. The company filed a suit against father of the minor to recover the remaining amount on the shares. Whether the company will succeed? Advise.

OR

State the manner in which a person may acquire membership of a public company,

Answer

Section 2(55)- Member

Member [Section 2(55)]

"Member", in relation to a company, means

- (1) The Subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (2) Every other person who agrees in writing to become a member of the company and whose name is entered in the Register of Members of the company;
- (3) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a Depository;

From the above it is clear that a person can become a member only after his name is entered as a beneficial owner in the register of members of the company and in the records of a depository. However, in order to have his name entered in these documents the avenues available to a person to become a member are as under:

- a. By subscribing to the Memorandum (for forming a company);
- b. By agreeing in writing to become a member of the company - this is done in any one of the following ways:
 1. Applying for shares or securities in the company in response to a public issue;
 2. Purchasing the shares or securities of the company from the stock exchange in which such shares and securities are listed for trading;
 3. Purchasing shares or securities in terms of a private placement made by the company.
- c. By registration as a member in the register of members and the records of the depository consequent upon transmission of such shares on the death of the registered member.

Conclusion

Minor's Status as a Member

In the present case therefore, as the shares are registered in the name of the minor, he shall enjoy all the benefits of a member without incurring any liability. The question of his father becoming liable does not arise as he is not a member of the company. Therefore, the company will not succeed in making the father of the minor member liable.

**CA AKASH AGARWAL****EXTRA DOCTRINES****CA AKASH AGARWAL****PROSPECTUS**

6. PROSPECTUS

14. Preliminary or Pre-Incorporation Contracts

ABC Co. Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for payment under the following situations:

- When the company has already adopted the contract after incorporation?
- When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?

Answer:

Preliminary or Pre-Incorporation Contracts

- Pre-incorporation contracts are contracts entered into between promoters and outsiders, on behalf of the company.
- Liability for Pre-incorporation contracts:
 - Company is not liable for PIC.
 - Promoters are liable for PIC
 - Outsiders cannot sue the company. They can only sue promoters.
- Novation of Pre-incorporation contracts:
After incorporation, Fresh contracts are entered into between Company and outsiders, thereby substituting pre-incorporation contracts. Now, the company becomes liable and the promoter is discharged.
- Ratification/Adoption of pre-incorporation contracts is NOT allowed.

Answer (i)

The company has adopted the contract after incorporation.

There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.

Answer (ii)

The company makes a fresh contract with the suppliers in terms of pre incorporation contract.

In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP Dec. 2014]**[5 Marks]**

1. Explain provisions of the Companies Act, 2013 regarding document containing offer of securities for sale to be deemed prospectus.

Answer:

- As per Section 25 of Companies Act, 2013, any document by which the offer or sale of shares or debentures to the public is made shall for all purpose be deemed as prospectus issued by the company.

The Act lays down the following provisions:

- Contents of prospectus and the liability: All enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from prospectus, or otherwise relating to prospectus, shall apply with the modifications and shall have effect as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities.
- The liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof, remains same as that in the case of a prospectus.
- Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document, that is deemed to be prospectus, is signed on behalf of the company or firm:
 - By 2 directors of the company or
 - By not less than one-half of the partners in the firm, as the case may be.
- Securities must be offered for sale to the public: For the purpose of this Act, it shall be evident that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown that:
 - An offer of the securities or of any, of them for sale to the public was made within 6 months after the allotment or agreement to allot; or
 - At the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

[PP Dec. 2016, June 2019]

[5 Marks]

2. Write short note on: Red Herring Prospectus. OR

Explain Red Herring Prospectus under the Companies Act, 2013.

Answer:

- Red herring prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.
- As per Section 32(1) of Companies Act, 2013, a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- As per Section 32(2) of Companies Act, 2013, a company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.
- As per Section 32(3) of Companies Act, 2013, a red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- As per Section 32(4) of Companies Act, 2013, upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

[PP June 2017, MTP DEC 2020/2022/2018, July 2023]

[6 Marks]

3. What is Shelf Prospectus? Explain it with relevant provisions.

Answer:

As per Section 31 of Companies Act, 2013, any class or classes of companies, as the SEBI may provide by regulations in this behalf, may file a shelf prospectus.

♦ File with Registrar:

The company shall file a shelf prospectus with the Registrar at the stage of the first offer of securities.

♦ Validity:

It shall specify a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus.

♦ No requirement of prospectus:

In respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, a further prospectus is not required

♦ Information memorandum:

A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed,

with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

♦ Exit offer:

Where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within 15 days thereof

➤ Deemed prospectus:

➤ Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

[PP Dec. 2017]

[5 Marks]

4. What are the requirements for public placement?

Answer:

- Rule 14(2) (a) of Companies (Prospectus of Securities) Rules, 2014, provides that a company shall make a private placement after –
- getting the approval by the shareholders of the company, by a special resolution for the proposed offer of securities or invitation to subscribe securities;
- the explanatory statement annexed to the notice for the general meeting shall disclose the basis for justification for the price, including premium, if any, at which the offer or invitation is being made;
- in case of offer or invitation for non convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures;
- in case of an offer or invitation for non convertible debentures made within a period of six months from 01.04.2014, the special resolution may be passed within the said period of six months from 01.04.2014.



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PROSPECTUS



[PP July 2023]

[10 Marks]

5. Issue of Securities by a public company

Answer:

Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;
- through private placement by complying with the provisions of Part II of Chapter III of this Act;
- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities -

- (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
- (b) through private placement by complying with the provisions of Part II of this Chapter.

Section 23 (3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed

Section 23(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

As per explanation to section 23, for the purposes of Chapter III, —public offer includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

[PP Dec. 2017]

[5 Marks]

6. State the reports that are to be set out in the prospectus

Answer:

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus;

The reports made by the auditors in respect of the business of the company

[RTP Dec. 2018]

7. Ascertain the financial information which are to be stated in a Prospectus for IPO.

Answer:

- **Section 26** of the Act provides the matters to be stated in a prospectus. Every prospectus issued by or on behalf of a public company shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government: Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this subsection, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.
- **Section 27** of the Act provides that a company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued except subject to the approval of or except subject to an authority given by the company in general meeting by way of special resolution through the postal ballot. The notice of the proposed special resolution, according to **Rule 7(1)**, shall contain the following particulars:
 - the original purpose or object of the issue;
 - the total money raised the money utilized for the objects of the company stated in the prospectus;
 - the extent of achievement of proposed objects;
 - the unutilized amount of the money so raised through prospectus;
 - the particulars of the proposed variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued;
 - the reason and justification for seeking variation;
 - the proposed time limit within which the proposed varied objects would be achieved;
 - the clause-wise details as specified in **Rule 3(3)** as was required with respect to the originally proposed objects of the issue;
 - the risk factors pertaining to the new objects; and
 - the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.



QUESTION BANK



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PROSPECTUS



[MTP DEC 2017]

8. Mr. X has fraudulently made mis-statements in the prospectus. What liability does arise on behalf of Mr. X in this context?

Answer:

- If there is any mis-statement in the prospectus then it would attract the liability on the issuer. The liability may be civil or criminal. Section 34 provides for criminal liability and section 35 provides for civil liability.
- Section 34 provides that where a prospectus includes any untrue statement or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorize the issue of such prospectus shall be liable under Section 447. The criminal liability will not arise if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of the issue of prospectus believe, that the statement was true or the inclusion or omission was necessary.
- Section 35 provides that where a person has subscribed for securities of a company based on the mis-statement in the prospectus and he has sustained any loss or damage as a consequence thereof, the company and every person who-
 - is a director of the company at the time of the issue of the prospectus;
 - has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become to become such director, either immediately or after an interval of time;
 - is a promoter of the company;
 - has authorized the issue of the prospectus; and
 - is an expert, shall be liable to pay compensation to every person who has sustained such loss or damage. This liability is without prejudice to any punishment to which any person may be liable under Section 36.
- No person shall be liable if he proves-
 - that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - that the prospectus was issued without his knowledge or consent and that on becoming aware of this issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- Section 35(3) provide that if it is proved that a prospectus has been issued with intent to defraud the applicant for the securities of a company or any other person or any fraudulent purpose, every person shall be personally responsible without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

[PP Dec. 2023]

[6 Marks]

9. Commission in connection with subscription to the 'securities by company?

Answer:

- As per Section 40(6) of Companies Act, 2013, a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules,
- As per Rule 13 of Companies (Prospectus & Allotment of Securities) Rules, 2014, a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:
 - The payment of such commission shall be authorized in the company's articles of association.
 - The commission may be paid out of proceeds of the issue or the profit of the company or both.
 - The rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less.
 - The prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable the underwriter and the to number of securities which is to be underwritten or subscribed by the under- writer absolutely or conditionally.
 - Commission shall not be paid to any underwriter on securities which are not offered to the public for subscription.
 - A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

[PP Dec. 2015]

[4 Marks]

10. Explain the meaning & Role of the Prospectus.

Answer:

Section 2(70)-Definition of Prospectus

"Prospectus" means:

1. any document described or issued as a prospectus and includes
2. a red herring prospectus referred to in section 32 or
3. a shelf prospectus referred to in section 31 or
4. any notice, circular, advertisement, or other document,

Inviting offers from the PUBLIC for the subscription or purchase of any securities of a body corporate.

Role of Prospectus

The prospectus is the main document on the basis of which the prospective investors decide whether or not they should subscribe to the securities offered by the company. The information in the prospectus is vital in every material aspect and any misstatements or concealment of material facts may result in huge losses to the investing public.



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PROSPECTUS



THEORY QUESTIONS

11. Explain the concept of Deemed Prospectus under the Companies Act, 2013. Under what circumstances prospectus need not be issued?

Answer:

Section 25-Deemed Prospectus

Where a company allots any securities of the company with a view to all or any of those securities being offered or sale to the public, any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company and all provisions shall apply accordingly.

2 Cases of Deemed Public Offer

The following cases shall be deemed to be a case of Deemed Public Offer

An allotment of securities was made with a view to the securities being offered for sale to the public if it is shown-

- That an offer of the securities or of any of them for sale to the public was made within 6 months after the allotment; or
- That at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

Section 26(2) Non-Requirement of Prospectus

nothing in sec 26(1) shall apply:

- to the issue of a prospectus or application form to existing members or debenture-holders of a company, whether an applicant has a right to renounce the shares or not under section 62 in favour of any other person; or
- to the issue of a prospectus or application form relating to shares or debentures which are uniform with shares or debentures previously issued and quoted on a recognised stock exchange.

12. What is meant by 'Red-herring prospectus'? What is the requirement relating to filing of final prospectus in such cases?

Answer:

"Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Issue of RHP

A company proposing to make an offer of securities may issue a Red Herring Prospectus (RHP) prior to the issue of Final prospectus.

Filing of RHP

A company proposing to issue a Red Herring Prospectus (RHP) shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.

Status of RHP

A Red Herring Prospectus (RHP) shall carry the same obligations as are applicable to a Final Prospectus and any variation between the Red Herring Prospectus (RHP) and a Final Prospectus shall be highlighted as variations in the Final Prospectus.

Filing of Final Prospectus

Upon the closing of the offer of securities, the Final Prospectus stating therein the total capital raised whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the Red Herring Prospectus (RHP) shall be filed with the Registrar and the SEBI.

13. What is meant by "Abridged Prospectus"? Is it necessary to furnish abridged form of prospectus along with the application form for shares?

Answer:

As per Section 2(1), "Abridged Prospectus" means

- a memorandum
- containing such salient features of a prospectus as may be specified
- by the SEBI by making regulations in this behalf.

Application Form and Abridged Prospectus

No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an Abridged Prospectus.

In the following cases abridged prospectus need not be given-

- In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- In relation to securities which were not offered to the public.

On request

A copy of the detailed prospectus shall be furnished on a request being made by any person before the closing of the subscription list and the offer.

If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of ₹ 5000 for EACH default i.e., ₹50000 for every application form that is issued without Abridged Prospectus.

14. State the conditions where under the issuing of prospectus/abridged prospectus is not necessary under the provisions of the Companies Act, 2013.

Answer:

Section 26(2) -Non-Requirement of Prospectus

Nothing in Sec 26(1) shall apply:

- To the issue of a prospectus or application form to existing members or debenture-holders of a company, whether an applicant has a right to renounce the shares or not under section 62 in favour of any other person; or
- to the issue of a prospectus or application form relating to shares or debentures which are uniform with shares or debentures previously issued and quoted on a recognised stock exchange.

15. Under what circumstances an abridged prospectus need not accompany the detailed information regarding the prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to the issue of an abridged prospectus?

Answer:

Circumstances under which the abridged prospectus need not accompany the application forms:

Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

- In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- Where the securities are not offered to the public.

Conclusion:

If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

16. State the remedies available against a company to a subscriber for allotment of shares on the faith of a misleading prospectus.

Answer:

- The remedies available to a subscriber arise more from the Indian Contract Act, 1872 than from the Companies Act, 2013.
- The Companies Act, 2013 lays down the punishment u/s 34 & 35 for the company and the responsible parties which will include directors, promoters, experts etc. but does not mention the legal remedies available to an aggrieved investor apart from making the guilty persons liable to pay compensation to every person who has sustained loss or damage from purchase of securities on the strength of a prospectus containing mis statements.
- Hence, we have to turn to the Section 19 of the Indian Contract Act, 1872. It states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

Therefore, to summarize, the remedies available to an investor for mis-statements in prospectus are as under:

- Voidable contract (Cancel the Allotment and Refund money):** He may avoid the contract under section 19 of the Indian Contract Act, 1872; or
- Claim compensation for damages:** He may claim compensation from directors, promoters or experts for any loss or damage sustained by such purchase; or
- Enforce the contract as if the representation was true:** He may enforce the contract and be placed in the position in which he would have been if the representation made has been true. This is an unlikely situation and may not be practically possible.

Hence, for all practical purposes he will have the remedies under (a) and (b) above.

CASE STUDIES

17. The Board of Directors of M/s Anand Rathi Investment Ltd. have allotted shares to the public without issuing a prospectus with the Registrar of Companies, Mumbai. Explain the remedies available to the investors in this regard.

Answer:

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 lays down the matters required to be disclosed and included in a prospectus and requires the filing of the prospectus with the Registrar before its issue.

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 of the Act.

Conclusion

In the given case, the company has violated the above provisions of the Companies Act, 2013.

- The allotment made by the company is void allotment.
- The company will have to refund the entire moneys received.
- It will also be punishable under section 26(9) of the Act.

On Company	₹50000 ≤ Fine ≤ ₹ 3Lacs
On officer in default	₹50000 ≤ Fine ≤ ₹ 3Lacs

18. The Board of Directors of Chana Limited proposed to issue the prospectus inviting offers from the public for subscribing the shares if a company. State the reports which shall be included in the prospectus of providing financial information under the provisions of the Companies Act, 2013.

OR

The Board of Directors of Chana Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer:

Section 26-Matters to be Contained in the Prospectus

Every prospectus issued by or on behalf of a public company either with reference to its formation [IPO] or subsequently [FPO], or by or on behalf of any person [Promoter] who is or has been engaged or interested in the formation of a public company,

- shall be dated and
- state such information as specified in SEBI(ICDR) Regulations 2018 and

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(3) set out such reports on financial information as specified in SEBI (ICDR) Regulations 2018,

Declaration of Compliance

Every prospectus issued by a public company shall make a declaration about the compliance of the provisions of:

- (1) Companies Act 2013,
- (2) Securities Contracts (Regulation) Act, 1956 and
- (3) SEBI Act, 1992 and
- (4) SEBI rules and regulations made thereunder.

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

OR

XYZ Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of XYZ Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

Answer.

"Shelf Prospectus" means:

- a prospectus in respect of which the securities are issued for subscription
- in one or more issues over a certain period [1 year]
- without the issue of a further prospectus.

Shelf Prospectus have a shelf life of 1 year

Any class of companies, as the SEBI may provide by regulations, may file a shelf prospectus with the registrar at the stage of the first offer of securities included therein.

- 1) shelf prospectus shall indicate a period ≤ 1 year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
- 2) in respect of a second/subsequent offer of such securities issued during such 1-year period, no further prospectus is required.

Changes to be intimated through Information Memorandum

A company filing a shelf prospectus shall be required to file an Information Memorandum in Form PAS-2 with the Registrar within 1 month prior to the issue of a second or subsequent offer of securities under the shelf prospectus containing all material facts relating to:

- a) New charges created &
- b) Changes in the financial position of the company as have occurred between the previous offer of securities and the succeeding offer of securities.

Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed as a prospectus.

Hence, the proposal of XYZ Limited to take into account the concept of deemed prospectus is correct.

20. Criminal Liability for Misstatements in Prospectus - 34

Kotak Investment. Issued a prospectus which contained mis-statement about the prospects of the company from a project to be undertaken with an intent to defraud the applicants for securities. Discuss the provision of law relating to criminal liability form mis-statement in the prospectus under the section 34 of the Companies Act, 2013.

Answer.

Where a prospectus is issued, circulated or distributed that includes any statement which is untrue or misleading in form or context in which it is included then every person who authorizes the issue of such prospectus shall be liable under section 447.

Punishment for fraud u/s 447 (Mega 447)

6 months/3 years $\leq$ Imprisonments $\leq$ 10 years

AND

Fraud Amount (100%) $\leq$ Penalty $\leq$ 3X Fraud Amount (300%)

Where the fraud in question involves public interest,

The term of imprisonment shall not be less than 3 years.

Defences available to the concerned person

1. He proves that such statement or omission was immaterial or
2. He had reasonable grounds to believe and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

21. A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.

Answer.

Section 19 of Contract Act Fraud & Misrepresentation

(1) The remedies available to a subscriber arise more from the Indian Contract Act, 1872 than from the Companies Act, 2013.

- (2) A misstatement in a prospectus will cover both
 - Wrong or False information included, and
 - Omission of Material information from the prospectus and

It may result from either a mistake, or a misrepresentation or a fraudulent statement.

(3) The Companies Act, 2013 lays down the punishment u/s 34 & 35 for the company and the responsible parties which will include directors, promoters, experts etc. but does not mention the



legal remedies available to an aggrieved investor apart from making the guilty persons liable to pay compensation to every person who has sustained loss or damage from purchase of securities on the strength of a prospectus containing mis statements.

(4) Hence, we have to turn to the Section 19 of the Indian Contract Act, 1872. It states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

Conclusion

- The present case before us is not in respect of liability for a possible mis statement but on the right of the allottee to avoid the contract of purchasing the shares from the company. In order to decide this, key factor is to determine if any material mis representation or concealment of a material fact has taken place and if such misrepresentation is fraudulent.
- The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made.

Section 19 of the Indian Contract Act, 1872 states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Hence, in the given case the allottee can avoid the contract of allotment of shares.

22. An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under these circumstances? Decide referring to the provisions of the Companies Act, 2013.

OR

When director is not liable for a misstatement in a prospectus

Answer.

Whereas section 34 imposes a criminal punishment on every person who authorizes the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements.

Defences available to the Director u/s 34 & 35.

The only situations when a director will not incur any liability for mis-statements in a prospectus are as under:

- (a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
- (b) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:
 - (i) He withdrew his consent before the issue of the prospectus; or

(ii) He immediately gave a reasonable public notice that it was issued without his knowledge or Consent.

(iii) As regards every misleading statement contained in expert's report, it was a correct and fair representation of the statement, or a correct copy/extract; and he had reasonable ground to believe, that the person making the statement was competent to make it.

Conclusion

Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013.

In the present case, the director cannot escape the liability by stating that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis Statements in the prospectus.

23. Mazgoan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the Builders report and number of trees in A.P. State. The report was found untrue. Mr. Ashok purchased the shares of Mazgoan exports Ltd. on the basis of the expert report published in the prospectus.

(i) Will Mr. Ashok have any remedy against the company?

(ii) State also the circumstances where an expert is not liable under the Companies Act, 2013.

Answer.

Section 35-Expert's Liability for Misstatement in Prospectus

Where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.

Answer (i)

In the present case, Mr. Ashok purchased the shares of Mazgoan Exports Limited on the basis of the expert's report published in the prospectus.

1. Mr. Ashok can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.
2. Also, Mr. Ashok may rescind the Allotment u/s 19 of Contract Act 1872 instead of Claiming Damages u/s 35.

Answer (ii)

Circumstances when an expert is not liable:

An expert will not be liable for any mis-statement in a prospectus under the following situations:

- (i) He withdrew his consent before the issue of the prospectus; or
- (ii) He immediately gave a reasonable public notice that it was issued without his knowledge or consent.
- (iii) As regards every misleading statement contained in expert's report, it was a correct and fair representation of the statement, or a correct copy/extract; and he had reasonable ground to believe, that the person making the statement was competent to make it.



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24. A prospectus issued by a company contained certain mis-statements. On becoming aware of the fact regarding mis-statements in the prospectus, one of the experts Anil who had earlier given his consent, forthwith gave a reasonable public notice stating that the prospectus was issued without his knowledge and consent. Is it possible for Anil to escape liability for mis-statement in the prospectus?

Answer.

Section 35-Defences available to the Expert u/s 35

No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:

- (i) He withdrew his consent before the issue of the prospectus; or
- (ii) He immediately gave a reasonable public notice that it was issued without his knowledge or consent.
- (ii) As regards every misleading statement contained in expert's report, it was a correct and fair representation of the statement, or a correct copy/extract; and he had reasonable ground to believe, that the person making the statement was competent to make it.

The case of Anil is covered under the above exception and therefore, he will escape liability for misstatement in the prospectus.

25. Expert's Liability for misstatement; Defences available-SEC 35

Aarna Ltd. was dealing in export of cotton fabric to specified foreign countries. The company was willing to purchase cotton fields in Punjab State. The prospectus issued by the company contained some important extracts of the expert report. The report was found untrue. Mr. Nick purchased the shares of Aarna Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Would Mr. Nick have any remedy against the company? State the circumstances where an expert is not liable under the Companies Act, 2013.

Answer.

Section 35- Civil Liability to pay damages for the loss caused to others

An investor has subscribed for securities of a company:

- 1) Acting on any untrue statement in the prospectus AND
- 2) Has sustained any loss or damage as a consequence thereof,

Civil Liability to pay damages for the loss caused to others

Then the company and following persons shall be liable to pay compensation to every person who has sustained such loss or damage:

- (a) Director: Is a director of the company at the time of the issue of the prospectus;
- (b) Deemed Director: Has authorised himself to be named in the prospectus as a director of the company;
- (c) Promoter: Is a promoter of the company;
- (d) Merchant Banker: Has authorised the issue of the prospectus; and
- (e) Expert: Is an expert,

Answer (i)

In the present case, Mr. Nick purchased the shares of Aarna Limited on the basis of the expert's report published in the prospectus. Mr. Nick can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Since, Mr. Nick did not suffer any loss due to purchase of such shares, he cannot claim any compensation for any loss or damage.

Section 35-Defences available to the Expert u/s 35

No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:

- (iv) He withdrew his consent before the issue of the prospectus; or
- (v) He immediately gave a reasonable public notice that it was issued without his knowledge or consent.
- (vi) As regards every misleading statement contained in expert's report, it was a correct and fair representation of the statement, or a correct copy/extract; and he had reasonable ground to believe, that the person making the statement was competent to make it.

Answer (ii) In the above circumstances, the expert is not liable.

26. With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. Sham received copy of the prospectus from the company but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Sham bought 2000 shares through the stock exchange at a higher price which later on fell sharply. Sham sold these shares at a heavy loss. Mr. Sham claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether Sham's claim for damages is justified.

Answer.

This case is related to misrepresentation made in the prospectus. The principle that evolved in this case was that an action of misrepresentation can only be brought by the misled party, or "representee", which means that only those who were an intended recipient of the representation may sue.

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

Since Sham purchased shares through the stock exchange open market which cannot be said to have bought shares on the basis of prospectus. Sham cannot bring action for deceit against the directors. Sham will not succeed. It was held in the case of Nitin Vs. Gaurav that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

27. Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. S purchased some partly paid shares of the company in good faith on the Stock Exchange. Subsequently, the company was wound up and the name of Mr. S was in the list of contributors. Decide:

- (i) Whether Mr. S is liable to pay the unpaid amount?
- (ii) Can Mr. S sue the directors of the company to recover damages?

Answer.

This case is related to misrepresentation made in the prospectus. The principle that evolved in this case was that an action of misrepresentation can only be brought by the misled party, or "representee", which means that only those who were an intended recipient of the representation may sue.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it. certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

Ans (i) Yes, X is liable to pay the unpaid amount on the shares. As X has purchased partly paid shares, so he is liable for the remaining value of the shares.

(ii) No, X cannot sue the directors to recover damages for the misstatement in the prospectus. The shareholder must have relied on the statement in the prospectus in applying for shares offered by it to hold the responsible persons liable. If a person purchases shares in the open market, the prospectus is non-operative as far as he is concerned. In the present case, Mr. X purchased shares on the stock exchange even if he did so on good faith he had not relied on the statement in prospectus.

Therefore, he cannot sue the directors of the company to recover damages.

28. M applies for share on the basis of a prospectus which contains mis-statement. The shares are allotted to him, who afterwards transfers them to N. Can N bring an action for a rescission on the ground of misstatement? Decide under the provisions of the Companies Act, 2013.

Answer.

This case is related to misrepresentation made in the prospectus. The principle that evolved in this case was that an action of misrepresentation can only be brought by the misled party, or "representee", which means that only those who were an intended recipient of the representation may sue.

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

Conclusion

The shareholder must have relied on the statement in the prospectus in applying for shares offered by it to hold the responsible persons liable. If a person purchases shares in the open market, the prospectus is nonoperative as far as he is concerned. In the present case, Mr. N purchased shares from Mr. M.

So, N cannot bring about an action against the Company or its directors.

29. The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issue dare left open and to be decided post closure of the issue. As a financial advisor of the company what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Answer.

Section 32-Red Herring Prospectus [RHP]

As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

[Explanation to Section 32]

Conclusion

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue. The company may follow the provisions of Section 32 in issuing a red herring prospectus:

- (1) **Red Herring Prospectus is issued prior to issue of Prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- (2) **Filing with the registrar:** A company proposing to issue a red herring prospectus shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.
- (3) **Obligations under Red Herring Prospectus vis-à-vis Prospectus:** A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- (4) **Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer:** Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

30. Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

Answer:

According to Sec 30, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:



QUESTION BANK



- (i) the objects,
- (ii) the liability of members and the amount of share capital of the company
- (iii) the names of the signatories to the memorandum,
- (iv) the number of shares subscribed for by the signatories, and
- (v) the capital structure of the company



QUESTION BANK



7. ALLOTMENT

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec 2023/MTP June 2019]

[6 Marks]

1. Explain the provisions relating to pay commission in connection with the subscription to the securities, by a company

Answer:

Section 40(6) provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules.

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration



THEORY QUESTIONS

2. What do you mean by Allotment of shares?

Answer.

"Allotment" means the appropriation out of previously un-appropriated capital of a company, of a certain number of shares to a person. Till the allotment, as such the shares do not exist. It is on allotment that the shares come into existence.

In fact, with the sending of allotment letters, the company starts the process of allotment and it is nothing but ACCEPTANCE of offer made by the applicants of securities.

3. How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:

- (1) Minimum Amount stated in the Prospectus; and
- (2) Application Money payable on shares.

Answer.

Section 39 Minimum Amount stated in the Prospectus

No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

SEBI (ICDR) Regulations 2018- Minimum Subscription to be received in an issue shall not be less than 90% of the OTOD (offer through offer Document)

Time limit for receipt of Minimum Subscription

Minimum Subscription should be received within 30 days from the date of issue of the prospectus, or such other period as may be specified by SEBI.

If it is NOT received within above time limit, then the application money shall be refunded within a period of 15 days from the closure of the issue.

Refund of Application Money

If it is not refunded within prescribed period above, the Directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15% per annum.

Section 39-Application Money payable on shares

The amount payable on application on every security shall not be less than 5% of the nominal amount of the security.

SEBI (ICDR) Regulations 2018- Minimum Application Money should be not less than 25% of the Issue Price.

4. Explain the provisions and main contents of "Return of Allotment" under the Companies Act, 2013.

Answer.

The company shall file a Return of Allotment in Form PAS-3 with the Registrar within 30 days of allotment

Details to be attached with PAS-3:

- (1) List of allottees stating their names, address, occupation, if any, and
- (2) Number of securities allotted to each of the allottees and
- (3) List shall be certified by the signatory of the Form PAS-3

Special Attachments in Special Cases:

Securities issued for Non-Cash Consideration [Sec 62, 232]

- (1) Attach a copy of the contract, duly stamped, pursuant to which the securities have been allotted.
- (2) Where a contract referred above is not reduced to writing, the company shall furnish complete particulars of the contract.
- (3) A report of a registered valuer in respect of valuation of the consideration.

Bonus Shares [Sec 63]

A copy of the shareholders' resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3.

Preferential Issue [Sec 62]

Attachment of Valuation Report of the Registered Valuer when shares have been issued in pursuance of Section 62 (1) (c).

5. Define Minimum Subscription. When is it liable to be refunded? Can share application money be deposited in any bank?

Answers

Minimum Subscription

The minimum amount of the Issue [Offer through offer Document] that must be subscribed by the Investors failing which the Public Issue shall be treated as void and the money so collected shall have to be refunded back.

No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

Time limit for receipt of Minimum Subscription

Minimum Subscription should be received within 30 days from the date of issue of the prospectus, or such other period as may be specified by SEBI.



If it is NOT received within above time limit, then the application money shall be refunded within a period of **15 days from the closure of the issue.**

Refund of Application Money

If it is not refunded within prescribed period above, the Directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of **15% per annum.**

Section 40- Application money to be deposited in separate bank account

All monies received on application from the public for subscription to the securities shall be kept in a **separate bank account [Escrow A/c] in a SCHEDULED BANK** and shall not be utilised for any purpose other than -

- For adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange; or
- For the refund of monies where the company is unable to allot securities.

6. A public limited company which went in for Public issue of shares had applied for listing of shares in 3 recognised Stock Exchanges and out of it only 2 had given permission for listing.
Can the company proceed for allotment of shares?

Answer

Section 40-Application to Stock Exchange for listing

Every company making public offer shall, before making such offer, make an application to a recognised STOCK EXCHANGE and obtain permission [in-principle approval] for the securities to be dealt with in such stock exchange.

Note: Companies Act 2013 requires that all the Stock Exchanges to which the Company has applied for listing its securities must grant in-principle approval. Even if one of the Stock Exchange refuses listing, then the Company CANNOT proceed with Public Issue.

Conclusion

Therefore, in the given case, the company **CANNOT** proceed for allotment of shares.

7. Explain the conditions and the manner in which a company may issue depository receipts in a foreign country under the Companies (Issue of Global Depository Receipts) Rules, 2014.

OR

NNP Limited wants to issue Global Depository Receipts. What are the conditions to be followed for issue of such receipts?

OR

Explain the conditions and the manner in which a company may issue Global Depository Receipts in a foreign country.

Answer.

Conditions for issue of GDR

- The Board of Directors of the company intending to issue depository receipts shall pass a **Board Resolution** authorising the company to do so.
- The company shall take prior approval of its shareholders by a **Special Resolution** to be passed at a general meeting.
- The depository receipts shall be issued by an **overseas depository bank** appointed by the company and the underlying shares shall be kept in the custody of a **domestic custodian bank.**
- The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the **Reserve Bank of India** are complied with before and after the issue of depository receipts.
- The company shall appoint a merchant banker or a practising CA/CS/CMA to oversee all the compliances relating to issue of depository receipts and their **COMPLIANCE REPORT** shall be placed at the Board Meeting to be held immediately after closure of all formalities of the issue of depository receipts.

Manner for Issue of Depository Receipts

- The depository receipts can be issued by way of public offering or private placement.
- The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

8. Discuss the provisions relating to private placement of shares under the Companies Act, 2013.

Answer.

Meaning of Private Placement

"Private Placement" means

- any offer or **invitation to subscribe** or issue of securities **to a select group of persons,**
- who have been **identified by the Board** (herein referred to as "identified persons") by a company (other than by way of public offer),
- through Private Placement Offer-Cum-Application [PAS-4],** which satisfies the conditions specified in this section.

Private Placement Offer Letter in PAS-4

Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issued of a private placement offer letter in **PAS-4.**

Provided that the private placement offer and application shall **NOT** carry any right of **RENUNCIATION.**

Conditions to be fulfilled



1. A company shall not make a private placement of its securities unless the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company by a **SPECIAL RESOLUTION**.

2. Such offer or invitation shall be made to ≤ 200 persons in the aggregate in a financial year.

Provided that any offer to QIB (Qualified Institutional Buyers), or to Employees under ESOP shall NOT be considered while calculating the limit of 200 persons.

Explanation - For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Allotment of shares or Refund of money

(a) Time Limit for Allotment of securities

Within 60 days from the date of receipt of the application money

(b) Refund of Money

If the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the date of completion of 60 days.

(c) Failure to refund within 15 days period attracts Interest

If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of **12% per annum** from the expiry of the 60th day.

No marketing

No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

Records and Returns

1. The company shall maintain a complete record of private placement offers in Form PAS-5 (Records)
2. A **Return of Allotment (PAS-3)** of securities u/s 42 shall be filed with the Registrar within 15 days of allotment in Form PAS-3. If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of **₹1,000** for each day during which such default continues but not exceeding **₹25 lacs**.

Punishment for contravention

If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which is LOWER of:

1. Amount involved in the offer or
2. ₹2 crores.

Also, the company shall also **Refund all monies** to subscribers **within 30 days** of the order imposing the penalty

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

OR

When is an Allotment of Shares treated as an irregular allotment? State the effects of an irregular allotment.

Answer.

The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non-fulfilment of those requirements. In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances -

- (1) Where a company does not issue a prospectus in a public issue as required by section 23; or
- (2) Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
- (3) Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
- (4) The minimum subscription as specified in the prospectus has not been received in terms of section 39;
- (5) The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf in terms of section 39; or

In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Conclusion

Effects of irregular allotment: The allotment becomes **VOID**



CASE STUDIES

10. P Ltd. issued 1,00,000 equity shares of ₹100 each at par to the public by issuing a prospectus.

The prospectus discloses the minimum subscription amount of ₹15,00,000 required to be received on application of shares and share application money shall be payable at ₹20 per share. The prospectus further reveals that p Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and p Ltd. received an amount of ₹20,00,000 on share application. p Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013.

Answers.

Section 39 Minimum Subscription

No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

Section 39 Minimum Application Money

The amount payable on application on every security shall not be less than 5% of the nominal amount of the security.

Section 40-Application to Stock Exchange for listing before making a public offer

Every company making public offer shall, before making such offer, make an application to a recognised STOCK EXCHANGE and obtain permission [in-principle approval] for the securities to be dealt with in such stock exchange.

Note: Companies Act 2013 requires that all the Stock Exchanges to which the Company has applied for listing its securities must grant in-principle approval. Even if one of the Stock Exchange refuses listing, then the Company CANNOT proceed with Public Issue.

Conclusion

Out of the 3 disclosures, 2 are compliant with Law.

1. The company has successfully raised the minimum subscription stated in the prospectus.
2. Minimum Application Money kept by the company is 20% of the nominal amount of the security which is in accordance with Law.

3. However, the company has failed in obtaining listing from all the stock exchanges that it had applied to.

A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application was rejected.

Consequently, A Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

11. After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalization of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act,

2013. Comment.

Answer.

Section 39-Minimum Subscription

No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

Section 40-Application money not to be used until shares allotted or money refunded

All monies received on application from the public for subscription to the securities shall be kept in a separate bank account [Escrow A/c] in a SCHEDULED BANK and shall not be utilised for any purpose other than -

- a) For adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange; or
- b) For the refund of monies where the company is unable to allot securities.

Conclusion

- 1) The company allotted the shares without receiving the minimum Subscription. Hence the Allotment of shares is void and the money is refundable. This is contravention of Sec 39.
- 2) The company utilized 50% of the Application Money pending Allotment and contravened Section 40.
- 3) Hence the Company is liable for punishment u/s 39 & 40.
- 4) The Company is also liable to refund the entire application money



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

OR

Explain clearly the meaning of the term 'Underwriting' and 'Underwriting Commission'. In what way, does the Companies Act, 2013 regulate payment of such Commission? Explain.

OR

In what way does the Companies Act, 2013 regulate the payment of 'underwriting commission'? Explain the provisions of the Act, state the conditions to be complied with before payment of such commission can be made to underwriters of the company.

Answer.

Underwriting is a contract entered into between the company and certain parties (called underwriters) whereby the underwriters guarantee to purchase or get investors to purchase the whole or an agreed portion of the securities that are not applied for by the public for subscription. In consideration of this guarantee the company pays a commission to the underwriters as a percentage of the value of the shares offered to the public.

A company may pay commission to any person in connection with the subscription or procurement or subscription to its securities subject to the following conditions, namely:

1. **Articles:** The payment of such commission shall be authorized in the company's Articles of Association
2. **Sources of payment:** The commission may be paid out of proceeds of the issue or the profit of the company or both;
3. **Rate of commission:** The rate of underwriting commission shall not exceed as given below;

SHARES	DEBENTURES
Maximum Rate = Lower of: (1) 5% of the price at which the SHARES are issued or (2) Rate authorised by the Articles.	Maximum Rate = Lower of: (1) 2.5% of the price at which the DEBENTURES are issued or (2) Rate authorised by the Articles.

4. **Disclosures in Prospectus:** the prospectus of the company shall disclose -

- i. the name of the underwriters;
- ii. the rate and amount of the commission payable to the underwriter; and
- iii. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

5. **Commission on Public offer portion:** There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;

6. **Underwriting Contract:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the PROSPECTUS for registration

Conclusion

Hence, the company is advised to follow the above provisions.

13. Shradha Advertisement Company, decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats.

Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.

OR

Examine the validity of the following referring to the provisions of the Companies Act, 2013 and/or Rules:

"The Articles of Association of M Ltd. contained a provision that up to 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of Directors of M Ltd. decided to pay 5% underwriting commission.

OR

Mohan Pharmacy Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares.

Examine the validity of the above decision under the provision of the Companies Act, 2013.

Answer.

Section 40-Rate of Underwriting Commission

Rate of commission: The rate of underwriting commission shall not exceed as given below:

SHARES	DEBENTURES
Maximum Rate = Lower of: (1) 5% of the price at which the SHARES are issued or (2) Rate authorised by the Articles.	Maximum Rate = Lower of: (1) 2.5% of the price at which the DEBENTURES are issued or (2) Rate authorised by the Articles.

Note: Underwriting Commission can be paid in cash or kind. The Companies Act does not impose any restriction on the mode of payment.

Conclusion

In view of the above the decision of Shradha Advertisement Company to pay underwriting commission exceeding 2% as prescribed in the Articles is **invalid**.

The company may pay the underwriting commission in the form of **flats** as the Companies Act does not impose any restriction on the mode of payment.



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

- Being a public company is it possible for JP Morgans Limited to issue securities under a private placement offer?
- By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers?
- What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Answer:

Maximum Invitees

Such offer or invitation shall be made to ≤ 200 persons in the aggregate in a financial year.

Provided that any offer to QIB (Qualified Institutional Buyers), or to Employees under ESOP shall NOT be considered while calculating the limit of 200 persons.

Explanation- For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

No fresh offer

No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Provided that, subject to the maximum number of identified persons, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

Answer 1:

The route of Private placement is available to all kinds of companies including Public Company. So, POR Bakers Limited can issue securities under a private placement offer.

Answer 2:

There are 2 issues involved in this question.

1st Issue: Maximum Number of invitees limited to 200 persons.

The limit of 200 persons would be counted individually for each kind of security that is equity share, preference share or debenture.

Equity Shares were offered to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. Debentures were offered to 155 persons which is well within the limit of 200 persons.

2nd Issue: Fresh Offer of Debentures without allotment of Equity Shares in Previous offer.

The company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42.

Hence the 1st Offer is VALID, but the 2nd offer is INVALID.

So, the 2nd offer will be treated as Public Offer.

Answer 3:

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

15. Namura Ltd. is planning to make a private placement of securities. The Managing Director arranged to obtain a brief note from some source explaining the salient features of the issue of private placement that the Board of Directors shall keep in mind while approving the proposal on this subject. The brief note includes, inter alia, the information/ suggestions on the following points:

1. A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year.

The aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme

2. The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.

The Company solicits your remarks on the points referred above as to whether they are valid or not?

Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013.

Answers:

Maximum Invitees

Such offer or invitation shall be made to ≤ 200 persons in the aggregate in a financial year

Provided that any offer to QIB (Qualified Institutional Buyers), or to Employees under ESOP shall NOT be considered while calculating the limit of 200 persons.



PROSPECTUS & ALLOTMENT MCQ'S

Explanation- For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Provided that, subject to the maximum number of identified persons, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

Conclusion

- The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct. The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme.
Hence, the second part of the proposal is only partially correct.
- Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

OBJECTIVES

Q1. Multiple Choice Questions:

- The persons who are liable to pay the to every person who compensation has due sustained loss or damage to misstatement in prospectus.
 - Company.
 - Director at the time of issue.
 - A promoter.
 - Company, director at the time of issue & a promoter
- A company which cannot issue a prospectus inviting subscription to securities
 - Private company.
 - Public company.
 - Unregistered company.
 - Registered company.
- Prospectus should be issued by the company within ____ days of registration with ROC.
 - 90 days.
 - 85 days.
 - 67 days.
 - 80 days.
- The category A in a prospectus is _____.
 - Reports.
 - Information.
 - Compliance declaration
 - Other matters.
- Non-compliance of Abridged prospectus by a company attracts a penalty of _____.
 - 45,000 for each default.
 - 60,000 for each default.
 - 50,000 for each default.
 - 20,000 for each default.
- What is the validity period of a Shelf Prospectus?
 - 9 months commencing from the date of opening of the first offer of securities.
 - 6 months commencing from the date of opening of the first offer of securities.
 - 1 year commencing from the date of opening of the first offer of securities.
 - 2 year commencing from the date of opening of the first offer of securities
- Information Memorandum shall be prepared in _____.
 - Form No.PAS.2.
 - Form No.PAS.3.
 - Form No. PAS. 1.
 - Form No.PAS.4.
- A company proposing to make an offer of securities may issue a _____ prior to the issue of a prospectus.
 - Abridged Prospectus.
 - Shelf Prospectus.
 - Information Memorandum.

- (d) Red Herring Prospectus.
9. The prospectus which does not include complete particulars of the price of the securities is
- Abridged Prospectus.
 - Shelf Prospectus.
 - Deemed Prospectus
 - Red Herring Prospectus.
10. The no. of persons who should subscribe for each security is ____
- 400 persons.
 - 200 persons.
 - 300 persons.
 - 100 persons.
11. When there is a untrue statement in a prospectus, who can sue?
- Subscriber in primary market
 - Subscriber in secondary market
 - Rights issue
 - None of these
12. Meaning of prospectus is defined under which section
- Sec 2(79)
 - Sec 2(68)
 - Sec 2(70)
 - Sec 9(80)
13. Which of the following are not required to issue prospectus
- Private company
 - In case of rights issue
 - Sweat equity share
 - All the above

14. ____ are the prospectus issued instead of full prospectus
- Abridged
 - Statement in lieu
 - Shelf
 - Red herring
15. ____ year of imprisonment will be imposed in case of issue of prospectus with untrue statement
- 1
 - 2
 - 3
 - 4
16. What is the liability of an expert for mis-statement in prospectus :
- Fine 50,000
 - Imprisonment 2 yrs
 - Both A & B
 - None of these
17. What is the liability not delivering that can be imposed for the statement in lieu of prospectus:
- Fine 10,000
 - Imprisonment 2 yrs.
 - Both
 - None of the above
18. The condition for considering a document containing offer for sale of securities is usually...
- It extends an invitation to the public to subscribe
 - It is open to any person to bring his money and apply for securities
 - Both A & B
 - Either A or B

19. ____ are the prospectus issued by issuing house
- Deemed prospectus
 - Shelf prospectus
 - Red Herring prospectus
 - None of the above
20. If a company fails to refund application money within 130 days from the date of issue of prospectus on non receipt of minimum subscription, who will be personally liable?
- company
 - directors
 - shareholders
 - none of the above
21. The date of opening of subscription list means the beginning of the ____ from the date of issue of prospectus
- 5th
 - 3rd
 - 10th
 - 24th
22. A Company cannot pay underwriting commission unless it is authorised by its
- Articles
 - Memorandum
 - Prospectus
 - Both A & B
23. The minimum application money should be ____ of the nominal value as per the SEBI guidelines
- 25%
 - 35%
 - 30%
 - 40%

24. In case of share underwriting commission will be ____ %
- 2
 - 3
 - 5
 - 7
25. Prospectus includes
- any notice, circular, advertisement or other document inviting offers from the public for subscription or purchase of any securities of a company
 - red herring prospectus
 - both A & B
 - none of these
26. ____ section and ____ provides the matters to be stated in the prospectus
- Sec20(1) & Companies (Prospectus & Allotment of Securities) Rules, 2016
 - Sec26(1) & Companies (Prospectus & Allotment of Securities) Rules, 2014
 - Sec20(2) & Companies (Prospectus & Allotment of Securities) Rules, 2013
 - Sec20(1) & Companies (Prospectus & Allotment of Securities) Rules, 2010
27. The Fact sheet of a prospectus of a company includes
- details about eligible investors
 - type of offer document
 - A or B
 - A & B
28. A prospectus which does not include complete particulars of the quantum or price of the securities included therein
- shelf prospectus
 - red herring prospectus
 - abridged prospectus



- (d) none of these
29. "Prospectus should contain everything which should be strictly accurate. None of the statements therein should be untrue" is governed by which case study
 (a) Rex vs Lord Kylsant
 (b) New Brunswick & Canada Rly
 (c) New Brunswick & Canada Rly & Land & Co. vs Muggeridge
 (d) None of these
30. Remedy to Civil liability for misstatement in prospectus is available only if subscription to shares which contained misstatement were
 (a) based on prospectus
 (b) Both A & B
 (c) B not based on prospectus
 (d) either A or B
31. Any offer of securities or invitation to subscribe securities to a selected group of persons by a company is called
 (a) public offer
 (b) private offer
 (c) A or B
 (d) Private placement
32. The private placement shall not be made to not more than ____ persons in aggregate in a financial year.
 (a) 400
 (b) 250
 (c) 200
 (d) 400
33. The payment of subscription money for a private placement cannot be made by
 (a) cheque
 (b) Demand Draft
 (c) other banking channels
 (d) cash
34. A company shall allot its securities by private placement within ____ from the date of receipt of application money
 (a) 60 days
 (b) 50 days
 (c) 65 days
 (d) none of these
35. ____ is a bank certificate issued in more than one country for shares in a foreign company.
 (a) GDR
 (b) CDR
 (c) FDR
 (d) none of these
36. Who can issue a GDR?
 (a) any Overseas depository bank
 (b) regional depository bank
 (c) overseas depository bank appointed by the company
 (d) any of these
37. ____ Prospectus were issued in order to test the market before finalizing issue size/ price.
 (a) Deemed
 (b) Shelf
 (c) Red herring
 (d) None of the above
38. Name the memorandum which contains salient features of a prospectus as specified by SEBI
 (a) Memorandum of Association
 (b) Abridged Prospectus
 (c) Shelf Prospectus
 (d) Red Herring Prospectus
39. Where an advertisement of any prospectus of a Company is published in any manner, it shall be necessary to specify the following therein
 (a) capital structure
 (b) provident fund
 (c) reserve capital
 (d) balance sheet
40. Prospectus is an
 (a) Advertisement.
 (b) Invitation to offer.
 (c) Specific offer.
 (d) Private offer.
41. Which of the points is not mentioned in a prospectus?
 (a) Capital structure
 (b) Terms of issue
 (c) Risk factors
 (d) Future dividend
42. A memorandum containing such features of a prospectus as may be specified by SEBI by making regulations are termed as:
 (a) Deemed Prospectus
 (b) Information Memorandum
 (c) Abridged Prospectus
 (d) Red Herring Prospectus
43. In the process of conversion of a private company into a public company which prospectus must be issued
 (a) Deemed prospectus
 (b) Shelf prospectus
 (c) Statement in lieu of prospectus
 (d) Red Herring prospectus
44. Company should file a prospectus in case of Conversion of private company into a public company with in ____ from the date of resolution
 (a) 30 days
 (b) 45 days
 (c) 60 days
 (d) none of these
45. Remedies available to an aggrieved shareholder for misrepresentation in the prospectus against the directors and other officials of the Company are
 (a) Civil Liability
 (b) Criminal Liability
 (c) Action for Deceit
 (d) All of the above
46. Reports of an expert should be included in a prospectus only if such expert has:
 (a) Not withdrawn the consent
 (b) Engaged in the promotion of management
 (c) Been in the internal management from its inception
 (d) Not a promoter - investor and also an expert.
47. Which of the following companies must file a statement in lieu of prospectus?
 (a) A private limited company.
 (b) A cooperative society.
 (c) A company that has issued a prospectus.
 (d) A public company that has not issued a prospectus.



48. DIN represents _____
 (a) Directory Identification Number
 (b) Director Identification Number
 (c) Doctor Identification Number
 (d) Direct Identification Number.
49. A prospectus is to be issued within _____ days of registration
 (a) 30.
 (b) 60.
 (c) 90
 (d) 180.
50. A company shall not proceed to allot shares until the beginning of _____ day from the date of issue the of prospectus
 (a) Second.
 (b) Third.
 (c) Fifth.
 (d) Seventh.
51. The most common method used for marketing of new securities is _____
 (a) Sale of existing shareholders.
 (b) Stock exchange placing.
 (c) Direct sale to public through prospectus.
 (d) Sale to biometers.
52. Which of the following companies must file a statement in lieu of prospectus?
 (a) Accompany which has issued a prospectus.
 (b) Public company which has not issued a prospectus
 (c) A private limited company.
 (d) All of these.
53. Prospectus is required to be issued when issue is for
 (a) Employees under Re-issue of forfeited shares
 (b) Employees under Buy-back of shares
 (c) Employees under Sweat equity shares
 (d) Employees under Employee stock option scheme
54. _____ Prospectus were issued in order to test the market before finalizing issue size/ price.
 (a) Deemed
 (b) Shelf
 (c) Red herring
 (d) None of the above
55. Because of Misrepresentation in prospectus an expert will be criminally liable, as per the Act:
 (a) Civil Liability will not attract
 (b) No criminal liability
 (c) Both civil and criminal liability
 (d) Criminal liability with severe punishment
56. Extra Limited is a growing Company and requires additional funds for expansion from time to time. They are following the same process for making an offer to public and then issue those shares. This is very time and energy consuming for them. Kindly advise them if there is any way out.
 (a) During first offer they shall file prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required,
 (b) During first offer they shall file prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required
 (c) During first offer they shall file shelf prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required
 (d) During first offer they shall file shelf prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required,
57. Morgan Limited decided to make an offer for purchase of securities. Application Forms for the purchase were issued to public. However, it was not accompanied by an abridged prospectus. For this default Company is liable for penalty. How much penalty Company has to bear?
 (a) 25,000
 (b) 50,000
 (c) 100,000
 (d) 500,000
58. A shelf prospectus filed with the ROC shall remain valid for a period of:
 (a) one year from the date of registration
 (b) one year from the date of closing of first issue
 (c) one year from the date of opening of first issue
 (d) Ninety days from the date on which a copy was delivered to ROC
59. The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is:
 (a) Three days before the delivery of the prospectus for registration
 (b) At the time of delivery of the prospectus for registration
 (c) Three days after the delivery of the prospectus for registration
 (d) Five days after the delivery of the prospectus for registration
60. Non-Filing of Return of Allotment within the period of 15 days u/s 42(8), Attracts Maximum penalty to the Company, its promoters, Directors as _____
 (a) 25,00,000
 (b) 50,00,000
 (c) 10,00,000
 (d) 500,000.
61. A prospectus which does not have complete particulars on the price of securities offered and the quantum of securities offered by the company is known as:
 (a) Statement in lieu of prospectus
 (b) Red-herring prospectus
 (c) Deemed prospectus after the
 (d) Shelf prospectus
62. No prospectus shall be valid if it is issued more than _____ days from the date on which a copy thereof is delivered to the Registrar
 (a) 15
 (b) 30
 (c) 60



(d) 90

which a copy thereof is delivered to the Registrar.

63. The private placement shall be made, not more than aggregate in a financial year as per Companies Act, 2013.

persons in

- (a) 400
- (b) 300
- (c) 200
- (d) 100

64. If there is any misstatement in the prospectus then it would attract the liability on:

- (a) The printer
- (b) The issuer
- (c) The publisher
- (d) The proof-reader

Q2. True or False:

1. Under the Companies Act, 2013, a Red Herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the Red Herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
2. Any misstatement in the prospectus would attract the liability on the issuer.
3. The information Memorandum shall be deemed to be a Red herring prospectus.

Q3. Fill Ups:-

1. Whenever a company makes any allotment of securities, it shall file a return of allotment with the Registrar within _____ days of allotment.
2. No prospectus shall be valid if it is issued more than days _____ after the date on

ANSWER KEY

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

True or False:

1. True	2. False
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Fill Ups:

1. 30	2. 90
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8. SHARE CAPITAL - 1

LAW QUESTIONS

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP, Dec 2023]

[5 Marks]

1. Write short note on : Dissent to variation of rights.

Answer:

Dissent to variation of rights Section 48 (2) of the Companies Act 2013, provides that if the holders of not less than 10% of the issued shares of a class did not consent to the variation or vote in favor of the special resolution for the variation, such shareholders may apply to the Tribunal to have the variation cancelled. Such application shall be filed before the Tribunal within 21 days from the date on which the consent was given or the resolution was passed. Such application may be made on behalf of all the shareholders who dissented by such one or more of their number as they may appoint in writing for the purpose. If an application is made before the Tribunal the variation shall not be effected until it is confirmed by the Tribunal. Section 48 (3) provides that the decision of the Tribunal shall be binding on the shareholders. The company shall file a copy of the order of the Tribunal with the Registrar of the Company within 30 days from the date of the order.

[PP, June 2018/MTP Dec 2017]

[5 Marks]

2. Write short note on: Alteration of Share Capital

Answer:

As per Section 61 of Companies Act, 2013,

- A limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting
- Increase its authorized share capital by such amount as it thinks expedient;
- Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares
- No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- Convert all or any of its fully paid up shares into stock and reconvert that stock into fully

paid up shares of any denomination;

- Sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- Cancel shares which, at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled The cancellation shall not be deemed to reduction of share capital.

[PP, Dec 2019]

[8 Marks]

3. Sweat equity shares are issued to directors or employees at a discount or for consideration other than cash. Discuss under the provisions of the Companies Act, 2013.

Answer:

As per Section 2(88) of Companies Act, 2013, the equity shares which are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called are called equity shares

As per Section 54 of Companies Act, 2013, a company may issue sweat equity shares of a class already issued, after fulfilling following conditions:

- The issue is authorized by a special resolution passed by the company;
- The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf.
- If they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

Rule 8(1) of Companies Rules, 2014, a company other than a listed company shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions unless the issue is authorized by a special resolution passed by the company in general meeting.

Section 54 of the Act overrides the Section 53 of the Act related to issue of shares at discount. Employee here means:



- A permanent employee of the company who has been working in India or outside India; or
- A director of the company, whether a wholetime director or not; or
- An employee or a director as defined above of a subsidiary, in India or outside India, or of holding company of the company.

Value additions means:

Actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of employee.

[PP. Dec 2021]

[6 Marks]

4. What is the procedure for issue of renewed share certificate under Companies Act, 2013?**Answer.**

As per Rule 6 of Companies Rules, 2014, the share certificate shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out or where the pages on the reverse for recording transfers have been duly utilized, unless the certificate in lieu of which it is issued is surrendered to the company.

The company may charge such fees as the Board thinks fit, not exceeding Rs.50/- per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.

In such cases it shall be stated on the face of the share of it & be recorded in the Register maintained that it is "Issued in lieu of Share Certificate No. _____ Subdivided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or CG.

A company may replace all the existing certificates by new certificates upon subdivision or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to conditions.

The details of such nature are to be entered in the Register maintained for this purpose.

[MTP. June 2018]

5. Write a note on issue of Preference shares**Answer.**

Rule 9 of Companies (Share Capital and Debentures) Rules, 2014, provides that a company having a share capital may, if so authorized by articles, issue preference shares subject to the following conditions:

- the issue should be authorized by passing a special resolution in the general meeting of the company;
 - the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier either before or after the commencement of Companies Act or in payment of dividend due on any preference shares.
- In the resolution the company shall set out the following:
- the priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares;
 - the participation in surplus fund;
 - the participation in surplus assets and profits, on winding up which may remain after the entire capital has been repaid;
 - the payment of dividend on cumulative or non cumulative basis;
 - the conversion of preference shares into equity shares;
 - the voting rights;
 - the redemption of preference shares.

The explanatory statement to be annexed to the notice of the general meeting shall provide the complete material facts concerned with and relevant to the issue of such shares, including-

- the size of the issue and number of preference shares to be issued and nominal value of each share;
- the nature of such shares i.e., cumulative or non cumulative, participating or non- participating, convertible or non convertible;
- the objectives of the issue;
- the manner of issue of shares;
- the price at which such shares are proposed to be issued;
- the basis on which the price has been arrived at;
- the terms of issue, including terms and rate of dividend on each share, etc.,
- the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
- the manner and modes of redemption;
- the current shareholding pattern of the company;
- the expected dilution in equity share capital upon conversion of preference shares.

The particulars of the issue of the preference shares shall be noted in the Register of Members. If a company wants to list its preference shares on a recognized stock exchange it shall issue the



preference shares in accordance with the regulations made by SEBI.

[RTP, Dec 2018]

6. N Ltd. has a paid up share - capital of 80 crores. M Ltd. holds a total of 50 crores of N Ltd. Now, N Ltd. is making huge profits and wants to expand its business and is aiming at investing in M Ltd. N Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of M Ltd.

Answer.

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company -

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one - half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, M Ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of N Ltd., it (M Ltd.) is holding of N Ltd. Further, as per the provisions of section 19 of the Companies Act, 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

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

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, N Ltd. cannot acquire the shares of M Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

EXTRA THEORY QUESTIONS

7. State the differences between the debentures and shares.

Answer.

- (1) Shares are a part of the capital of a company whereas debentures constitute a loan.
- (2) The shareholders are the owners of the company whereas debenture holders are creditors.
- (3) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.
- (4) Interest on debenture is payable even if there are no profits. But dividends can be paid to shareholders only out of the profits of the company.
- (5) Debentures generally have a charge on the assets of the company, but shares do not carry any such charge.
- (6) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.
- (7) Fixed amount of interest on debentures gets priority over dividend on shares.

8. Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

Answer.

No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

- (1) **Articles of Association:** Articles of Association of the company authorizes the issue of shares with Differential Rights.
- (2) **Ordinary Resolution:** The issue of shares is authorized by an Ordinary Resolution passed at a general meeting of the shareholders. (Ordinary Resolution by Postal Ballot in case of Listed Company).
- (3) **Maximum Differential Equity Shares:** The voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time.
- (4) **The company having consistent track record of distributable profits for the last 3 years.**
- (5) **Regular Filing:** The company has not defaulted in **filing Financial Statements and Annual Returns** for 3 financial years immediately preceding the financial year in which it is decided to issue such shares.
- (6) **No Subsisting Default:** The company has **No Subsisting Default** in the payment of:
 - (1) Declared Dividend or
 - (2) Repayment of its Matured Deposits or



- (3) Redemption of its Preference Shares or Debentures.
- (4) Payment of the Preference Dividend or
- (5) Repayment of Term Loan from a PFI or State Level Financial Institution or Scheduled Bank or Interest payable thereon or
- (6) Dues with respect to Statutory Payments relating to its Employees to any authority or
- (7) Default in crediting the amount in Investor Education and Protection Fund (IEPF).
- (7) **Not Been Penalized in last 3 years:** The company has Not Been Penalized by Court or Tribunal during the last 3 years of any offence under the **RBI Act, SEBI Act, SCRA, FEMA or any other special Act**, under which such companies being regulated by Sectoral regulators.

Conclusion

So, equity share with differential voting rights can be issued by following the above described conditions

9. What is the law and procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 2013 in case the original share certificate is lost or destroyed?

Answer

Section 46-Duplicate Share Certificate

Cases of Renewal or Issue of Duplicate Share Certificate

- 1) Sub-Division of shares
- 2) Consolidation of shares
- 3) Replacement of worn out shares
- 4) Loss of Old Share Certificates

Conditions for issuing Duplicate Certificate

A duplicate certificate of shares is issued:

- 1) If Original Certificate is surrendered.
- 2) Consent of the Board is needed for issue of duplicate shares in case of loss of old shares.
- 3) Company may charge up to ₹50 per certificate
- 4) On the face of the New Certificate so issued it should be prominently displayed "Duplicate issued in lieu of share certificate No....."

Exception

In case of amalgamation or Restructuring, new certificate shall be issued without requiring the surrender of the old certificates. [Renewal of shares]

Time limit for issuing Duplicate Certificate

Case 1:- Private company

The duplicate share certificates shall be issued within a period of 3 months.

Case 2:- Public company

Such certificate shall be issued within 45 days (Amended on 19th March, 2015 Earlier it was 15 days), from the date of submission of complete documents with the company respectively.

Register of Renewed and Duplicate Share Certificates

The particulars of every share certificate issued above shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in **Form No.SH-2** indicating the necessary changes in the Register of Members by suitable cross-references.

10. What are the rights of preference shareholders if dividends remained unpaid? Would your answer be different if preference shares are non-cumulative?

OR

Goldman Ltd. has not given dividend to its preference shareholders. In this regard state the rights of preference shareholders and non-cumulative Preference Shareholders on dividend.

Answer

Section 47-Voting Rights of a Preference Shareholder

Voting Rights of Preference Shareholders

Every member of a company holding any PSC therein shall, in respect of such capital,

- (i) **1 Member = 1 Vote:** Have a right to vote (in following 2 situations)
 - (a) Only on resolutions placed before the company which directly affect the rights attached to his preference shares and,
 - (b) Any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital
- (ii) **1 Share = 1 Vote:** His voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

When PSH can vote in all the resolution placed before the Co.

Where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Conclusion

The answer does not change whether the shares are cumulative or non-cumulative.

11. A Company cannot issue share at a discount as per Section 53 of the Companies Act, 2013.

Explain the exception to this provision, if any, with reference to Companies Act, 2013.

Answer.

Section 53-Issue of Shares at Discount

Any company shall NOT issue shares at a discount. Any share issued by a company at a discount shall be **VOID**

2 Exceptions

There are 2 cases in which shares can be issued at Discount:-

- (1) Issue of Sweat Equity Shares u/s 54.
- (2) Issue shares at discount to creditors by converting their DEBT into SHARES under Strategic Debt Restructuring (SDR) Scheme as per RBI regulations.

Penalty on Contravention of the provisions

Where any default is made in complying with the provisions of this section, the punishment shall be as follows:

On Company and every officer in default	Penalty $\leq$ Lower of : (a) Amount raised (b) ₹5,00,000
On company	Refund all money with interest at the rate of 12% p.a.

12. What conditions as required under the Companies Act, 2013 must be satisfied by a company for the forfeiture of shares of a member, who has defaulted the payment of calls? What are the consequences of such forfeiture?

Answer.

Table F-Forfeiture of shares

Forfeiture of Shares and the Consequences

The Companies Act, 2013 prescribes the rules and procedures of forfeiture of shares to be mentioned in the Articles of Association. Therefore, the forfeiture of shares is governed by the Articles rather than the Act itself. However, **Table F of the First Schedule of the Act** lays down the draft Articles of a company limited by shares which may be adopted either in full or with some modifications. In accordance with the Act and Table F the conditions and applicable rules for forfeiture of shares are as under -

1. **Articles:** Forfeiture must be authorized by the Articles of the company and must be for the benefit of the company.

2. **Notice prior to forfeiture:** Before shares can be forfeited, the company must serve a notice on the defaulting shareholder requiring payment of unpaid call together with any interest which may have accrued. (Article 28: Table F).

3. **Give not less than 14 days' time** from the date of service of notice for the payment of the amount due (Article 29 of Table F);

4. **Warning:** State that in the event of non-payment of the amount due within the period mentioned in the notice, the shares in respect of which the call was made will be liable to be forfeited, (Article 29. Table F). The notice of forfeiture must also specify the exact amount due from the shareholder. If the notice is defective in any respect, the forfeiture will be invalid.

5. **Board Resolution:** If a defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors must pass a resolution forfeiting the shares (Article 30). If the resolution is not passed, the forfeiture is invalid. If, however, the notice threatening the forfeiture incorporates the resolution of forfeiture as well, e.g., when it states that in the event of default the shares shall be deemed to have been forfeited, no further resolution is necessary.

6. **Good faith:** The power to forfeit shares must be exercised by the directors in good faith and for the benefit of the company.

Effect of forfeiture

- 1) **Cessation of membership:** A person whose shares have been forfeited ceases to be a member in respect of the shares so forfeited.
- 2) **Cessation of liability:** The liability of the person whose shares have been forfeited ceases upon forfeiture of shares.
- 3) **Re-issue:** Forfeited shares become the property of the company and may be reissued or otherwise disposed of on such terms and in such manner as the Board thinks fit. The purchaser would be liable to pay all the calls due on the shares including the call for which shares were forfeited.

13. Write a note on Secured debentures?

Answer.

Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

- The date of redemption of secured debentures shall not exceed ten years;
- The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
- Companies engaged in infrastructure projects;
- 'Infrastructure Finance Companies'



- Infrastructure Debt Fund Non Banking Financial Companies;
- The issue shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- In case of a non banking financial company, the charge or mortgage may be created on any movable property.
- In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply.

14. Explain the provisions relating to pay commission in connection with the subscription to the securities, by a company.

Answer.

Section 40(6) provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules.

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

CASE STUDY QUESTIONS

15. "Moods Ltd" is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moods Ltd., deposits in advance the remaining amount due on his shares without any calls made by

"Moods Ltd". Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr V, which will arise on the payment of calls made in advance.

OR

ANAND LTD. Had issued 10000 shares of ₹10 each, on which company called up ₹7.50 per share. However, Mr. C, a shareholder of ANAND Ltd, deposited in advance the remaining amount due on his shares without any calls made by ANAND Ltd. Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr.N, which will arise by the payment of calls made in advance.

Answer.

Section 50-Calls-in-Advance

Calls-in-Advance

A company may, if so authorised by its Articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Rights and Liabilities of the Shareholder

- 1) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up. [Section 50].
- 2) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.
- 3) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, becomes it must be paid out of capital, because shareholder the creditor of the company in respect of this amount.
- 4) The amount received in advance of calls is not refundable.
- 5) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
- 6) The power to receive the payment the benefit in advance of calls must be exercised in the general interest and for of the company.



16. Ratni Limited has an authorized share capital of 2,00,000 equity shares of ₹100 per share and an amount of ₹2 crores in its Securities Premium Account as on 31-3-2020. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.

OR

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which securities premium account can be utilized?

Answer.

Section 52-Application of Premium Received on Issue of Shares

Where a company issues shares at a premium (in cash or otherwise) the amount of the premium received on those shares shall be transferred to a "Securities Premium Account".

Utilisation of Securities Premium

The Securities Premium Account may be applied by the company-

- For issue of Bonus shares.
- For writing off the Preliminary Expenses.
- For writing off the Expenses of, or the Commission paid or Discount allowed on, any issue of shares or debentures of the company.
- For providing the Premium on Redemption of Preference Shares or Debentures or
- For Buy-Back of Shares u/s 68.

Note: Companies required to follow Accounting Standards u/s 133 can use Securities Premium only for (a), (c), (e) as given above [BBC].

Conclusion to 1st Question

The Board of Directors is advised to utilize the Securities Premium Account only for the purposes described above.

Conclusion to 2nd Question

When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issues shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount. However, as per the provisions of section 53 of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013. The purposes for which securities premium account can be utilized is described above.

17. Nazra Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) wants to bring a public issue of 100000 equity shares of ₹10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Answer.

Section 53-Issue of Shares at Discount

Any company shall NOT issue shares at a discount. Any share issued by a company at a discount shall be VOID

2 Exceptions

There are 2 cases in which shares can be issued at Discount:

- Issue of Sweat Equity Shares u/s 54.
- Issue shares at discount to creditors by converting their DEBT into SHARES under Strategic Debt Restructuring (SDR) Scheme as per RBI regulations.

Conclusion

- In terms of the above provisions, issue of shares by Nazra Limited at a discount of ₹1 per share is NOT valid.
- In case the above shares have been issued to employees as Sweat equity shares, then the issue of shares at discount is VALID.

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

Answer.

Section 54-Sweat Equity Shares

"Sweat Equity Shares" means such equity shares as are issued by a company -

- to its DIRECTORS or EMPLOYEES



- at a **DISCOUNT** or for consideration, **other than cash**,
- for providing their **know-how** or **intellectual property rights** or **value additions**, by whatever name called.

Conditions for Issue of Sweat Equity Shares [SES]

- The issue is authorised by a **Special Resolution** passed by the company;
- The resolution specifies the **number of shares**, the **current Market Price consideration**, if any, and the class or classes of **DIRECTORS OR EMPLOYEES** to whom such equity shares are to be issued;
- Where the equity shares of the company are listed on a recognised stock exchange, the Sweat Equity Shares are issued in accordance with the **SEBI regulations** and if they are not listed, the Sweat Equity Shares are issued in accordance with **Companies rules**.

Maximum Quantum of Issue

Maximum Issue in a Year	Higher of: 1) 15% of PAID-UP equity share capital (PUESC) or, 2) ₹5 crores of ISSUE VALUE of Equity Shares.
Maximum Issue in the Company's lifetime	25% of PAID-UP equity share capital (PUESC) of the Company at any time.
Start Up Company	50% of PAID-UP equity share capital (PUESC) up to 10 years from the date of its incorporation

Lock-In Period: 3 years from the date of allotment.

Valuation

- The sweat equity shares to be issued shall be valued at a price determined by a **registered valuer** as the **fair price** giving justification for such valuation.
- The **valuation of intellectual property rights** or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a **registered valuer**, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

The rights, limitations, restrictions and provisions as applicable to Equity Shares shall be applicable to the Sweat Equity Shares issued under this section and the holders of such shares shall rank **PARI PASSU** (rank equally) with other equity shareholders

The company shall maintain a Register of Sweat Equity Shares in **Form No. SH-3** and shall forthwith enter therein the particulars of Sweat Equity Shares.

Conclusion

Anushka Jewellery Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just about a year old because no such minimum time limit of 2 years in operations is specified under Section 54.

19. Feder Pvt Ltd. Is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid-up equity shares), with a locking period of 5 years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a **start-up company**, with reference to the provision of the Company Act, 2013. Explain?

Answer.

Section 54-Sweat Equity Shares

"Sweat Equity Shares" means such equity shares as are issued by a company :

- to its **DIRECTORS** or **EMPLOYEES**
- at a **DISCOUNT** or for consideration, **other than cash**,
- for providing their **know-how** or **intellectual property rights** or **value additions**, by whatever name called.

Maximum Quantum of Issue by a Start-up Company

50% of PAID-UP equity share capital (PUESC) **upto 10 years** from the date of its incorporation.

Maximum Lock-In Period

3 years from the date of allotment.

Conclusion

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a start-up company is right in issue of sweat equity share up to 30% of its paid-up equity shares as it is overall within the limit of 50% of its paid-up share capital. But the lock in period of the shares is limited to 3 years period from the date of allotment.



20. ABC Limited issued 8% 1,50,000; Redeemable Preference Shares of 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013? Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Answer.

Section 55-Issue of Redeemable PSC, when Co. is not in a position to Redeem PSC issued earlier Where a company is not in a position to redeem any preference shares or to pay dividend on unredeemed preference shares, it may:-

1. Issue further redeemable preference shares equal to the amount due,
2. Including the dividend thereon.

Approval needed

1. With the consent of the holders of 3/4th in value of such preference shares and
2. With the approval of the NCLT on a petition made by it in this behalf,

Deemed Redemption

On the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Tribunal's solution to the Dissenting Preference shareholders:

The Tribunal shall order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Case Analysis & Conclusion

In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

If the consent has been taken by 1/4th (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

21. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

Answer.

According to section 48 of the Companies Act, 2013

1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:

- a. if provision with respect to such variation is contained in the memorandum or articles of the company; or
- b. in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

2) Cancellation of variation: Where the holders of not less than ten per cent of the issued shares of a class did not Consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.



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

Answer:

Section 55 - Issue of Redeemable PSC, when Co. is not in a position to Redeem PSC issued earlier

Where a company is not in a position to redeem any preference shares or to pay dividend on unredeemed preference shares, it may:-

1. Issue further redeemable preference shares equal to the amount due,
2. Including the dividend thereon.

Approval needed

1. With the consent of the holders of 3/4th in value of such preference shares and
2. With the approval of the NCLT on a petition made by it in this behalf,

Deemed Redemption

On the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Tribunal's solution to the Dissenting Preference shareholders:

The Tribunal shall order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Case Analysis & Conclusion

Minda Groups can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹10,00,000. For this purpose, it shall obtain the consent of the holders of 3/4th in value of such preference shares and also seek approval of the Abhinav by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Abhinav may order the company to redeem forthwith such preference shares. Accordingly, Minda Groups Limited must be ready with sufficient funds for the preference shares held by those who have redemption of not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

9. SHARE CAPITAL - II

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec 2018/MTP Dec 2018]

[7 Marks]

1. Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares.

Answer:

As per Section 63(1) of the Companies Act, 2013, a company may issue fully paid up bonus shares to its members out of its:

- Free reserves;
- Securities premium account; or
- Capital redemption reserve account

As per Section 63(2) of the Companies Act, 2013, a company cannot issue bonus shares by capitalizing reserves created by revaluation of assets unless:

- It is authorized by its articles;
- It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- It has no defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- The partly paid up shares, if any outstanding on the date of allotment are made fully paid up;
- It complies with such conditions as may be prescribed (The bonus once announced shall not subsequently be withdrawn).

As per Section 63(3) of the Companies Act, 2013, a company shall not be issued in lieu of dividend.



[MTP June 2020]

2. Explain transfer and transmission of shares

Answer.

Section 56 provides that a company may transfer the shares of a person to another person, provided he applies for the same to the company in the prescribed form duly stamped, dated and executed by or on behalf of the transferor and the transferee specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or transferee within a period of 60 days from the date of execution. The certificate relating to the securities is also to be sent along with the application. If there is no such certificate, then the letter of allotment of securities is to be attached.

Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed time, the company may register the transfer on such terms as to indemnity as the Board may think fit. This shall not prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives notice of the application to the transferee and the transferee gives no objection to the transfer, within 2 weeks from the receipt of notice.

The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

[RTP Dec 2018]

3. Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer.

The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order -

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

EXTRA THEORY QUESTIONS

4. Differentiate between 'Share Warrant' and 'Share Certificate' under the Companies Act, 2013

Answer.

Distinction between a share warrant and a share certificate

Sr. No.	SHARE CERTIFICATE	SHARE WARRANT
1.	A Share Certificate is a prime facie evidence of document of title, stating that the holder is entitled to specific number of shares	A share warrant is a <u>bearer document</u> stating that the holder is entitled to certain number of shares specified therein
2.	Share certificate can be issued by a public and private company	Share warrant can be issued only by public companies
3.	A share certificate can be issued for a fully paid and partly paid up shares	share warrant can be issued only with respect of fully paid up shares
4.	The shares can be transferred by execution of a transfer deed and its delivery along with the share certificate. The transfer is complete when it is registered by the company.	A share warrant can be transferred by mere delivery and no registration of transfer with the Company is required.



5. Explain the meaning of "Transmission of Shares" under the Companies Act, 2013. In what ways is "transmission of shares" different from "Transfer of Shares"?

OR

Distinguish between transfer and transmission of shares.

Answer.

Section 56-Transmission and transfer of shares

Transfer	Transmission
1) Voluntary • Sale of securities • Gift	1) Involuntary • Death → Legal heir • Insolvency → Liquidator
2) Usually, there is Consideration except for gift	2) No Consideration.
3) Instrument of Transfer i.e., Share Transfer form SH-4 is executed.	3) There is no need of SH-4 unless the legal heir or liquidator wants to transfer securities to a buyer.

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

Answer.

Section 61-Alteration of Share Capital

Ways of Alteration of Share Capital

A limited company having a share capital may, if so authorised by its Articles, alter its Memorandum in its General Meeting [Ordinary Resolution based on Regulation 35 & 36 of Table E] to-

- Increase its authorised share capital.
- Consolidate its share capital into shares of a larger amount than its existing shares.
- Sub-divide its shares into shares of smaller amount.
- Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.
- Cancel unsubscribed share capital [Diminution of Share Capital]

Procedure for Alteration of Share Capital

- The alteration should be authorized by the Articles of Association.
- Pass Ordinary Resolution.

File Form SH-7 with the ROC within 30 days along with an altered memorandum [Section 64].

Conclusion

The Directors of Mars India Ltd are advised as above.

7. Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:

- When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;
- Matters considered in determining the terms and conditions of such conversion.
- Remedy available to the company if conversion or terms of conversion is not acceptable to it.

Answer.

Section 62-Power of CG to convert Govt loan to Shares

Where any debentures have been issued, or loan has been obtained from Government by a company, and Government considers it necessary in the PUBLIC INTEREST so to do, it may direct that such debentures or loans shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion

Answer 1:

Therefore, the CG has the power to convert debentures/loans into shares of the company, even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

Answer 2:

Factors to be considered by Government while determining the terms of conversion

- Financial position of the company,
- Terms of issue of debentures or loans
- Rate of interest payable on such debentures or loans
- Public Interest and
- Such other matters as it may consider necessary.

Answer 3:

Right to Appeal

Where the terms and conditions of such conversion are not acceptable to the company, it may, within 60 days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.



8. When can a Public Company offer the new Equity shares (further issue of Equity shares) to persons other than the existing Equity shareholders of the Company? Can New Preference shares be offered to persons other than the existing Preference Shareholders?

Answer.

Section 62-Rights Issue

Issue of Further Shares: Section 62 of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. This is known as Rights Issue.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may be offered to other persons as well. These are as under -

- When the shareholder declines the offer of Right shares, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.
- Employee Stock Option Plan [ESOP]
- Preferential Issue of shares

Issue of New preference shares to persons other than the existing Preference shareholders

Issue of New preference shares to persons other than the existing Preference shareholders does NOT require Preference shareholders' approval as it does NOT carry voting rights.

CASE STUDY QUESTIONS

9. Mr. U was having 500 equity shares of Open Sky Aircrafts Limited. Mr. T stole these shares & forged the signature of Mr. U on the transfer deed and transferred the shares to Mr. W. The company registered the shares in the name of Mr. W by issuing share certificate. Mr. W sold 100 equity shares to Mr. P on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. W and Mr. P are not having the knowledge of forgery. State the rights of Mr. U, Mr. W and Mr. P under the Companies Act, 2013.

OR

500 equity shares of ABC Limited were acquired by Mr. Sumit, but the signature of Mr. Manish, the transferor, on the transfer deed was forged. Mr. Sumit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Kunal on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Kunal were not aware of the forgery. What are the liabilities/rights of Mr. Manish, Sumit and Kunal against the company with reference to the aforesaid shares?

Answer.

Section 46-Certificate of Shares

Certificate to be evidence for Title of shares

A share certificate in Form SH-1 signed by:

- a) 2 directors or by
- b) A director and the CS, wherever the company has appointed a CS, shall be prima facie evidence of the title of the person to such shares.

Forged Transfer

Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. S) any title to the shares. Similarly, any transfer made by Mr. S (to Mr. T) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller

Section 57- Punishment for Personation of Shareholders

If any person deceitfully personates as an owner of any security in a company and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable as follows:

Punishment	1 Year ≤ Imprisonment ≤ 3 Years AND ₹1,00,000 ≤ Fine ≤ ₹5,00,000
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Conclusion

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Y) from the Register of Members, then the company is bound to restore the name of Mr. Y as the holder of the shares and to pay him any dividends which he ought to have received.

Rights of Mr. Y

In the above case, therefore, Mr. X has the right against the company to get the shares recorded in his name.

Rights of Mr. S and T

Option I : Neither Mr. S nor Mr. T have any rights against the company even though they are bona fide purchasers. However, since Mr. H seem to be the perpetrator of the forgery, Mr. B nor Mr. C can sue Mr. H for compensation. Also, Mr. A will be liable for punishment u/s 57.

Option II: The Company may be asked to indemnify Mr. B and Mr. C as they are bona fide purchasers. The Company can then sue Mr. H for compensation. Also, Mr. H will be liable for punishment u/s 57



10. Rakesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered office in Mumbai. He did not receive the shares certificates even after the expiry of 1 months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter.

Answer.

Section 58-Refusal of Registration & Appeal against Refusal

Notice of Refusal by private company

If a private company limited by shares refuses to register the transfer or transmission, it shall within 30 days, send notice of the refusal to the transferor/transferee/person giving intimation of transmission giving reasons for such refusal.

Appeal to the Tribunal by Transferee in case a PRIVATE COMPANY refuses to register transfer

Case 1:- Notice of refusal received

Transferee may appeal to the Abhinav against the refusal within 30 days from the date of receipt of the notice.

Case 2:- Notice of refusal is NOT received

Transferee may appeal to the Abhinav against the refusal within 60 days from the date on which the instrument of transfer or the intimation of transmission was delivered to the company.

Appeal to the Abhinav by Transferee in case a PUBLIC COMPANY refuses to register transfer

Case 1:- Notice of refusal received

If a public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which the instrument of transfer or the intimation of transmission is delivered to the company, the transferee may, within 60 days of such refusal appeal to the Abhinav

Case 2:- Notice of refusal is NOT received

Where no intimation has been received from the company, Transferee may appeal to the Abhinav within 90 days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal

Action by Abhinav

The Abhinav, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order -

- Direct that the transfer or transmission shall be registered by the company** and the company shall comply with such order within 10 days of the receipt of the order; or
- Direct rectification of the register** and also direct the company to pay damages, if any, sustained by any party aggrieved.

Conclusion

There are 2 issues:

- First only NCLT is the appropriate Judicial Authority for this matter. So any other Court shall not entertain this case.
- Also, the cause of action is deemed to have arisen in the state in which the registered office of the company is situated and not in the jurisdiction of the Court located in the place where the complaint resides.
- Hence, in the given case the Delhi court is not competent to take action in the matter. **Hence Rakesh should approach the NCLT Mumbai Bench.**

11. Sagar purchased 1000 shares of Birla Constructions Private Ltd. from Rishabh and suraj those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Sagar, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

OR

Mr. Nikhil has transferred 1000 equity shares of Perfect Vision Private Limited to his sister Ms. Sneha. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nikhil or Ms. Sneha within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

Answer.

Section 58-Refusal of Registration & Appeal against Refusal

Notice of Refusal by private company

If a private company limited by shares refuses to register the transfer or transmission, it shall within 30 days, send notice of the refusal to the transferor/transferee/person giving intimation of transmission giving reasons for such refusal.

Appeal to NCLT by Transferee in case a Private Company when the Notice of refusal is NOT received

Transferee may appeal to the Tribunal against the refusal within 60 days from the date on which the instrument of transfer or the intimation of transmission was delivered to the company.

**Action by Abhinav**

The Abhinav, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order –

- 1) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within 10 days of the receipt of the order; or
- 2) Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Conclusion

In the instant case, Sagar, can make an appeal before the Abhinav within 60 days from the date on which the instrument of transfer was delivered to the company. NCLT shall be order the company to register transfer of securities within 10 days of the receipt of order, or rectify register and pay damages

12. Mr. Anil has transferred 1000 shares of Shanti Limited to Mr. Raju. The company has refused to register the transfer of shares and has sent the notice of refusal to Mr. Anil. Decide, under the provision of the Companies Act, 2013, whether the aggrieved party has any right against the company for such a refusal. Discuss the nature of Punishment to a person who contravenes the order of the Tribunal.

Answer.

Section 58 Refusal of Registration & Appeal against Refusal**Appeal to the Rajat by Transferee in case a PUBLIC COMPANY: Notice of refusal received**

If a public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which the instrument of transfer or the intimation of transmission is delivered to the company, the transferee may, within 60 days of such refusal appeal to the Tribunal.

Action by Rajat

The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order -

- (A) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within 10 days of the receipt of the order; or
- (B) Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Punishment for not following Rajat's order

If a person contravenes the order of the Rajat under this section, he shall be punishable as follows:

Punishment	1 Year ≤ Imprisonment ≤ 3 Years AND
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₹1,00,000 ≤ Fine ≤ ₹5,00,000

Conclusion

Therefore, Mr. Raju, the transferee, can make an appeal before the Rajat and claim damages.

13. Ragini Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the Company in the share market and requested the Company to reduce the face value of each share to ₹10 and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the Company can alter its share capital as per the provisions of the Companies Act, 2013.

OR

Vidya Computers Limited was incorporated in the year 2018 having paid up share capital of ₹10 crores. Now the company wants to convert its share capital into stock. Can the company do so? State also whether the company may create stock as its capital at the time of incorporation.

Answer.

Section 61- Alteration of Share Capital**Ways of Alteration of Share Capital**

y limited company having a share capital may, if so authorised by its Articles, alter its Memorandum in its General Meeting [Ordinary Resolution based on Regulation 35 & 36 of Table F] to -

- (a) Increase its authorised share capital.
- (b) Consolidate its share capital into shares of a larger amount than its existing shares.
- (c) Sub-divide its shares into shares of smaller amount.
- (d) Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.
- (e) Cancel unsubscribed share capital [Diminution of Share Capital]

Procedure for Alteration of Share Capital

- 1) The alteration should be authorized by the Articles of Association.
- 2) Pass Ordinary Resolution.
- 3) File Form SH-7 with the ROC within 30 days along with an altered memorandum [Section 64].

Conclusion 1**Ragini Limited**

Therefore, the request of the shareholders is possible and the share capital can be sub-divided. The Company can alter its share capital by following the procedure described above.

Conclusion 2**Vidya Computers Limited**



The company can convert its share capital into stock by following the procedure described above. However the company cannot create stock as its capital at the time of incorporation as in the Memorandum of Association, the number of shares has to be written along with the subscriber's name. The shares can be converted into stock on a later date, but the company cannot be incorporated with stock.

14. Anand Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Ravi 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Ravi. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013.

OR

Shilpa Developers India Limited owed to Ravi ₹10,000. On becoming this debt payable, the company offered Sunil 100 shares of ₹100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013.

Answer.

Section 62 Preferential Issue of Shares

A Company may offer shares to any persons, if it is authorised by a Special Resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Companies Act 2013 and any other conditions as may be prescribed.

Conclusion

In the present case, Anand Ltd. is empowered to allot the shares to Ravi in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.

15. Advertisement Company Ltd. is holding 45% of total equity shares in PQ Company Ltd. The Board of Directors of PQ Company Ltd. (incorporated on January 1, 2015) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to Advertisement Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in PQ Company Ltd. The Articles of Association of PQ Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2019 new shares were offered to all the shareholders except Advertisement Company Ltd. Referring to the provisions of the

Companies Act, 2013 examine the validity of the decision of the Board of Directors of PQ Company Limited of not offering any further shares to Advertisement Company Limited. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of PQ Company Ltd. of not offering any further shares to Advertisement Company Limited..

Answer.

Section 62 Right Shares

Section 62(1)(a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

Conclusion

As per facts of the case, the Articles of PQ Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting Advertisement Company Ltd, which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to Advertisement Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in PQ Company Ltd. is not valid. Such a decision violates the provisions of Section 62(1)(a) as well as Articles of the issuing company.

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

Answer.

Section 62-Preferential Issue of Shares

Section 62 of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. This is known as Rights Issue.

However, one of the exceptions to the above is the Preferential Issue of Shares.

A Company may offer shares to any persons, if it is authorised by a Special Resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the



valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Conditions for Preferential Issue

- (1) Preferential Issue should also comply with conditions laid down in section 42 of the Act.
- (2) The issue is authorized by its Articles of Association.
- (3) The issue has been authorized by a Special Resolution of the members.
- (4) Disclosure of pre-issue and post-issue shareholding pattern.

Price of Preferential Issue Shares

Case 1: Pricing of Preferential Issue for an unlisted company

Price $\geq$ Price determined by a Registered Valuer u/s 247.

Case 2: Pricing of Preferential Issue for Listed company

In case of Listed companies the price shall be determined by the formula given in SEBI Regulations.

Time Limit for Allotment of shares

1. The allotment of securities on a preferential basis shall be completed within 12 months from the date of passing of the Special Resolution.
2. If the allotment of securities is not completed within 12 months, another Special Resolution shall be passed for the company to complete such allotment thereafter.

Conclusion

Therefore, Swapnil Dairy Ltd. can issue shares to AAC Ltd. on Preferential Issue basis by following the conditions described above.

17. U Ltd issued a notice on 1st Feb 2018 to its existing shareholders offering to purchase one extra share for every five shares held by them.

The last date to accept the offer was 15th Feb 2018 only. Mr. Ashish has given an application to renounce the shares offered to him in favour of Mr. Ravindra, who is not a shareholder of the company. Examine the validity of application of Mr. Ashish under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Ravindra is a shareholder of U limited?

Answer,

Section 62-Renunciation of Rights Shares to a Non-Member

Where a company proposes to increase its subscribed capital by the issue of further shares, it shall be first offered to existing equity shareholders of the company in proportion to the paid-up share capital on those shares by sending a LETTER OF OFFER subject to the following conditions, namely:

- (i) Offer Period: The offer shall be made by notice specifying the number of shares offered and limiting a time between 7 days to 30 days, to accept or decline the offer.
- (ii) Renunciation Rights: Unless the ARTICLES of the company otherwise provide, the offer aforesaid shall be deemed to include the right to renounce the offer.
- (iii) Lapse of Offer: After the expiry of the time specified in the notice, unless he has exercised the offer himself or renounced the offer, it shall be deemed that he has declined the offer.

Conclusion

- 1) As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Ashish can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
- 2) In the second part of the question, even if Mr. Ravindra is a shareholder of U Ltd. then also it does not affect the right of renunciation of shares of Mr. Ashish to Mr. Ravindra.

18. DT Limited has following balances in their Balance Sheet as on 31 March, 2018:

(1) Equity Share Capital (3 Lacs equity shares of 10 each)	30 Lacs
(2) Free Reserves	5 Lacs
(3) Securities Premium Account	3 Lacs
(4) Capital Redemption Reserve Account	4 Lacs
(5) Revaluation Reserve	3 Lacs

Directors of the company seeks your advice in the following case:

- (I) Whether company can give bonus shares in the ratio of 1:3?
- (II) What if company decide to give bonus share in the ratio of 1:2?

Answer.

Section 63 - Sources out of which Bonus shares can be issued i.e., Reserves which can be capitalized

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

- i) Free Reserves;
- ii) Securities Premium Account; Or
- iii) Capital Redemption Reserve Account

Provided that no issue of bonus shares shall be made by capitalising Revaluation Reserve

Conclusion

As per the given facts, Bajaj Ltd. has total eligible amount of ₹12 lakhs (i.e. 5 + 3 + 4) out of which bonus shares can be issued and the total share capital is ₹30 lakhs.

Accordingly

- (1) For issue of 1:3 bonus shares, there will be a requirement of ₹10 lakhs (i.e., $1/3 \times 30$ lakhs) which is well within the limit of available amount of ₹12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
- (2) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹15 lakhs (i.e., $1/2 \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹15 Lakhs is exceeding the available eligible amount of ₹12 lakhs.

19. Shubham Industries Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as on March 31, 2020 showed the following position:

Authorized Share Capital (25,00,000 equity shares of ₹10/- each)	₹2,50,00,000
Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹10/- each, fully paid-up)	₹1,00,00,000
Free Reserves	₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

OR

ST Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2017 shows the following position:

Authorized Share Capital (25,00,000 equity shares of face value of ₹10/- each)	₹2,50,00,000
Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10 each, fully paid-up)	₹1,00,00,000
Free Reserves	₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013, Advice.

Answer.

Section 63-Conditions & Sources of Bonus Shares

Sources out of which Bonus shares can be issued i.e., Reserves which can be capitalized

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

- Free Reserves;
- Securities Premium Account; Or

(iii) Capital Redemption Reserve Account

Provided that no issue of bonus shares shall be made by capitalising Revaluation Reserve.

Conditions for issuing bonus shares

No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless -

- Articles: It is authorised by its Articles;
- Ordinary Resolution: It has been authorised in the general meeting of the company;
- No default in Deposits or Debentures: It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- No default in statutory dues of the employees: It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- Fully Paid Shares: The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up (Both Original Shares and the Bonus Shares);

Bonus cannot be revoked: The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Conclusion

For the issue of bonus Shubham Industries Limited will require reserves of ₹50,00,000 (i.e. half of ₹1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

20. Following is the extract of the Balance sheet Beta Ltd. as on 31st March, 2020:

Particulars	Rs	Rs
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of 10 each	1,00,000	
1,00,000 equity shares of 10 each	10,00,000	11,00,000
Issued & Subscribed Capital:		
8000, 12% Preference Shares of 10 each fully paid up		80,000
90,000 equity shares of 10 each, 8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P&L	2,00,000	

**(2) Non-Current Liabilities:****(a) Long-term borrowings:**

Secured Loan: 12% partly convertible

Debenture @ 100 each

5,00,000

On 1st April, 2020 the company has made final call at 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize its reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

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

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

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

(C) If the company did not ask for the final call on April 1st, 2020, can it still issue bonus shares to its members?

Answer.

Section 63-Issue of Bonus Shares

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

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

Answer(A)

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

(1) General Reserve

(2) Securities Premium

(3) Surplus in statement of P&L

Answer(B)

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

Hence, the amount to be capitalized from free reserves to issue bonus shares will be 2,25,000.

Answer(C)

A company can issue bonus shares on only fully paid shares. Hence, if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.

21. As per the FS as at 31.03.2021, the Authorized and Issued share capital of Manoranjan Travels Private Limited (the Company) is of 100 Lakh divided into 10 Lakh equity shares of 10 each. The subscribed and paid-up share capital on that date is 80 Lakh divided into 8 Lakh equity shares of 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the F.Y 2021- 22, without obtaining the confirmation from the NCLT (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing CS refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to -

(i) examine, the validity of the decision of the Company and contention of the practicing CS and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association

Answer.

Section 61-Power of Limited Company to Alter its Share Capital [A Capital]

According to Section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

Analysis

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, CS refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.



CA AKASH AGARWAL

SHARE CAPITAL-2



Answer (i)

Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, **does not require confirmation of the Tribunal**. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing CS is **not valid**.

Answer (ii)

According to **Section 13**, save as provided in Section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a **special resolution**.

QUESTION BANK



10. SHARE CAPITAL - III

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec.2017 July 2023 & MTP June 2019]

[5 Marks]

1. Elucidate the own circumstances in which a company cannot buy-back its shares as per the provisions of the Companies Act, 2013.

Or

What are the prohibitions of buy back as mentioned under section 70 of Companies Act 2013?

Answer.

As per Section 70(1) of the Companies Act, 2013, a company cannot buy back shares or other specified securities directly or indirectly:

- Through any subsidiary company including its own subsidiaries; or
- Through investment or group of investment companies; or
- When the company has defaulted in the repayment of deposit or interest there on, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank.

The buy-back is not prohibited, if the default has been remedied and a period of 3 years has elapsed after such default ceased to subsist.

If a company has defaulted in filing of Annual Return, declaration of dividend or punishment for failure to distributed dividend and financial statement, then it cannot buy-back its own securities.

[PP. July 2023]

[5 Marks]

2. Short note on: Solvency Certificate under Companies Act, 2013.

Answer.

As per Section 68(6) of Companies Act, 2013 a listed company before making a buy-back, shall file with the Registrar and SEBI, a declaration of solvency in Form No. SH-9 signed by at least 2 directors of the company, 1 of whom shall be the Managing Director, if any, and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of 1 year from the date of declaration adopted by the Board.

An unlisted company is not required to file the declaration of solvency with SEBI



[MTP Dec 2019 & Dec 2022]

[7 Marks]

3. Define Debentures. Who may not be appointed as debenture trustee?

Answer:

Section 2(30) of the Act defines the term "debentures" as including debenture, stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of a company or not. **Section 44** provides that the debentures shall be the movable property transferable in the manner provided in the articles of the company.

Section 71(1) of the Act provides that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Section 71(2) provides that no company shall issue any debentures carrying any voting rights. Who may not be appointed as debenture trustee?

Rule 18(2) provides that a person shall not be appointed as a debenture trustee, if he beneficially holds shares in the company;

- is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- is relative of any promoter or any person who is in the employment of the company as director or key managerial personnel.

[MTP June, 2020]

[7 Marks]

4. Write a note on 'Letter of offer'

Answer:

Rule 17(2) provides that the company which has been authorized by a special resolution shall, before the buyback of shares, file with the Registrar of Companies a letter of offer in Form No. SH-8 along with the fee. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors, one of whom shall be the Managing Director, where there is one.

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 20 days from its filing with the Registrar of Companies. **Rule 17(5)** provides that the offer for buy-back shall remain open for a

period of not less than 15 days and not exceeding 30 days from the date of dispatch of offer letter provided that where all members of a company agree, the offer for buy-back may remain open for a period less than 15 days.

Rule 17(6) provides that in case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

[PP Dec 2023, MQP July 2023]

[7 Marks]

5. Critically assess the conditions for Buy back of Shares by listed company in India with an example.

Or

Enumerate different points in context of buy-back of shares under Companies Act, 2013.

Answer:

Section 68(2) of Companies Act 2013 provides that a company shall purchase its own shares or other specified securities if-

- the buy-back is authorized by its articles;
 - a special resolution has been passed at a general meeting of the company authorizing the buy back. This shall not apply to a case where-
 - the buy-back is 10% or less of the total paid up equity capital and free reserves of the company; and such buy-back has been authorized by the Board by means of a resolution passed at its meeting
 - the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company
- In respect of the buy-back of equity shares in any financial year, the reference to 25% shall be construed with respect to its total paid-up equity capital in that financial year.
- the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid up capital and free reserves. The Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies
 - all the shares or other specified securities for buy-back are fully paid up;
 - the buy-back of shares or other specified securities in a listed company is done in accordance with the regulations made by SEBI; and
 - the buy-back in respect of shares or other specified securities of a unlisted company is to be in accordance with the rules as may be prescribed.

Example: Both the Companies Act and SEBI guidelines made provisions for companies to buy back their own shares. Indian regulations require companies to cancel the shares that it buys back unlike in some other countries where it's allowed to keep those shares alive on its own balance sheet. The concept of share buybacks is also common in India. Several companies announce



buybacks in order to improve shareholder value. For example, in Oct-2022, Bajaj Auto announced a share buyback of about 64 lakh number shares from the public.
Let's say company ABC has 20,00,000 in cash and 1,00,000 shares in issue, trading at a price of ₹ 10 per share. If ABC buys back 150,000 shares, using ₹ 1,50,000 in cash, it's left with 8,50,000 shares in circulation and 18,50,000 in cash.

[PP. Dec 2023]

[7 Marks]

6. Enumerate different points in context of buy-back of shares under Companies Act, 2013.

Answer:

As per Section 68 of Companies Act, 2013 & Companies Rules, 2014, a company shall purchase its own shares or other specified securities if,

The buy-back should be done in case of listed company as per regulations of SEBI & as per Rules specified in case of unlisted company.

- It is authorized by its articles.
- A Board Resolution will be passed if the buy-back is 10% or less of the total paid up equity capital and free reserves of the company.
- A Special resolution at general meeting shall be passed along with board resolution if buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company.
- In every financial year a buy-back of maximum 25% of total paid-up equity capital in that financial year can be made.
- All shares or other specified securities should be fully paid up.
- After buy-back the ratio of the aggregate of secured and unsecured debts owed by the company should not be more than twice the paid up capital and free reserves. The Central Government may, by order, notify a higher ratio for a class or classes of companies.
- No offer of buy-back shall be made within a period of 1 year reckoned from the date of closure of the preceding offer of buy-back.
- Every buy-back shall be completed within a period of 1 year from the date of passing of the special resolution or the board resolution.
- A listed company before making a buy-back shall file with the Registrar and SEBI a declaration of solvency in Form No. SH-9 signed by at least 2 directors of the company, one of whom shall be the Managing Director, if any, and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of 1 year from the date of declaration adopted by the Board. An unlisted company is not required to file the declaration of solvency with SEBI.
- The company shall within 7 days from 21 days from the date of closure of the offer Make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or Return the share certificates to the shareholders or security holders whose securities have not been accepted.

- Where a company buy-back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.
- The buy back may be:
 - From the existing shareholders or security holders on a proportionate basis;
 - From the open market;
 - By purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

[PP. June 2024 MTP June. 2018 & MTP Dec. 2022]

[7 Marks]

7. Critically assess the different conditions laid down in Companies Act, 2013 for issuing secured debentures.

Or

Short Note on Secured Debentures

Answer:

As per Section 71(3) secured debentures may be issued by a company subject to such terms and conditions as may be prescribed under Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014.

- The date of redemption of secured debentures shall not exceed 10 years.
- The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
 - Companies engaged in infrastructure projects; Infrastructure Finance Companies
 - Infrastructure Debt Fund Non-Banking Financial Companies;
- The issue shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.
- The company shall appoint a debenture trustee before the issue of prospectus of letter of offer for subscription of its debentures and not later than 60 days after the allotment of debentures.
- A debenture deed shall be executed to protect the interest of debenture holders. The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on Any specific movable property of the company; and Any specific immovable property wherever situate, or any interest therein. In case of a non-banking financial company, the charge or mortgage may be created on any movable property.
- In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply.

**EXTRA THEORY QUESTIONS****8. Short Note on Trust Deed****Answer:**

1. Trust Deed for securing any issue of debentures shall be open for inspection to any Member or Debenture Holder of the company, in the same manner as if it were the Register of Members of the company; and
2. A copy of the Trust Deed shall be forwarded to any Member or Debenture Holder of the company, at his request, within 7 days of the making thereof, on payment of fee.

9. Buy Back Declaration of Solvency 68

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

Answer:**Section 68-Buy Back-Declaration of Solvency**

The Company shall before making buy-back, file with the

- (a) ROC (all companies) and
- (b) SEBI (for listed company).

a Declaration of Solvency in **Form SH-9** signed by at least 2 directors of the company, 1 of whom shall be the MD, if any that the

"Board of Directors of the company has made a **full inquiry into the affairs of the company** as result of which they have formed an opinion that it is **capable of meeting its liabilities and will not be rendered insolvent within a period of 1 year** from the date of declaration adopted by the Board."

10. Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

Answer:**Funds utilized for purchase of its own securities:**

Section 68 of the Companies Act, 2013 states that a Company may purchase its own securities out of:

- i) its **free reserves**; or
- ii) the **securities premium account**; or
- iii) the **proceeds of the issue of any shares or other specified securities**.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

1. The provision says that no company shall directly or indirectly purchase its own shares or other specified securities
 - (a) through any subsidiary company including its own subsidiary companies; or

- (b) through any investment company or group of investment companies; or

- (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company:

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.

2. No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

11. Explain the meaning and significance of the 'Pari Passu' clause in a debenture.

Answer:**Section 71-Debentures**

Section 71 does not prescribe any provisions regarding the 'Pari Passu' clause in a debenture.

Meaning of the 'Pari Passu' clause

- (a) Pari Passu clause in a debenture means that all the different Issues of debentures by a company rank equally and will be paid proportionally.

- (b) If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue.



CASE STUDIES

[June 2015, 4 Marks]

[7 Marks]

12. A company wants to buy back its own shares in the current financial year. State the defaults which make the company ineligible to buy back its own shares as outlined in the Companies Act, 2013.

Answer:

A company cannot buy back its own shares out of proceeds of an earlier issue of same kind of shares.

A company cannot buy back its own shares if the company does not have the available cash required to make the payment.

As per Section 70 of Companies Act, 2013, no company shall directly or indirectly purchase its own shares or other specified securities:

- Through any subsidiary company including its own subsidiary companies;
- Through any investment company or group of investment companies; or
- If a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon redemption of debentures of preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

The buy-back is not prohibited, if the default is remedied and a period of 3 years has lapsed after such default ceased to subsist.

[PP. June 2016]

[4 Marks]

13. ABC Limited decides to buy-back its own shares. Advise the Company's Board of Directors about the sources of which the company can buy-back its own shares,

Answer

As per Section 68(1) of Companies Act, 2013, a company can purchase its own shares or other specified securities if authorised by its articles u/s 68(2).

The purchase should be out of:

- Its free reserves; or
- The securities premium account; or
- The proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. 'Specified securities' includes employees' stock option or other securities as may be notified by the CG from time to time.

14. Reduction of Share Capital (Sec 66); Alteration of Share Capital (Sec 61)

The Authorized share capital of SNTD Limited is ₹5 crore divided into 50 Lakhs equity shares of ₹10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹10 each to ₹8 each and to carry out the following proposals:

- (i) Conversion of 30 Lakhs partly paid up equity shares of ₹8 each to fully paid up equity shares of ₹8 each there by relieving the shareholders from making further payment of ₹2 per share.
- (ii) Reduction in Authorized Capital from ₹5 crore divided into 50 Lakhs equity shares of ₹10 each to ₹4 crore divided into 50 Lakhs equity shares of ₹8 each.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

Answer:Answer (i): Section 66 - Procedure for reduction of share capital

Conversion of 30 Lakhs partly paid up equity shares of ₹8 each to fully paid up equity shares of ₹8 each there by relieving the shareholders from making further payment of ₹2 per share.

As per Section 66, Extinguishing or reducing the liability on any of its shares in respect of the share capital not paid-up amounts to reduction of share capital.

Procedure for reduction of share capital

- (1) Special Resolution: Pass Special Resolution.
- (2) Application to NCLT: Make an application to the Sanjeev (NCLT) for obtaining its approval for reduction of share capital.
- (3) Representation from CG, ROC, Creditors: The Sanjeev shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of 3 months from the date of receipt of the notice.
- (4) Order of NCLT: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.
- (5) Delivery of NCLT's order to the ROC: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Sanjeev to the Registrar within 30 days of the receipt of the copy of the order.
- (6) ROC shall issue a Certificate: ROC shall register the same and issue a certificate to that effect.

Answer (ii): Section 61-Procedure for Alteration of share capital

Reduction in Authorized Capital from ₹5 crore divided into 50 Lakhs equity shares of ₹10 each to ₹4 crore divided into 50 Lakhs equity shares of ₹8 each.

Reduction in Authorized Capital without reducing the subscribed capital is simply Alteration of share capital.

Procedure for alteration of share capital

- (1) The alteration should be authorized by the Articles of Association.



- (2) Pass Ordinary Resolution.
(3) File Form SH-7 with the ROC within 30 days along with an altered memorandum [Section 64]

15. Restriction on Purchase by Company or giving of loans by It for Purchase of its Shares-67
Abhijit, an employee of National Bank Limited which is actively engaged in Banking business, drawing a salary of ₹50,000 p.m., borrowed Rupees One lakh and invested in the shares of the bank. Assume that the Bank is not giving Loan in this case in the ordinary course of business.

- (1) Explain whether there is any violation in the light of the provisions of the Companies Act, 2013.
(2) Would your answer be different if Abhijit is key managerial personnel of the bank?

Answer:

Section 67-Restriction on Purchase by Company or giving of loans by it for Purchase of its Shares

As per section 67 of the Companies Act, 2013 a public company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Director or Key Managerial Personnel;
(b) The amount of such loan shall not exceed an amount equal to 6 months' salary of the employee.
(c) The shares to be subscribed must be fully paid shares.

Conclusion

- (1) On the basis of the above provisions, Mr. Abhijit is entitled for the loan from the Bank up to ₹3 lakh. Being amount of loan less than his 6 months' salary, considering in compliance with other requirements, there is no violation of the provisions of the Companies Act, 2013.
(2) In case, if Mr. Abhijit is Key managerial personnel of the Bank, there will be violation to the provision of law contained in section 67(3) of the Companies Act, 2013.

16. Restriction on Purchase by Company or giving of loans by it for Purchase of its Shares-67
SSP Limited, a subsidiary of PQR Limited, decides to give a loan of ₹4,00,000 to its Human Resource Manager Mr. Suket Naman, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹40,000 per month, to buy 500 partly paid-up equity shares of ₹1000 each in SSP Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Or

The Board of Directors of Rakesh Exports Ltd., a subsidiary of Manoj Ltd., decides to grant a loan of ₹3 lakh to Anil, the finance manager of Manoj Ltd., getting salary of ₹40,000 per month, to buy 500 partly paid-Up equity shares of ₹1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.

Answer:

Section 67- Restriction on Purchase by Company or giving of loans by it for Purchase of its Share

As per section 67 of the Companies Act, 2013 a public company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Director or Key Managerial Personnel;
(b) The amount of such loan shall not exceed an amount equal to 6 months' salary of the employee.
(c) The shares to be subscribed must be fully paid shares.

Conclusion

Keeping the above facts and legal provisions in view, the decision of PQR Limited in granting a loan of ₹4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

- (i) The amount of loan is more than 6 months' salary of Mr Suket Naman, the HR Manager. It should have been restricted to ₹2,40,000 only.
(ii) The loan to be given by PQR Limited to its HR Manager Mr. Suket Naman is meant for purchase of partly paid shares

17. Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

Answer:

Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares.

However, **Section 67(3) of the Companies Act, 2013**, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership.

Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

Purchasing in order to redeem its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of section 68 of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and upto specified limits and only after following the prescribed procedure

18. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

Answer:

Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance up to the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

19. Conditions & Sources of Buy-Back-68

Toys Company Limited decides to buy-back its own shares. Advise the company's Board of Directors about the sources out of which the company can buy-back its own shares. What conditions are attached to the buy-back scheme of the company in accordance with the provisions of the Companies Act, 2013? Whether there is any time limit for the completion of buy-back of its shares? Explain.

Answer:

Section 68-Buy-Back

Sources out of which Buy Back can be made

A company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of -

- Free Reserves;
- Securities Premium; or
- Proceeds of the issue of any shares or other specified securities.

Provided that no buy-back of any kind of shares shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Conditions to be complied with before Buy Back can be made

Conditions to be complied with before Buy Back can be made:

- Articles:** The buy-back is authorised by its Articles.
- Approval (BR/SR):** A Special Resolution has been passed at a general meeting of the company authorising the buy-back.

Provided that nothing contained in this clause shall apply to a case where -

- The buy-back is, $\leq 10\%$ of the (paid-up equity capital & Free Reserves & Securities Premium) of the company. [10% of (PUESC+ FR + SP)] AND
- Such buy-back has been authorised by the Board Resolution passed at its meeting.
- Maximum Amount spent:** The buy-back is $\leq 25\%$ of the (paid-up equity capital & Free Reserves & Securities Premium) of the company. [25% of (PUESC+ FR + SP)]
- Maximum Number of Shares:** The number of Equity Shares that can be bought-back in any financial year shall be $\leq 25\%$ of the total paid-up EQUITY capital of the company.
- Maximum D/E ratio:** The Debt/Equity ratio ≤ 2 after buy-back.
- Fully paid-up:** All the shares or other specified securities for buy-back are fully paid-up.
- SEBI Regulations:** SEBI Buy Back Regulations have been complied with for listed companies; and
- LOO filed with ROC:** The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a LETTER OF OFFER in Form SH-8.
- LOO circulated to shareholders:** The letter of offer shall be dispatched to the shareholders within 20 days from its filing with the Registrar of Companies.
- No subsisting defaults:** There are no defaults subsisting u/s 70.

Time Limit for completing the Buy Back

Every buy-back shall be completed within a period of 1 year from the date of passing of the SR/BR.

Conclusion

Toys Company Limited is advised to follow the above legal provisions.

20. Sources of Buy Back-68

Exports Company Ltd, desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 advise whether the above buy back of equity shares by the company is possible.

Answer:

Section 68-Sources of Buy Back

Maximum Number of Shares: The number of Equity Shares that can be bought-back in any financial year shall be $\leq 25\%$ of the total paid-up equity capital of the company.

Conclusion

Therefore, the company's proposal to buy back all its equity shares is not in order.



21. "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

Answer:

Section 68-Buy Back

- (A) There should be a gap of at least 1 year between 2 Buy Back Offers.
 (B) Where a company completes a buy-back of its shares, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares or other specified securities within a period of 6 months

Two Exceptions:

- (a) Bonus issue or
 (b) Conversion of warrants, stock option schemes, sweat equity or conversion of preference share or debentures into equity shares.

Conclusion

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions is not valid."

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

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

Answer:

Answer 1:

Approvals required for Buy Back

Approval (BR/SR): A Special Resolution has been passed at a general meeting of the company authorising the buy-back.

Provided that nothing contained in this clause shall apply to a case where -

- The buy-back $\leq 10\%$ of the (paid-up equity capital & Free Reserves & Securities Premium) of the company. [10% of (PUESC + FR + SP) AND
- Such buy-back has been authorised by the Board Resolution passed at its meeting.

Conclusion

No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves ($50,00,000 \times 10/100 = 5,00,000$) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.

Answer 2:

Time Limit for completing the Buy Back

Every buy-back shall be completed within a period of 1 year from the date of passing of the SR/BR.

Answer 3:

Maximum Debt/Equity ratio

Maximum D/E ratio: The Debt/Equity ratio ≤ 2 after buy-back.

Provided that the Central Government may, by order, notify a higher D/E ratio for a class or classes of companies.

The CG hereby notifies that the Debt/Equity ratio shall be 6:1 for Government Companies which carry on Non-Banking Finance Institution activities and Housing Finance Activities.

Conclusion

The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid-up capital and its free reserves.

23. Navneet unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Article of Association empowers the company to buy back its own shares. Earlier the company has also passed special resolution to buy-back its own shares on January 15th, 2018. The company further decided the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. In the light of the provisions of the Companies Act, 2013,

- Decide, whether the company's proposal is in order.
- What will be your answer if buy-back offer date is revised from January 5th 2019 to January 25th 2019 and percentage of buy-back is reduced from 30% to 25% keeping the source of purchase above?

Or

Anand Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:

- Whether company's proposal is in order?
- Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?

Answer:

Section 68- Buy Back

Maximum Number of Shares



The number of Equity Shares that can be bought-back in any financial year shall be $\leq 25\%$ of the **total paid-up EQUITY capital** of the company.

Time Limit for completing the Buy Back

Every buy-back shall be completed within a period of 1 year from the date of passing of the SR/BR.

Buy-back out of Proceeds of the issue of any shares or other specified securities

No buy-back of any kind of shares shall be made out of the proceeds of an **earlier issue of the same kind of shares** or same kind of other specified securities.

Conclusion to 1st Question

Answer (i)

In the instant case, the company's proposal is **NOT** in order due to the following 3 reasons:

- It cannot buy-back more than 25% of the total paid-up EQUITY capital of the company.
- Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of 1 year from the date of the closure of the preceding offer of buy-back, if any.
- The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. This is not in order as buy-back of any kind of shares or other specified securities **cannot be made out of the proceeds of an earlier issue of the same kind of shares** or same kind of other specified securities.

Answer (ii)

If buyback offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, **then also the company's proposal is NOT in order** as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Conclusion to 2nd Question

In the instant case, Anand Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.

- The Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.
 - If the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required.
- Hence, our answer will not change. This proposal of the company will also be not in order.

24. Prohibition for buy-back in certain circumstances-70

Elucidate the circumstances in which a company cannot buy back its own shares as per the provisions of the Companies Act, 2013. M/s Diya Construction Limited is planning to buyback of its shares during the current year but the company has defaulted in the payment of term loan & interest thereon to its bankers. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013.

OR

Explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

Answer:

Section 70-Prohibition for Buy-Back in Certain Circumstances

No company shall **directly or indirectly** purchase its own shares or other specified securities -

- Through **any subsidiary company** including its own subsidiary companies;
- Through **any investment company** or group of investment companies; or
- If a **default**, is made by the company, in the repayment of
 - Deposits,
 - Interest on Deposits
 - Redemption of Debentures,
 - Redemption of Preference Shares,
 - Payment of declared Dividend to any shareholder,
 - Repayment of any term loan to any Bank/financial institution,
 - Interest payable on any term loan.

Remedy:

Provided that **the buy-back is not** prohibited if the default is remedied and a period of **3 years** has lapsed after such default ceased to subsist.

Conclusion

Therefore, M/s. Diya Construction Limited needs to follow the procedure as highlighted above for buy back of shares.

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

- A shareholder who has no beneficial interest.
- A creditor whom the company owes Rs. 499 only.
- A person who has given a guarantee for repayment of amount of debentures issued by the company?

Answer:

Appointment of Debenture Trustee:

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

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

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

- beneficially holds** shares in the company
- is **promoter, director or key managerial personnel** or any other officer or an employee of the company or its holding, subsidiary or associate company;
- is **beneficially entitled to moneys** which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- is **indebted to the company**, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- has **furnished any guarantee** in respect of principal debts secured by the debentures or interest thereon;
- Has any pecuniary relationship** with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever its lower. during the two immediately preceding financial years or during the current financial year;
- is a **relative of any promoter** or any person who is in the employment of the company as director or key managerial personnel:

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

- A shareholder who has no beneficial debenture trustee. interest, can be appointed as a
- A creditor whom company owes Rs. 499 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

26. The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

Authorised Share Capital: 1,00,000 Nos. of Equity Shares of ₹100 each	₹ 1,00,00,000
Subscribed and Paid-up Share Capital: 40,000 Nos. of Equity Shares of 100 each, fully paid-up.	40,00,000
Share Premium Reserve	50,00,000
General Reserve	30,00,000
Balance in Profit and Loss Account	20,00,000
Capital Reserve (profit on sale of Fixed Assets)	
8% Non-Convertible Debentures	
9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1-year moratorium period)	20,00,000
Short-term Cash Credit Loan from XYZ Bank Limited (On hypothecation of stock and receivables of the Company, repayable on demand)	50,00,000

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

- The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?
- What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?

Answer:

1. The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000



Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	1,40,00,000

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve. Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	50,00,000

Here, Short-term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting
= (A) - (B) = 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed 90,00,000.

2. Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

OBJECTIVES

Q1. Multiple Choice Question

1. The liability of the directors for failure to return minimum subscription is

- (a) Repay the money with interest at the rate of 15 %.
- (b) Penalty of 1000 for each day or 1 Lakh.
- (c) A & B.
- (d) Penalty of 2000 for each day or 3 Lakh.

2. The liability for an officer & a company for failure to return minimum subscription is

- (a) Penalty of 1000 for each day or 1 Lakh.
- (b) Penalty of 1000 for each day or 1 Lakh whichever is less.
- (c) Penalty of 100 for each day or 1 Lakh.
- (d) Penalty of 100 for each day or 1 Lakh whichever is less.

3. What is the minimum period for return of amount received through share issue for the failure of receiving subscription of minimum subscription?

- (a) 15 days.
- (b) 30 days.
- (c) 20 days.
- (d) 10 days.

4. Sec.8 companies are not required to fulfil the requirement as to

- (a) Apply its profit.
- (b) Intends to promote.
- (c) Minimum paid up capital.
- (d) Apply its unexpected losses

5. The shares issued by a company to its employees for providing their know-how is

- (a) Equity shares.
- (b) Sweat shares.
- (c) Sweat equity shares.
- (d) Preference shares.

6. If the company fails to repay the application money within such period the company should repay that money at the interest of ____ % p.a.

- (a) 13%
- (b) 14%
- (c) 10%.
- (d) 15%

7. The Company shall allot its securities within ____ days from the date of receipt of application money.

- (a) 70 days
- (b) 60 days.
- (c) 50 days.
- (d) 40 days.

8. The repayment of application money with interest in case of failure to repay the application money within such period is unapplicable to

- (a) Nidhi Company.
- (b) Public Company.
- (c) Private Company.
- (d) Registered company



CA AKASH AGARWAL

SHARE CAPITAL-3



QUESTION BANK



9. Which of the following company should file Form No.PAS-5 & Private Placement Letter to SEBI?
 - (a) Nidhi Company.
 - (b) Public Company.
 - (c) Listed Company.
 - (d) Registered Company.
10. Any offer/invitation not in compliance with the provisions of _____ shall be treated as a Public Offer.
 - (a) Sec.41
 - (b) Sec.42.
 - (c) Sec.44.
 - (d) Sec.43
11. Which of the following company can issue stock?
 - (a) Company limited by shares.
 - (b) Company limited by guarantee.
 - (c) Company limited by shares without share capital.
 - (d) Company limited by guarantee without share capital.
12. The minimum face value of share is
 - (a) Rupee 1.
 - (b) Rupees 5.
 - (c) Rupees 3.
 - (d) Rupees 6.
13. Difference between subscribed capital and called-up capital is
 - (a) Paid up capital.
 - (b) Uncalled capital.
 - (c) Nominal capital.
 - (d) Subscribed capital.
14. _____ can be transferred only in its entirety.
 - (a) Stock.
 - (b) Shares.
 - (c) Reserve capital.
 - (d) Unreserved capital.
15. _____ also includes shares allotted for consideration other than cash
 - (a) Registered capital.
 - (b) Paid up capital.
 - (c) Issued capital.
 - (d) Uncalled capital.
16. _____ is the other name of nominal capital.
 - (a) Authorised capital
 - (b) Paid up capital.
 - (c) Issued capital.
 - (d) Uncalled capital.
17. _____ equals called up capital less calls in arrears.
 - (a) Unpaid capital.
 - (b) Paid up capital.
 - (c) Authorised capital.
 - (d) Issued capital.
18. In order to reserve capital, the company should reregister itself as a _____ company, a passing a resolution.
 - (a) Public company.
 - (b) Dormant company.
 - (c) Nidhi Company.
 - (d) Limited company.
19. A company can create reserve capital by increasing _____.
 - (a) Paid up capital.
 - (b) Subscribed capital.
 - (c) Nominal capital.
 - (d) Uncalled capital.
20. For a _____ kinds of shares u/s 43 is not applicable.
 - (a) Private company.
 - (b) Govt Company.
 - (c) Public company.
 - (d) OPC.
21. The kinds of shares which come under section 43 is
 - (a) Preference & equity share capital.
 - (b) Called & uncalled capital.
 - (c) Paid and unpaid capital.
 - (d) Nominal & issued capital.
22. All such share capital that is not _____ is called
 - (a) Paid up capital.
 - (b) Preference share capital.
 - (c) Unpaid capital.
 - (d) Subscribed capital.
23. _____ shareholders have an additional right to participate in the dividends and re-payment of capital.
 - (a) Cumulative preference share holders.
 - (b) Redeemable preference share holders.
 - (c) Participating preference share holders.
 - (d) Convertible preference share holders.
24. _____ share holders have the right to claim accumulated dividends.
 - (a) Cumulative preference share holders.
 - (b) Redeemable preference share holders.
 - (c) Participating preference share holders.
 - (d) Convertible preference share holders.
25. On what ground the preference shares are classified as cumulative and non-cumulative?
 - (a) Maturity period.
 - (b) Entitlement to past.
 - (c) Convertibility.
 - (d) Participation in surplus profit.
26. Shares that carry a preferential right at the time of repayment of capital is
 - (a) Equity shares.
 - (b) Preference shares.
 - (c) Equity shares & Preference shares.
 - (d) Equity shares OR Preference shares.
27. _____ can be repaid only at the winding up
 - (a) Non redeemable preference shares.
 - (b) Redeemable preference shares.
 - (c) Non participating preference shares.
 - (d) Participating preference shares.
28. Principle relating to rights or bonus issue is not applicable to _____ shareholders.
 - (a) Equity.
 - (b) Preference.
 - (c) Equity & Preference.
 - (d) Participating.



29. Issuing preference shares is possible only by passing a _____ in the general meeting of a company.
 (a) Ordinary Resolution.
 (b) Special Resolution.
 (c) Written Resolution.
 (d) Oral Resolution.
30. What is the time period for the redemption of preference shares?
 (a) 15 yrs from the date of issue.
 (b) 10 yrs from the date of issue.
 (c) 25 yrs from the date of issue.
 (d) 20 yrs from the date of issue.
31. Minimum _____ % of preference shares should be redeemed every year.
 (a) 20%.
 (b) 30%.
 (c) 5%.
 (d) 10%.
32. Premium if any, payable on redemption, must be provided _____ Shares are redeemed.
 (a) After.
 (b) Before.
 (c) When.
 (d) On.
33. Within How many days of redemption should a Company give a notice to the ROC?
 (a) 20 days.
 (b) 30 days.
 (c) 40 days.
 (d) 50 days.
34. After providing premium to preference shareholders, the balance in CRR is used to issue
 (a) Fully paid bonus shares.
 (b) Fully paid shares.
 (c) Fully paid equity shares.
 (d) Fully paid preference shares.
35. Preference shares can be redeemed only out of
 (a) Profits of the company.
 (b) Company's Security Premium A/c.
 (c) Divisible Profits.
 (d) Capital Redemption Reserve A/c.
36. Shares can be issued at discount only as per _____ provisions.
 (a) Issue of Preference shares
 (b) Issue of equity shares
 (c) Issue of Sweat equity shares
 (d) All of the above.
37. The allotment of sweat equity shares can be within months from the date of passing the Special Resolution.
 (a) 10 months.
 (b) 11 months.
 (c) 9 months.
 (d) 12 months.
38. The sweat equity shares of _____ company should be issued in accordance with SEBI guidelines.
 (a) Listed company.
 (b) Unlisted company.
 (c) Nidhi Company.
 (d) Sec.8 Company.
39. The sweat equity shares of _____ Company should be issued in accordance with Companies Rules 2014 guidelines.
 (a) Listed company.
 (b) Unlisted company.
 (c) Nidhi Company.
 (d) Sec.8 Company.
40. What is the fine charged on a company if-it issues shares at discount?
 (a) Fine of minimum 5,00,000 & maximum 10,00,000.
 (b) Fine of minimum 10,00,000 & maximum 20,00,000.
 (c) Fine of minimum 1, 00,000 & maximum 5,00,000.
 (d) Fine of minimum 15,00,000 & maximum 25,00,000.
41. What is the annual ceiling limit on sweat equity issue?
 (a) Shares of issue value 5 crores
 (b) 15% of existing paid up equity share capital.
 (c) Shares of issue value 5 crores or 15% of existing paid up equity share capital whichever is less.
 (d) Shares of issue value 5 crores or 15% of existing paid up equity share capital whichever is higher.
42. Sweat equity shares issued shall be locked in for a period of years _____ from the date of allotment.
 (a) 3 years.
 (b) 1 year.
 (c) 2 years.
 (d) 5 years.
43. The _____ shares issued to directors / managers is treated as managerial remuneration.
 (a) Sweat equity shares.
 (b) Preferred stock.
 (c) Capital surplus.
 (d) Retained earnings
44. A Start Up Company as per notification by Ministry of Commerce & Industry may issue sweat equity shares _____ % of its paid up capital.
 (a) Exceeding 40%.
 (b) Not exceeding 40%.
 (c) Exceeding 50%.
 (d) Not exceeding 50%.
45. Which of the following forms shall maintain a register of sweat equity shares?
 (a) Form No SH.1.
 (b) Form No SH.3.
 (c) Form No SH.2.
 (d) Form No SH.4.
46. Letter of offer/notice shall be despatched to existing shareholders _____ days before opening of the issue.
 (a) 3 days.
 (b) 4 days.
 (c) 6 days.
 (d) 7 days.
47. How will the shareholders of a public company issue ESOS?
 (a) By passing Special Resolution.
 (b) By passing Ordinary Resolution.
 (c) By passing Written Resolution.
 (d) By passing Oral Resolution.

48. How will the shareholders of a private company issue ESOS?

- (a) By passing Special Resolution.
- (b) By passing Ordinary Resolution.
- (c) By passing Written Resolution.
- (d) By passing Oral Resolution.

49. The register of employee stock options should be in

- (a) Form No.SH.2.
- (b) Form No.SH.4.
- (c) Form No.SH.5.
- (d) Form No.SH.6.

50. Where should a company maintain its register of Employee Stock options?

- (a) Any place.
- (b) At the company's Registered Office.
- (c) Registered office of the company
- (d) At the company's registered Office/such other place as decided by the board.

51. Which of the following does not include preferential offer?

- (a) Equity shares.
- (b) Partly convertible shares.
- (c) Partly convertible debentures.
- (d) issue of sweat equity shares.

52. Which of the following include preferential offer?

- (a) Public offer.
- (b) Foreign securities.
- (c) Rights Issue.
- (d) Equity shares.

53. The allotment of securities for preferential offer should be completed within _____ from the date of passing of the Special Resolution.

- (a) 2 months
- (b) 12 months.
- (c) 6 months.
- (d) 3 months.

54. A company which announces bonus issue after the approval of the BOD must implement the proposal within _____ months from the date of approval.

- (a) 8 months.
- (b) 9 months.
- (c) 6 months.
- (d) 4 months.

55. The type of company who should file with SEBI, a Certificate signed by the issuer company, & counter signed by CS in practice for Bonus issue is.

- (a) Nidhi Company.
- (b) Sec.8 Company.
- (c) Listed company.
- (d) Unlisted company.

56. The privilege given to existing shareholders to subscribe for the shares offered by way of rights is.....

- (a) Rights shares.
- (b) Preferred stock.
- (c) Capital surplus.
- (d) Retained earnings

57. The condition relating to minimum subscription is unapplicable to _____

- (a) Rights shares.
- (b) Preferred stock.
- (c) Capital surplus.
- (d) Bonus shares.

58. In which of the following cases, the member has a right to renounce?

- (a) Rights shares.
- (b) Preferred stock.
- (c) Capital surplus.
- (d) Retained earnings.

59. Which of the following company is not entitled to issue equity shares with differential rights?

- (a) A company which completed 6 yrs of existence.
- (b) A company in which payment of dividend due.
- (c) A company which has redeemed preference shares.
- (d) A company which has paid the statutory payments relating to its employees.

60. Which of the following company is entitled to issue equity shares with differential rights?

- (a) A company which has not repaid matured deposits.
- (b) A company which has not credited the amount in Investor Education & Protection Fund.
- (c) A company which has completed 5 yrs of existence
- (d) A company which has not repaid dividend after becoming due.

61. Shares with differential rights cannot exceed _____ % of Total Post Issue Paid up equity share capital

- (a) 26%
- (b) 16%
- (c) 32%
- (d) 6%

62. For issuing _____ approval with postal ballot is sufficient for listed companies.

- (a) Rights shares.
- (b) Equity shares with differential rights.
- (c) Capital surplus.
- (d) Bonus shares.

63. What is the maximum rate of commission devolving on underwriters on equity shares?

- (a) Maximum 3.5%.
- (b) Maximum 4.5%.
- (c) Maximum 2.5%.
- (d) Maximum 5%.

64. _____ is payable only when shares are offered to public.

- (a) underwriting commission.
- (b) Brokerage.
- (c) Remuneration.
- (d) Salary.

65. The appropriation out of the previously unappropriated capital of the company, of a certain no: of shares to a person is

- (a) Share calls.
- (b) Allotment of shares.
- (c) Subscription of shares.
- (d) Application of shares.



66. What is the time limit for receiving minimum subscription?
 (a) 15 days from the date of issue.
 (b) 30 days from the date of issue.
 (c) 10 days from the date of issue.
 (d) 60 days from the date of issue.
67. What is the time limit for receiving minimum subscription if the issue is underwritten under SEBI Guidelines?
 (a) 15 days from the date of closure.
 (b) 30 days from the date of closure.
 (c) 10 days from the date of closure.
 (d) 60 days from the date of closure.
68. What is the time limit within which the company should return the minimum subscription after providing underwriting is.
 (a) Within 15 days.
 (b) Within 30 days.
 (c) Within 10 days.
 (d) Within 60 days.
69. Acceptance of a company to give shares to the investor is nomenclated as
 (a) allotment of shares
 (b) receipt of allotment
 (c) application of shares
 (d) forfeiture of shares
70. Find the correct duty of registered owner of shares
 (a) He does hold beneficial interest in such shares
 (b) He cannot file a declaration to the company
 (c) A & B
71. Who can file a declaration to the company regarding the beneficial interest/ownership of shares
 (a) Registered owner
 (b) Beneficial owner
 (c) A or B
 (d) A&B
72. Every person whose holds shares and whose name is entered as ____ in the records of the depository shall be deemed to be a member of the concerned company.
 (a) Registered owner
 (b) Depository
 (c) Beneficial owner
 (d) None
73. A company must inform the registrar about the redemption of preference share within ____ days of Redemption
 (a) 21
 (b) 15
 (c) 13
 (d) 30
74. Share premium amount is treated as the ____ capital of a company
 (a) issued
 (b) reserved
 (c) subscribed
 (d) none of these
75. A company can create reserve capital by passing ____
 (a) ordinary Resolution
 (b) Special Resolution
 (c) A Board Resolution
 (d) None of these
76. What is the maximum period of redemption in case of preference shares issued by a company with infrastructural projects.
 (a) 20 years
 (b) 25 years
 (c) 30 years
 (d) 15 years
77. Part of the issued share capital taken by public is called
 (a) Subscribed capital
 (b) called up capital
 (c) uncalled capital
 (d) paid up capital
78. Part of the authorised capital which is offered by the company for subscription
 (a) subscribed
 (b) issued
 (c) uncalled
 (d) called
79. Premium amount on the securities are transferred to ____ account
 (a) Securities Premium
 (b) Reserve Fund
 (c) capital reserve
 (d) none
80. ____ are the shares issued by the company to it employees or directors for consideration other than cash
 (a) bonus
 (b) Sweat
 (c) right
 (d) none of the above.
81. ____ form is to be find in case of variation rights of shareholders
 (a) 23
 (b) 19
 (c) 30
 (d) 20
82. ____ is an aggregate of fully paid shares that has been legally considered
 (a) shares
 (b) stock
 (c) both A & B
 (d) none of the above
83. ____ have fixed denominations
 (a) Shares
 (b) stock
 (c) Bonus
 (d) None of the above
84. The company must deliver the share certificate within ____ If the shares are allotted by the company.
 (a) 3 months
 (b) 6 months
 (c) 9 months
 (d) 2 months
85. Share warrants can be issued with prior approval of the
 (a) Company Law Board
 (b) Dept of Company Affairs
 (c) registrar
 (d) none



86. _____ specifies the time limit within which share certificate is to be delivered
 (a) Section 110
 (b) Section 111
 (c) Section 112
 (d) Section 113
87. _____ are attached to the share warrant
 (a) dividend coupon
 (b) warrant
 (c) certificate
 (d) none of the above
88. _____ is the document showing title
 (a) share certificate
 (b) share warrant
 (c) Both A & B
 (d) None of these
89. Company to accept calls in advance from shareholders they should have permission in
 (a) MOA
 (b) AOA
 (c) BOD
 (d) None of these
90. _____ days be given for payment of call money from the date of service of notice
 (a) 14
 (b) 13
 (c) 10
 (d) 12
91. shareholders are _____
 (a) owners
 (b) creditors
 (c) debtors
 (d) none of the above
92. Who should certify that the company allot the shares & cash received in respect their of _____
 (a) auditor
 (b) director
 (c) shareholder
 (d) members
93. The types of preference shares which cannot be issued by a company
 (a) irredeemable preference shares
 (b) preference shares redeemable after 20 yrs
 (c) participating preference shares
 (d) A & B
94. As per SEBI guidelines the application money should be minimum of _____ of nominal value of security
 (a) 10 %
 (b) 15 %
 (c) 20 %
 (d) 25 %
95. Voting right can't be exercised in case of _____
 (a) Calls in advance
 (b) Calls in arrears
 (c) Both (a) & (b)
 (d) None of the above
96. The basic condition to issue preference share is
 (a) AOA authorisation
 (b) Passing of special resolution
 (c) Passing of ordinary resolution
 (d) Both A & B
97. _____ have holders do not enjoy additional right to participate in the surplus profit or asset
 (a) a Participating preference shareholder
 (b) Non participating preference shareholders
 (c) A or B
 (d) A & B
98. If the shares are not redeemed out of proceeds of fresh issue a sum equal to the nominal amount of shares is transferred to
 (a) Capital redemption reserve account
 (b) Capital account
 (c) Reserve account
 (d) Redemption account
99. The company should give notice to _____ within _____ days of redemption in the case of redemption of preference shares
 (a) Director, 15
 (b) Chairman, 20
 (c) ROC, 30
 (d) None of these
100. Which of the following statement is incorrect
 (a) The rate of premium while issuing shares is decided by BOD
 (b) A company can issue shares at discount
 (c) The amount of shares can be received in cash or kind.
 (d) Both B & C
101. Securities premium account can be used only for
 (a) Issuing fully paid bonus shares to members
 (b) writing of preliminary expenses of the company
 (c) Providing incentives to employees
 (d) A & B
102. The shares issued by the company to its employees or directors at a discount or for consideration other than cash
 (a) Common stock
 (b) Preferred stock
 (c) Capital surplus
 (d) Sweat equity shares
103. The employee to whom the sweat equity shares are issued must be
 (a) A permanent employee who has been working in India or outside India for atleast 1 year
 (b) A director of the company
 (c) A & B
 (d) A or B.
104. If minimum subscription is not received application money should be refunded within _____ days from date of closure under COA.
 (a) 20
 (b) 25
 (c) 30
 (d) 15



105. Sweat equity shares should be issued in accordance with the ____ in case of listed companies
(a) SEBI guidelines
(b) Companies Rules 2014
(c) A&B
(d) (d) A/B
106. The sweat equity shares can be issued only after ____ from the date it commenced business
(a) 3 years
(b) 2 years
(c) 1 year
(d) None of these
107. In the case of employee stock option, the company should have the freedom to specify the ____ for the shares issued pursuant to exercise of option
(a) Lock in period
(b) Lock period
(c) Freedom period
(d) None of these
108. Allotment of sweat equity shares should be made within ____ months from the date of passing the special resolution
(a) 12 months
(b) 11 months
(c) 10 months
(d) 9 months
109. Company to accept call in adv from shareholders should have permission in
(a) MOA
(b) AOA
(c) BOD
(d) none of these
110. ____ day be given for payment of call money from the date of service of notice
(a) 14
(b) 13
(c) 12
(d) 11
111. Find appropriate term from the given situation
Company with a nominal capital of 2 Crore is divided into 20 Lakh units of 20 each, each unit of 20 is called as :
(a) share of the company
(b) company deposits
(c) capital advances
(d) debentures
112. What is section 50 of the companies Act 2013 pointing out
(a) A company to accept unpaid share capital although not called up
(b) B company to decline unpaid share capital if not called upon
(c) C company to accept unpaid share capital.
(d) D company to accept unpaid share capital if called up
113. The aggregate of fully paid up shares of a company is.
(a) Stock
(b) Capital
(c) Par value
(d) Reserve
114. The aggregate amount of money credited as ____ is equivalent to the amount received as paid up in respect of the shares issued
(a) Paid up
(b) Called up
(c) C received
(d) D and B
115. The consequence to be faced by a company in default of notice to the ROC within 30 days of conversion of shares into stock
(a) fine up to 1000 for every day of continuing default or 5,00,000 which ever is less
(b) fine up to 2000 for every day of continuing default or 5,00,000 whichever is less
(c) fine up to 1500 for every day of continuing default or 5,55,000 whichever is less
(d) fine up to 1000 for every day of continuing default or 5,00,000 which ever is more
116. The representation of the share held by a shareholder is
(a) capital
(b) document
(c) share certificate
(d) valuation report for shares
117. find the correct condition which is true in the case of issue of share certificates
(a) It can be issued only after passing board resolution
(b) It can be issued only by surrender of letter of allotment
(c) Either A or B
(d) Both A & B
118. Choose the appropriate signatories in a share certificate
(a) 2 directors/committee & secretary
(b) 3 directors/committee /secretary
(c) 1 director& company secretary
(d) any person authorised by the board for this purpose
119. Find the persons who are responsible for printing and custody of share certificate
(a) Committee of the board
(b) Company secretary
(c) A and B
(d) A or B
120. Find out the signatory of a share certificate for a OPC
(a) 1 director and CS
(b) 1 director or CS
(c) 2 directors
(d) a CS
121. What is the time limit for return of allotment?
(a) Within 15 days of allotment.
(b) Within 30 days of allotment.
(c) Within 10 days of allotment.
(d) Within 60 days of allotment.
122. The ____ form is about Return of Allotment.
(a) Form No.PAS.3.
(b) Form No.PAS.2.
(c) Form No.PAS.3.
(d) Form No.PAS.1.



123. Share certificates are given in

- (a) Form No.SH.2.
- (b) Form No.SH.1.
- (c) Form No.SH.3.
- (d) Form No.SH.4.

124. Which of the following shall not be deemed as signature?

- (a) Facsimile Signature.
- (b) Signature by mechanical means.
- (c) Digital Signature.
- (d) Signature by Rubber stamp.

125. The fee charged for a duplicate share certificate is

- (a) not exceeding 50.
- (b) not exceeding 70.
- (c) not exceeding 80.
- (d) not exceeding 100

126. When should the defaced share certificate be destroyed?

- (a) After 5 years from the date of surrender of original certificate.
- (b) 3 years from the date of surrender of original certificate.
- (c) After 2 years from the date of surrender of original certificate.
- (d) After 6 years from the date of surrender of original certificate.

127. The duplicate share certificate of a listed company should be issued within

- (a) 20 days from the date of submission of complete documents.
- (b) 30 days from the date of submission of complete documents.
- (c) 15 days from the date of submission of complete documents.

(d) 25 days from the date of submission of complete documents.

128. Who should keep the custody of renewed & duplicate share certificate?

- (a) Equity shareholder.
- (b) Company Secretary.
- (c) Any person authorised by the Board.
- (d) Company Secretary/Any person authorised by the Board.

129. Register of Renewed & Duplicate Certificates shall be in _____

- (a) Form No.SH.2.
- (b) Form No.SH.3.
- (c) Form No.SH.4.
- (d) Form No.SH.5.

130. Non-payment of calls within the specified time will render the shareholder liable for interest at a maximum of _____

- (a) 15% of Interest p.a.
- (b) 10% of Interest p.a.
- (c) 20% of Interest p.a.
- (d) 25% of Interest p.a.

131. Amount to be called up on application, allotment & on various calls _____ of the total quantum of issue in each case.

- (a) can exceed 35%.
- (b) can exceed 25%.
- (c) cannot exceed 25%.
- (d) cannot exceed 35%.

132. As per _____ a call must not exceed 1/4th of the nominal value of the shares.

- (a) Table A.
- (b) Table D.
- (c) Table E
- (d) Table F.

133. The amount received in advance of calls is _____

- (a) Not refundable.
- (b) May be refundable.
- (c) Refundable.
- (d) May not be refundable.

134. _____ has the power to convert debentures issued by the company into shares

- (a) State govt.
- (b) Central govt.
- (c) Director.
- (d) Chairman.

135. In the case of public issue of shares the subscription list is kept open for minimum period of _____ days.

- (a) 2 working days.
- (b) 5 working days.
- (c) 3 working days.
- (d) 4 working days.

136. The securities premium account cannot be utilised

- (a) In providing for the premium payable on redemption of redeemable preference shares.
- (b) In writing off the preliminary expenses of the company.
- (c) In writing off expenses of commission paid on issue of shares of the company

(d) For redemption of redeemable preference shares

137. The issuance of share certificates creates estoppels as to

- (a) Title.
- (b) Payment.
- (c) Title & Payment.
- (d) Name.

138. Who is empowered to make calls?

- (a) Director.
- (b) Committee of Directors.
- (c) Any other officer of the company.
- (d) The Board of Director.

139. Upon acquiring shares in a company, a member will have the right to have the prescribed time.

- (a) Certificate of shares.
- (b) Stock Register.
- (c) Certificate of stock issued.
- (d) Certificate of shares/Certificate of stock issued.

140. Any allotment/transfer of shares in a company to its subsidiary is

- (a) Void.
- (b) Voidable.
- (c) Valid.
- (d) Invalid.

141. The voting right of an equity shareholder _____ to his share in paid up equity capital.

- (a) Shall be in proportion.
- (b) Shall not be in proportion.
- (c) Is equal to.
- (d) Not equal to.



142. Equity Shareholders have the right to vote on ____ resolution placed before the company.
- Ordinary Resolution.
 - Special Resolution.
 - Written Resolution.
 - Every.
143. What is the proportion of voting rights of shareholders of Nidhi companies?
- No member shall exercise voting rights on poll in excess of 5% of total voting rights of equity shareholders.
 - No member shall exercise voting rights on poll less than 5% of total voting rights of equity shareholders.
 - No member shall exercise voting rights on poll in excess of 10% of total voting rights of equity shareholders.
 - No member shall exercise voting rights on poll less than 10% of total voting rights of equity shareholders.
144. What happens when variation of rights of shareholders affects the rights of any other class of shareholders?
- Consent $\frac{3}{4}$ th of such other class of shareholders shall be obtained.
 - Consent $\frac{2}{4}$ th of such other class of shareholders shall be obtained.
 - Consent $\frac{1}{4}$ th of such other class of shareholders shall be obtained.
 - Consent of 2 of such other class of shareholders shall be obtained.
145. Who can apply to the Tribunal to have the variation cancelled?
- Holders of not less than 20% of the Issued shares of that class who had not assented to the variation
 - Holders of not less than 10% of the Issued shares of that class who had assented to the variation
 - Holders of less than 10% of the Issued shares of that class who had not assented to the variation
 - Holders of not less than 10% of the Issued shares of that class who had not assented to the variation.
146. The provision of is to prevent the company from starting its business without adequate financial resources.
- Maximum subscription.
 - Minimum subscription.
 - Public issue of shares.
 - Private issue of shares.
147. What should be the minimum subscription amount as per SEBI regulations?
- 95% of the issue amount.
 - 90% of the issue amount.
 - 80% of the issue amount.
 - 85% of the issue amount.
148. The underwriting commission is paid out of
- Proceeds of the issue.
 - Profit of the company.
 - Proceeds of the issue/Profit of the company.
 - Half taken from proceeds & other half from profits.
149. Underwriting commission is limited to ____ in case of shares.
- 5 % of issue price.
 - 5.5% of issue price.
 - 6% of issue price.
 - 6.5% of issue price.
150. Allotment of shares or debentures must be made after getting ____ subscription against entire public issue as per SEBI guidelines
- 80%
 - 90%
 - 100%
 - 112 %
151. Every Company who want to go for public issue and allot shares:
- should make an applicant to stock exchange
 - Should NOT make an applicant to stock exchange
 - should make an applicant to SEBI
 - should make an applicant to ROC
152. As per SEBI guidelines the application money should be minimum of ____
- 10
 - 15
 - 20
 - 25
153. Voting right can't be exercised in case of ____
- Calls in advance
 - Calls in arrears
 - Both (a) & (b)
 - None of the above
154. For which of the following shareholders would get shares without paying any money:
- rights share
 - bonus share
 - paid up share
 - Transfer of share.
155. Issue of sweat equity shares must be ____ and must be ____.
- Before 6 months of financial year/ with permission of ROC.
 - After 6 months of first financial year/ with permission of SEBI.
 - Before 6 months of preceding financial year/ with permission of CLB.
 - Only after one year / must be authorised by a special resolution.
156. The entitlement of the existing shareholders to receive invitation of offer or subscription to the shares of a company in case of further issue of capital by the company before being offered to others are termed as:
- Participatory rights
 - Right reserved on equity
 - Right of Pre-emption
 - Bonus shares.
157. Converting physical scrip's into computerized ledger accounts maintained by the depository is called
- Dematerialisation
 - Rematerialisation
 - Digitalisation
 - E- link de-matting

158. The rights attached to the shares of any class may be varied with the consent in writing of the holders of the issued shares of that class having not less than-

- (a) 1/3 of the shareholding
- (b) 10% of the shareholding
- (c) 4 of the shareholding
- (d) 2/3 of the shareholding

159. An offer of securities to a select group of persons which satisfies the conditions specified u/s 42 is termed as

- (a) Red Herring prospectus
- (b) Placement Offer for issue
- (c) Private placement
- (d) Deemed prospectus

160. Securities Premium Account can be used only for

- (a) Buyback of own shares
- (b) Issue fully paid bonus shares
- (c) Providing for discount on issue of shares
- (d) Only A and B.

161. Employee for the purpose of Sweat Equity Shares include

- (a) Person working for more than one year
- (b) Part time director
- (c) Ex employee
- (d) Both A and B

162. Issue of ESOS should be approved by shareholders of a company by passing

- (a) Ordinary resolution with special notice
- (b) Special Resolution
- (c) Special resolute with special notice
- (d) Ordinary resolution only.

163. A company can do preferential offer only by passing

- (a) Special Resolution
- (b) Articles not necessary
- (c) Preferential basis with special resolution
- (d) Ordinary resolution

164. Under SEBI guidelines, if the issue is not underwritten, the application money will be refunded from the date of closure

- (a) 10 days from 60 days.
- (b) 30 days.
- (c) 15 days.
- (d) 71 days.

165. Underwriting commission will not be paid to any underwriter on shares which are

- (a) Not mentioned in prospectus
- (b) ROC authorises to pay.
- (c) Offered for private placement by an agreement.
- (d) Not offered to public for subscription.

166. A company having share capital should file return as to allotment within

- (a) 60 days
- (b) 45 days
- (c) 70 days
- (d) 30 days

167. A company having share capital should file return as to allotment within

- (a) 60 days
- (b) 45 days
- (c) 70 days
- (d) 30 days

168. Duplicate share certificate can be issued to listed Companies within:

- (a) 25 days from submission of complete documents
- (b) 15 days from submission of complete documents
- (c) 90 days from submission of complete documents
- (d) 65 days from submission of complete documents

169. For issue up to 500 crores shares offered and allotted to the public shall be made fully paid within:

- (a) 9 months
- (b) 12 months
- (c) 15 months
- (d) 3 months

170. The premium amount that can be charged as per Companies Act.

- (a) 10%
- (b) 15%
- (c) 20%
- (d) None of these.

171. Underwriting means.

- (a) selling shares at a discount
- (b) purchasing property at less than market price
- (c) agreeing to purchase shortfall of shares in Company in case of under subscription
- (d) offering new shares to outsiders

172. The Return of document is to be filed with the Registrar in the case of

- (a) allotment of debentures
- (b) reissue of forfeited shares
- (c) issue of shares
- (d) all of the above

173. The minimum subscription is to be received within ____ days of the offer.

- (a) 30.
- (b) 60.
- (c) 120.
- (d) 150.

174. Any person who induces a company to allot shares in a fictitious name is punishable with ____

- (a) a fine of 5,000.
- (b) a fine of 10,000.
- (c) imprisonment upto 5 years
- (d) a fine of 5,000 and imprisonment up to 5 years

175. Share capital of a company means ____

- (a) Equity share capital.
- (b) preference share capital
- (c) Equity and preference share capital.
- (d) Equity and preference share capital and debentures

176. Shares can be issued ____

- (a) At par.
- (b) At discount.
- (c) At premium.
- (d) All of the above.

177. A share certificate is required to be signed by ____

- (a) Company secretary.
- (b) Two directors.
- (c) Two directors and company secretary.
- (d) All directors and company secretary.

178. A share certificate is required to be signed by ____.

- (a) Company secretary.
- (b) Two directors
- (c) Two directors and company secretary.
- (d) All directors and company secretary.

179. According to the companies act, which one of the following companies can commence allotment of shares even before the minimum subscription is subscribed or paid?

- (a) Chartered company.
- (b) Private company.
- (c) Government company
- (d) Public limited company

180. Share premium received by issuing shares can be used for _

- (a) payment of dividend
- (b) Issue of bonus share.
- (c) Remuneration to management.
- (d) any business purpose

181. A public limited company can offer pre-emptive rights only to the

- (a) Directors of the company.
- (b) Existing equity share holders.
- (c) Debenture holders.
- (d) Short-term creditors of the company

182. Rights shares mean the shares which are

- (a) Issued to the directors of the company
- (b) First offered to the debenture holders
- (c) First offered to the existing shareholders
- (d) Issued by a newly formed company

183. Control of management of the company mainly vests in ____

- (a) Equity shareholders.
- (b) Preference shareholders
- (c) All of these.

184. When an existing company offers its shares for sale to the existing shareholders, it is known as ____

- (a) private placing
- (b) Bonus issue.
- (c) Rights issue.
- (d) Offer for sale.

185. ____ Model articles deal with forfeiture of shares.

- (a) Table F.
- (b) Table D.
- (c) Table C.
- (d) Table A.

186. Right to recover call money expire ____ years after the date of allotment. Forfeiture after this period becomes invalid. [Re. Farooq Ahmed case]

- (a) 2 years.
- (b) 3 years.
- (c) 4 years.
- (d) 5 years.

187. Which of the following should not be filed with ROC?

- (a) Allotment of shares.
- (b) Return of Allotment of the Forfeited shares reissued.
- (c) Forfeiture of shares.
- (d) Return of Allotment of the Forfeited shares.

188. A duly verified declaration in writing stating a share in the company has been duly forfeited on a date stated in the declaration shall be ____ evidence

- (a) Conclusive
- (b) Exclusive.
- (c) Inclusive.
- (d) Disclosure.

189. ____ is a tool in the company's hands to make defaulting shareholders pay within the specified time.

- (a) Bonafied of shares.
- (b) Re issue of shares.
- (c) Forfeiture of shares.
- (d) By sending them schedules of the amount to be paid.

190. Why doesn't a company pay consideration in exchange of surrendered shares?

- (a) They are purchasing their holding company's shares.
- (b) They are purchasing HUF company's shares.
- (c) They are purchasing their merger company's shares.
- (d) It would amount to purchase its own shares.

191. Name the company to which reduction of share capital is applicable

- (a) Company limited by shares.
- (b) Company limited by guarantee & no share capital
- (c) Listed company.
- (d) Unlimited company.

192. Reduction of share capital should be authorised by the company's

- (a) Director.
- (b) ROC.
- (c) AOC.
- (d) AOA.

193. The company should make an application to for obtaining a confirm for reduction in capital.

- (a) ROC.
- (b) NCLT.
- (c) NLCT.
- (d) RAC.

194. Tribunal shall send notice of application for capital reduction to ____ in case of listed company.

- (a) CG.
- (b) ROC.
- (c) SEBI.
- (d) Creditors.



195. Who is liable for the punishment u/s for 47?

- (a) Any officer of the company who knowingly discloses name of any creditor entitled to object to the reduction.
- (b) Any officer of the company who knowingly conceals name of any creditor entitled to object to the reduction.
- (c) Any officer of the company who knowingly represents the amount of debt.
- (d) Any officer of the company who unknowingly represents the amount of debt.

196. A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again bought back another 10% equity shares in September 2020. Is second buy back valid?

- (a) It can do so subject to the fulfilment of other conditions because maximum buy-back in a financial year is up to 25%
- (b) It cannot do so because there must be a time gap of 12 months between two buy-backs
- (c) It can buy back shares within one year but the Company should pass an ordinary resolution at a meeting of its board
- (d) It can buy back shares within one year but the Company will have to pass a special resolution

197. _____ doesn't amount to reduction of capital.

- (a) Depreciation.
- (b) Appreciation.
- (c) Depletion
- (d) Diminution.

198. Which of the following cases require confirmation of tribunal?

- (a) Reduction of share capital.
- (b) Alteration of share capital.
- (c) Diminution of capital.
- (d) Depletion of share capital.

199. Diminution denotes cancelation of _____ part of issued capital.

- (e) Called.
- (f) Uncalled.
- (g) Unpaid.
- (h) Unsubscribed.

200. Which of the following involves repayment of surplus capital?

- (a) Reduction of share capital.
- (b) Alteration of share capital.
- (c) Diminution of capital.
- (d) Depletion of share capital.

201. _____ requires producing notice to ROC within 30 days of cancellation.

- (a) Reduction of share capital.
- (b) Alteration of share capital.
- (c) Diminution of capital.
- (d) Depletion of share capital.

202. In which of the following cases

Buyback of shares is not applicable to private companies-

- (a) If it's borrowing from bank is more than 2 times of paid up share capital?
- (b) If it's borrowing from bank is less than 2 times of paid up share capital?
- (c) If it's borrowing from bank is more than 3 times of paid up share capital?
- (d) If it's borrowing from bank is less than 4 times of paid up share capital?

203. The person who cannot be appointed as trustee to hold shares is

- (a) Person holding beneficially 20% or more of the paid up share capital of the company.
- (b) Person holding beneficially 10% or less of the paid up share capital of the company.
- (c) Person holding beneficially 20% or less of the paid up share capital of the company.
- (d) Person holding beneficially 10% or more of the paid up share capital of the company.

204. In which of the following cases of buy back special resolution of members is not required?

- (a) Buy back is <10% of the total paid up equity capital & free reserves.
- (b) Buy back =10% of the total paid up equity capital & free reserves.
- (c) Buy back is >10% of the total paid up equity capital & free reserves.
- (d) Buy back is < 20% of the total paid up equity capital & free reserves.

205. In which of the following cases of buy back passing of board resolution of members is sufficient?

- (a) Buy back is <10% of the total paid up equity capital & free reserves.
- (b) Buy back =10% of the total paid up equity capital & free reserves.
- (c) Buy back is >10% of the total paid up equity capital & free reserves.
- (d) Buy back is <20% of the total paid up equity capital & free reserves.

206. What is Debt equity Ratio?

- (a) Secured Debts + Unsecured Debts. Paid up capital + Free Reserves
- (b) Secured Debts-Unsecured Debts. Paid up capital + Free Reserves
- (c) Secured Debts + Unsecured Debts. Paid up capital - Free Reserves
- (d) Secured Debts-Unsecured Debts. Paid up capital - Free Reserves

207. Debt Equity Ratio should not be _____ after buy back.

- (a) Less than 2:1.
- (b) More than 2:1.
- (c) More than 3:1.
- (d) Less than 3:1.

208. Name the type of companies which should conduct buy back in compliance with Companies Act, 2013.

- (a) Private companies & public companies.
- (b) Private companies & listed companies.
- (c) Public companies & unlisted companies.
- (d) Private companies & unlisted companies.

209. The offer for Buy-Back shall remain open for a period of
- Not less than 15 days from the date of despatch of the Letter of Offer.
 - Not exceeding 30 days from the date of despatch of the Letter of Offer.
 - Not less than 15 days / Not exceeding 30 days from the date of despatch of the Letter of Offer.
 - Not less than 15 days & Not exceeding 30 days from the date of despatch of the Letter of Offer.

210. The company should extinguish & physically destroy the shares/ Securities within ___ days of the last date of completion of buy back.
- 7 days
 - 8 days.
 - 9 days.
 - 6 days.

211. What is the fine charged on a company for non compliance with Sec.68 SEBI Regulations?
- Minimum 1 Lakhs, Maximum 3 Lakhs.
 - Minimum 3 Lakhs, Maximum 5 Lakhs.
 - Minimum 5 Lakhs, Maximum 10 Lakhs.
 - Minimum 10 Lakhs, Maximum 50 Lakhs.

212. ___ is necessary for authorising the contemplated reduction of share capital.
- Ordinary Resolution.
 - Special Resolution.
 - Written Resolution.
 - Oral Resolution.

213. find out correct statement from the following
- reissue of forfeited shares does constitute appropriation out of the unappropriated capital of the company
 - reissue of forfeited shares does not constitute appropriation out of the unappropriated capital of the company
 - A is true only in the case of govt company
 - bis true only in the case of OPC

214. Board resolution is sufficient if Buy back can only be up to ___ of total paid-up Equity capital and Free Reserves
- 15%
 - 10%
 - 20%
 - 25%

215. Forfeiture can be made only if it is authorised by ___
- AOA
 - MOA
 - ROC
 - CG

216. ___ is the shortcut to forfeiture
- Lien
 - surrender
 - Rights issue
 - None of these

217. Forfeiture can be made only if it is authorised by
- AOA
 - MOA
 - ROC
 - CG

218. ___ is a shortcut to forfeiture.
- surrender
 - lien
 - rights issue
 - none of the above

219. no consideration shall be paid by the company in exchange of
- lien
 - forfeited
 - Surrender
 - none of these

220. Within 30 days of completion of buy back company shall file the details with whom
- Registrar
 - SEBI
 - Both a) & b)
 - None of the above

221. If buy back is made from free resources then what should be created
- Debenture Redemption Reserve
 - Capital Redemption Reserve
 - Statutory liquid Ratio.
 - None of the above

222. The number of days within which a company should file a copy of the Tribunal Order with the ROC is
- 30 days of the date of order
 - 29 days of the date of order
 - 31 days of the date of order
 - 10 days of the date of the order

223. Which of the following is not the requirement to be complied before buy back?
- It should be authorised by articles.
 - A Special Resolution authorising the buyback should be passed.
 - The buy back is 15% less than of the aggregate of the paid up capital & free reserves.
 - All the shares/other specified securities for buy back are fully paid up.

224. A company which has defaulted on payment of Term Loan & Interest thereon to Bankers is prohibited to do
- Preferred stock.
 - Capital surplus.
 - Buy Back.
 - Retained earnings

225. In case of buyback of shares by a listed company the letter of offer to the shareholders shall be dispatched not earlier than -
- 10 days from its submission to the SEBI in draft form
 - 15 days from its submission to the SEBI in draft form
 - 21 days from its submission to the SEBI in draft form
 - 30 days from its submission to the SEBI in draft form



226. In case of buyback of shares by a listed company, the letter of offer to the shareholders shall be dispatched not earlier than

- (a) 10 days from its submission to the SEBI in draft form
- (b) 15 days from its submission to the SEBI in draft form
- (c) 21 days from its submission to the SEBI in draft form
- (d) 30 days from its submission to the SEBI in draft form

227. A company can purchase its own shares or Other specified securities out of

- (a) Free reserves and securities premium account.
- (b) Only securities premium account
- (c) Only out of free reserves and fixed assets.
- (d) Only out of paid up capital and reserves and Current year profits.

228. Buy back of shares is process of:

- (a) Acceptance of a valid surrender of shares
- (b) Reduction of capital
- (c) Redemption of preference shares
- (d) None of the above

229. A company cannot lend any money to anyone for the purpose of

- (a) To buy another company's shares
- (b) To buy debentures
- (c) To buy property
- (d) To purchase its own shares.

230. Appointment of debenture trustee is mandatory in case of

- (a) Unsecured debenture
- (b) Irredeemable debentures
- (c) Secured Debentures
- (d) Convertible Debentures

231. The date of redemption shall not exceed _____ from the date of issue:

- (a) 30 years
- (b) 20 years
- (c) 12 years
- (d) 10 years

232. Buy back securities should be physically destroyed within _____ days

- (a) 7
- (b) 17
- (c) 21
- (d) 28

233. After buy back company can't issue the same kind of shares for _____ months

- (a) 6
- (b) 12
- (c) 18
- (d) 24

234. Within 30 days of completion of buy back, company shall file the details with whom _____

- (a) Registrar
- (b) SEBI
- (c) Both (a) & b)
- (d) None of the above

235. If buy back is made from free resources then what should be created

- (a) Debenture Redemption Reserve
- (b) Capital Redemption Reserve
- (c) Statutory liquid Ratio.
- (d) None of the above

236. The share capital of a company may be reduced by _____

- (a) an ordinary resolution
- (b) a special resolution.
- (c) a resolution of the board of directors
- (d) obtaining permission from the company law board

237. A Person ceases to be a company members when _____

- (a) He lost his share certificate.
- (b) He becomes insolvent
- (c) His share certificate is converted into a share warrant.
- (d) His shares are forfeited for non-payment of call monies

238. After re-issue of forfeited shares the balance of forfeited share account is transferred to _____

- (a) General reserve.
- (b) Profit & loss a/c.
- (c) Capital reserve.
- (d) None of these.

239. Which of the following securities is not redeemable?

- (a) Equity shares.
- (b) Preference shares.
- (c) Cumulative preference shares.
- (d) Debenture

240. If a company does not have a common seal, the share certificate shall be signed by:

- (a) 2 Directors
- (b) 1 Director and Company Secretary
- (c) 2 Directors and Company Secretary
- (d) Company Secretary

241. The sweat equity shares shall be locked in for a period of _____ years from the date of allotment.

- (a) 1
- (b) 2
- (c) 3
- (d) 4

242. Every company limited by shares shall keep and maintain the Register of Members in Form No.:

- (a) MGT-1
- (b) MGT-3
- (c) MGT-7
- (d) MGT-1

243. If any default is made in filing refund of money, the company and every officer, who is in default shall be liable to a penalty maximum up to:

- (a) ₹50,000
- (b) ₹75,000
- (c) ₹1,00,000
- (d) ₹1,25,000



QUESTION BANK



244. If equity shares of the company are listed on recognised stock exchange, the employees stock option scheme shall be issued, in accordance with the regulations made by:

- (a) Registrar of companies
- (b) Ministry of corporate affairs
- (c) Securities & Exchange Board of India
- (d) Relevant stock exchange

245. In case of unlisted company the duplicate share certificate shall be issued within a period of

- (a) 45 days
- (b) 3 months
- (c) 6 months
- (d) 30 days

246. A start-up company may issue sweat equity shares not exceeding its paid-up capital up to 5 years from the date of its incorporation.

- (a) 50%
- (b) 25%
- (c) 15%
- (d) 10%

247. Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued in accordance with regulations made by the

- (a) Concerned company
- (b) Registrar of Companies
- (c) Ministry of Corporate Affairs
- (d) SEBI

ANSWER KEY

1. A	2. B	3. A	4. C	5. C	6. D	7. B	8. A	9. C	10. B
11. A	12. A	13. A	14. B	15. C	16. A	17. B	18. D	19. C	20. A
21. A	22. B	23. C	24. A	25. B	26. B	27. A	28. B	29. B	30. D
31. D	32. B	33. B	34. A	35. C	36. C	37. D	38. A	39. B	40. C
41. D	42. A	43. A	44. D	45. B	46. A	47. A	48. B	49. D	50. D
51. D	52. D	53. B	54. C	55. C	56. A	57. D	58. A	59. B	60. C
61. A	62. B	63. C	64. A	65. B	66. B	67. D	68. C	69. A	70. C
71. D	72. C	73. D	74. B	75. B	76. C	77. A	78. B	79. D	80. B
81. B	82. B	83. A	84. D	85. C	86. D	87. A	88. C	89. B	90. A
91. A	92. A	93. D	94. D	95. C	96. D	97. B	98. A	99. C	100. B
101. D	102. D	103. D	104. D	105. A	106. A	107. C	108. A	109. B	110. A
111. A	112. A	113. A	114. A	115. D	116. C	117. D	118. A	119. D	120. A
121. B	122. A	123. B	124. D	125. A	126. B	127. C	128. D	129. A	130. B
131. C	132. D	133. A	134. B	135. C	136. D	137. C	138. D	139. D	140. A
141. A	142. D	143. A	144. A	145. D	146. B	147. B	148. C	149. A	150. B
151. A	152. D	153. B	154. B	155. D	156. C	157. A	158. A	159. C	160. D
161. D	162. B	163. A	164. C	165. C	166. D	167. B	168. B	169. B	170. D
171. C	172. C	173. A	174. C	175. C	176. D	177. C	178. C	179. B	180. B
181. B	182. C	183. D	184. C	185. A	186. B	187. B	188. A	189. C	190. D
191. A	192. D	193. B	194. C	195. B	196. B	197. D	198. A	199. D	200. A
201. C	202. B	203. D	204. A	205. A	206. A	207. B	208. D	209. D	210. A
211. A	212. B	213. B	214. B	215. B	216. B	217. B	218. A	219. C	220. A
221. B	222. C	223. C	224. C	225. C	226. C	227. A	228. D	229. D	230. C
231. D	232. A	233. A	234. A	235. B	236. B	237. D	238. C	239. A	240. C
241. C	242. A	243. C	244. C	245. B	246. A	247. D			



11. DEPOSITS

THEORY QUESTIONS

PREVIOUS YEAR QUESTIONS & MOP & RTP

[MTP Dec 2017]

1. Write about the rules regarding repayment of deposits accepted before the commencement of Companies Act, 2013

Answer.

Section 74 (1) provides that if any deposit is accepted before the commencement of the Companies Act, 2013 the amount of such deposit or part thereof or any interest due thereon remains unpaid the company shall within a period of 3 months from such commencement or from the date on which such payments due at any time thereafter the company shall-

- file a statement of all deposits accepted by the company and the sums remaining unpaid on such amount with interest thereon along with the arrangements made for such repayment with the Registrar within a period of three months from such commencement or from the date on which such payments are due; and
- repay within one year from such commencement or from the date on such payments are due, whichever is earlier.

Section 74(2) provides that the Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters allow further time as considered reasonable to the company to repay the deposit.

2. Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

Answer.

Rule 2(1)(c)- Amounts which are not considered as deposits when received by a company in the ordinary course of business

Any amount received in the course of the business of the company -

- (a) as an **ADVANCE** for the **supply of goods or services** provided that such advance is appropriated against supply of goods or provision of services **within 365 days**. Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days shall not apply.
- (b) as **ADVANCE** received in connection with **consideration for an immovable property**, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.
- (c) as **SECURITY DEPOSIT** for the **performance of the contract** for supply of goods or services.
- (d) as **ADVANCE** received under **long term projects for supply of capital goods** except those covered under item (b) above.
- (e) as an **ADVANCE** towards **consideration for providing future services in the form of a warranty or maintenance contract** as per written agreement or arrangement, if the period for providing such services does not exceed
 - the period prevalent as per common business practice or
 - 5 years,
 whichever is **less**.
- (f) as an **ADVANCE** received and as allowed by **any sectoral regulator** or in accordance with directions of Central or State Government.
- (g) as an **ADVANCE** for **subscription towards publication**, whether in print or in electronic to be adjusted against receipt of such publications.

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be **deemed to be a deposit** under these rules.

Explanation: For the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of **15 days** from the date they become due for refund.



3. Can XYZ Private Limited accept the deposits from its members to the extent of ₹50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ₹50.00 Lakh.

Answer.

Section 73 & Rule 3(3)- Maximum Deposits

Maximum Deposits that every Company may accept from its MEMBERS u/s 73:

Type of company	Maximum Deposits from Members
Ineligible Public Companies	35% of {Paid up Share Capital + Free Reserves + Securities Premium}
Private Company	100% of {Paid up Share Capital + Free Reserves + Securities Premium}
Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.	

Therefore, the company, XYZ Private Limited, being a **PRIVATE** Company can accept the deposits from its members to the extent of ₹50.00 Lakh = 100% of {Paid up Share Capital + Free Reserves + Securities Premium}

4. State the procedure to be followed by the companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies?

Answer.

Section 73-Procedure to accept deposits from its members

- 1) Pass Ordinary Resolution in GM
- 2) Follow Companies (Acceptance of Deposits) Rules, 2014,

A company may accept deposits from its members by complying with the following conditions:

- (a) Issue a circular in Form DPT-1 to its members including therein a statement showing the financial position of the company, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company;
- (b) Filing DPT- 1 with ROC within 30 days before circulating it to members;
- (c) Maintain Liquidity: Depositing, on or before the 30th day of April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the financial year and kept in a scheduled bank in a separate bank account to be called Deposit Repayment Reserve Account (DRRA)
- (d) Deposit Insurance: Provide such deposit insurance in such manner and to such extent as may be prescribed; [Omitted via The Companies (Amendment), 2017].
- (e) No subsisting defaults: Company shall certify that it has not committed any default in the repayment of deposits or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of 5 years had elapsed since the date of making good the default;

- (f) Furnishing Security: Company shall provide security for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Section 73 Exemptions to Private Companies

Exemption Chart for Private Companies		
Type of Private Company	Enhanced Limit on Deposits	Exemption Notification
Private Company	100% of {Paid up Share Capital+ Free Reserves + Securities Premium}	Exempted from conditions given in Section 73 (2) (a,b,c,e)
Start-Up Private Company (For First 10 years)	No Limit	
Conditional Private Company (See 3 Conditions Below)	No Limit	

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.

Note:

Conditional Private Company is a private company which fulfils **ALL** the following conditions:

- (a) No body corporate investor: which is not an associate or a subsidiary company of any other company;
- (b) Maximum Borrowings Limit: the borrowings of such a company from banks or financial institutions or any body corporate is less than Lower of:
 - 1) 2 X {Paid up Share Capital}
 - 2) ₹50 crores; and

No subsisting Default: such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.

5. Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

Answer.

Rule 7-Appointment of Trustee for Depositors

Appointment

No company shall issue a circular in DPT-1 unless the company has appointed 1 or more trustees for depositors for creating security for the deposits by passing **Board Resolution in Board Meeting [BR in BM]**

Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular that the trustees for depositors have given their consent to the company to be so appointed.

**Deposit Trust Deed**

The company shall execute a deposit trust deed in **Form DPT-2** at least **7 days** before issuing the circular.

Disqualifications

No person shall be appointed as a trustee for the depositors, if the proposed trustee-

- (a) is a **director, key managerial personnel** or any other **officer** or an **employee** of the company or of its holding, subsidiary or associate company or a depositor in the company;
- (b) is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (c) has any **material pecuniary relationship** with the company;
- (d) has entered into any **guarantee arrangement** in respect of principal debts secured by the deposits or interest thereon;
- (e) is **related** to any person specified in clause (a) above.

Removal

No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of **ALL the directors in Board Meeting [Unanimous Board Resolution]**.

Provided that in case the company is required to have independent directors, at least 1 independent director shall be present in such meeting of the Board.

6. What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

Answer.

Section 76-Credit Rating

- (1) Every eligible company shall be required to **obtain the credit rating** from a recognised credit rating agency which ensures adequate safety.
- (2) The credit rating shall be obtained for every year during the tenure of deposit.
- (3) The credit rating must be specified in the circular **DPT-1**.
- (4) A copy of the credit rating shall be sent to ROC along with Return of Deposits in Form **DPT-3**. The credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits.

7. Can a Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

Answer.

Section 76-Maximum Amount of Deposits for Eligible Government Company

Maximum Amount of Deposits that **ELIGIBLE** Company may accept from its **MEMBERS** or **PUBLIC** = 35% of (Paid up Share Capital + Free Reserves + Securities Premium)

Conclusion

Therefore, an eligible Government Company can accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

EXTRA QUESTIONS

8. Shish Ltd. having a net-worth of 80 crores and turnover of 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.

Acceptance of deposit from public:

According to section 76 of the Companies Act, 2013, a public company, having net worth or pt 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 the deposit holders in accordance with such rules as may be prescribed.

Conclusion: Since, Ashish Ltd. has a net worth of 80 crores and turnover of 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 fulfil the eligibility criteria of net worth or turnover both and then the other conditions as stated above.



9. State true or false.

- (i) XYZ Private Limited may accept the deposits from its members to the extent of 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is 60.00 Lakh.
 (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

Answer.

(i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of Such deposits not exceeding 35% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Conclusion: Therefore, the given statement of eligibility of XYZ Private Ltd. to accept deposits from its members to the extent of 60.00 lakh is True.

ii. A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Conclusion: Therefore, the given statement prescribing the limit of 25% to accept deposits is False

Crux: Upper limit on acceptance of Deposit:

Sec 73 - Deposit from Members
 Normal company - 35% of Limit
 Private company - 100% of Limit

Sec 76 - Deposit from Public
 Eligible non-government company - 25% of Limit
 Eligible government company - 35% of Limit

Limit : PUSC + FR+ Sec Prem A/c

CASE STUDY QUESTIONS

10. Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;

- (i) ₹5,00,000 raised by Khushi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
 (ii) ₹2,00,000 received from Mr. A, an EMPLOYEE of the company who is drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.
 (iii) Amount of ₹3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.

Answer.

Section 2(31) and Rule 2(1)(c)- Definition of Deposits

"DEPOSIT" includes

- any receipt of money
- by way of deposit or loan or in any other form by a company
- but does not include such categories of amount as may be prescribed in consultation with RBI.

However certain receipts as prescribed in Rule 2(1)(c) of the Companies (Acceptance of deposit) Rules, 2014 are NOT regarded as Deposits.

Answer 1:

As per Rule 2(1)(c), the following is NOT considered as Deposits.

Any amount raised by issue of Listed Unsecured non-convertible debentures.

In the first case, where ₹5,00,000 raised by the Khushi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will NOT be considered as deposits.

Answer 2:

As per Rule 2(1)(c), the following is NOT considered as Deposits.

Any amount received from an EMPLOYEE of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing SECURITY DEPOSIT.

In the second case, ₹2,00,000 was received from Mr. A, an employee of the company drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-



interest bearing security deposit. This amount received by company from employee is more than his annual salary. So it is considered as Deposits.

Answer 3:

As per Rule 2(1)(c), the following is NOT considered as Deposits.

Any amount received from a person who, at the time of the receipt of the amount, was a DIRECTOR of the Public/Private company or RELATIVE of the director of the Private company. Provided that the director/relative should furnish a declaration in writing to the effect that the amount is NOT being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

In the third case, amount of ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother, i.e. the amount is NOT being given out of funds acquired by him by borrowing or accepting loans or deposits from others. So it will NOT be considered as deposits.

11. Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

- Sumit, one of the directors of TATA Technology Private Limited, a start-up company, requested his close friend Ritu to lend to the company ₹30.00 lacs in a single tranche by way of a convertible note repayable within a period 6 years from the date of its issue. Advise whether it is a deposit or not.
- Parag Traders Limited received a loan of ₹30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.
- Shantanu Bakers Limited failed to repay deposits of ₹50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?
- Readymade Garments Limited wants to accept deposits of ₹50.00 lacs from its members for a tenure which is less than 6 months. Is it a possibility?

Is it in order for the Bajaj Housing Finance Limited to accept and renew deposits from the public from time to time?

Answer:

Section 2(31) and Rule 2(1)(c)- Definition of Deposits

"DEPOSIT" includes :

- any receipt of money
- by way of deposit or loan or in any other form by a company
- but does not include such categories of amount as may be prescribed in consultation with RBI

However certain receipts as prescribed in Rule 2(1)(c) of the Companies (Acceptance of deposit) Rules, 2014 are NOT regarded as Deposits.

Answer 1:

As per Rule 2(1)(c), the following is NOT considered as Deposits.

An amount of ₹25 lakhs or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period ≤ 10 years from the date of issue) in a single tranche, from a person.

In the given case, TATA Technology Private Limited, a start-up company, received ₹30.00 lacs from Ritu in a single tranche by way of a convertible note which is repayable within a period of 6 years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of 10 years from the date of its issue, the amount of ₹30.00 lacs shall NOT be considered as deposit.

Answer 2:

As per Rule 2(1)(c), the following is NOT considered as Deposits.

Any amount received from a person who, at the time of the receipt of the amount, was a DIRECTOR of the Public/Private company or RELATIVE of the director of the Private company. Provided that the director/relative should furnish a declaration in writing to the effect that the amount is NOT being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Parag Traders Limited when the company received a loan of ₹30.00 lacs from her. Further, it is assumed that she had furnished the above declaration.

If these conditions are satisfied ₹30.00 lacs shall NOT be treated as deposit.

Answer 3:

Section 76A- Punishment for contravention of Section 73 or 76

Where a company Fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, then the punishment shall be as follows:

On company	Minimum punishment	₹1 crore or twice the amount of deposits accepted by the Company, whichever is lower
	Maximum punishment	₹10 crores



On officer in default	Imprisonment ≤ 7 Years AND Fine ₹25 lacs ≤ Fines ≤ ₹2 crores
Wilful offence by officer in default with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities	Punishment u/s 447

By not repaying the deposit of ₹50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, Shantanu Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Hence the above punishment u/s 76A shall be imposed.

Answer 4:

Rule 3(1): Tenure of Deposits

No company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit.

Very Short Term Deposits [3 months-6 months]

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than 6 months from the date of deposit or renewal, as the case may be, subject to the condition that -

- such deposits shall not exceed 10% of the aggregate of the [Paid-up share capital, free Reserves and securities premium account] of the company, and
- such deposits are repayable not earlier than 3 months from the date of such deposits.

In the given case of Readymade Garments Limited, it wants to accept deposits of ₹50 lacs from its members for a tenure which is less than 6 months. It can do so if it satisfies the above 2 conditions

Answer 5:

As per Section 73(1), on and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

Exception:

- Nothing in this sub-section shall apply to:
- Banking Company.
- NBFC.
- Housing Finance Company.

Such other company as CG may specify in consultation with RBI.

In the given case, it is assumed that Bajaj Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73(1) with respect to the acceptance of deposit from public shall not apply to it. In other words, it being an exempted

company, can accept deposits from the public from time to time without following the prescribed manner.

12. The Promoters of Jayrm Mills Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

- Whether the unsecured loan will be regarded as Deposit or not.
- What will be your answer in case the entire loan obtained from SIDCL is repaid?

Answer.

Section 2(31) and Rule 2(1c)-Definition of Deposits

"DEPOSIT" includes

- any receipt of money
- by way of deposit or loan or in any other form by a company
- but does not include such categories of amount as may be prescribed in consultation with RBI

However certain receipts as prescribed in Rule 2(1)(c) of the Companies (Acceptance of deposit) Rules, 2014 are NOT regarded as Deposits, such as:-

Amount brought by Promoters

Any amount brought in by the PROMOTERS of the company by way of unsecured loan, subject to fulfilment of ALL 3 conditions below:

- the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; AND
- the loan is provided by the promoters themselves or by their relatives or by both; AND
- the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Conclusion

- Hence, in the instant case, the unsecured loan contributed by promoters of Jayrm Mill Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.
- In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of Jayrm Mills Limited will be regarded as deposit.



13. SRK Ltd. received share application money of ₹50.00 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit.

The share application money of ₹5.00 Lakh received from Mr. Salman, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of SRK Ltd. reported to the Board that the entire amount of ₹50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

Answer.

Section 2(31) and Rule 2(1)(c)- Definition of Deposits

"DEPOSIT" includes

- any receipt of money
- by way of deposit or loan or in any other form by a company
- but does not include such categories of amount as may be prescribed in consultation with RBI.

However certain receipts as prescribed in Rule 2(1)(c) of the Companies (Acceptance of deposit) Rules, 2014 are NOT regarded as Deposits, such as:

Escrow Amount received from issue of Securities

Any amount received and held pursuant to an offer made for subscription to any SECURITIES, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for.

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

any adjustment of the amount for any other purpose shall not be treated as refund.

In simple words,

- Share Application Money pending Allotment ≤ 75 days is NOT Deposit.
- Share Application Money pending Allotment > 75 days is Deposit.

Conclusion

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

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has more 15 days to refund

such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹50 Lac as 'Deposits' on 31.07.2019.

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

14. AAC Limited having a NET WORTH of ₹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'

OR

Transport Limited having a net worth of ₹130 crore wants to accept deposits from its members. It has approached you to advise whether it falls within the category of an eligible company? What special care has to be taken while accepting such deposits from members?

Answer.

Section 76-Eligible Company

Notwithstanding anything contained in section 73, a PUBLIC company, having:

- a) Net Worth ≥ ₹100 crores OR
- b) Turnover ≥ ₹500 crores,

may accept deposits from persons other than its members by passing SPECIAL RESOLUTION Subject to compliance with other conditions mentioned in Section 73 (2) (a,b,c,e) and subject to Companies (Acceptance of Deposits) Rules, 2014.

Rule 2(1)(e) An ELIGIBLE company, which is accepting deposits within the limits u/s 180(1)(c), may accept deposits by means of an ORDINARY RESOLUTION.

Extra Conditions to be followed by an Eligible Company for accepting Public Deposits

- (1) Every eligible company shall be required to obtain the credit rating from a recognised credit rating agency which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
- (2) Every eligible company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders, failing which it shall be described as 'Unsecured Deposits'

An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1. Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.



Maximum Amount of Deposits that ELIGIBLE Company may accept from its MEMBERS or PUBLIC

ELIGIBLE Public Companies	Maximum Amount of Deposits
From its MEMBERS	10% of (PUSC+ FR+SP)
From PUBLIC	25% of (PUSC + FR+SP)
Total	35% of (PUSC + FR+ SP)
ELIGIBLE Government Companies	
From its MEMBERS and PUBLIC	35% of (PUSC + FR+SP)

{PUSC+FR+ SP} = (Paid up Share Capital)+ Free Reserves + Securities Premium)

Conclusion

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

15. Varun Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital	₹70 Crores
Securities Premium	₹20 Crores
Free Reserves	₹20 Crores
Long-term borrowings	₹50 Crores

The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.

(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.

(ii) Calculate the maximum amount of deposit Varun Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.

Answer.

Sec 76-Deposits from Public

Eligible Company

A PUBLIC company, having:

a) Net Worth $\geq$ ₹100 crores OR

b) Turnover $\geq$ ₹500 crores,

may accept deposits from persons other than its members by passing **SPECIAL RESOLUTION**

Tenure of Deposits

No company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of **less than 6 months or more than 36 months** from the date of acceptance or renewal of such deposit.

Very Short Term Deposits [3 months-6 months]

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than 6 months from the date of deposit or renewal, as the case may be, subject to the condition that-

- such deposits shall not exceed **10% of the aggregate of the [Paid-up share capital, free Reserves and securities premium account]** of the company, and
- such deposits are repayable **not earlier than 3 months** from the date of such deposits.

Maximum Amount of Deposits that ELIGIBLE Company may accept from its MEMBERS or PUBLIC u/s 76:

ELIGIBLE Public Companies	
1) From its MEMBERS	10% of (PUSC+ FR+SP)
2) From PUBLIC	25% of (PUSC + FR+SP)
Total	35% of (PUSC + FR+ SP)
ELIGIBLE Government Companies	
From its MEMBERS and PUBLIC	35% of (PUSC + FR+SP)

Answer 1:

Net worth of Varun Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital	₹70 crores
Free Reserves	₹20 crores
Securities premium	₹20 crores
Total	₹110 crores

Hence, Varun Limited is an eligible company, since its Net worth is in excess of ₹100 crores.

Calculation of the Maximum amount of Public Deposit

For Plan A:

Since the maximum period of deposits is 4 months, such deposits shall not exceed **10% of the aggregate of the [Paid-up share capital, free Reserves and securities premium account]** of the company.

= 10% of 110 crores (70 + 20+ 20) = ₹11 crores.

**For Plan B:**

TOTAL Maximum amount of Public deposits=25% of 110 crores (70 + 20+20)	₹ 27.5 crores
Less: Maximum amount of Public deposits under PLAN-A as shown above =	(₹11 crores)
Therefore, Maximum amount of Public deposits under PLAN-B =	₹16.5 crores

Answer 2:

In case Varun Limited is a Government Company,
Maximum amount of Public deposits under PLAN-B assuming there is no Plan-A
= 35% of 110 crores (70+ 20+20) = ₹38.5 crores.

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

Particulars	₹ in Crores
Land & Building	60
Plant & Machinery	20
Factory Shed	20
Trade Mark	20
Goodwill	25

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Answer.**Sec 76- Deposits from Public - Security created**

Every eligible company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders, failing which it shall be described as 'Unsecured Deposits'.

Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states :-

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

Conclusion

In the given question,

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

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

17. Answer the following citing relevant provisions:

- Prayas Electricals Limited having paid-up capital of 1 crore availed a term loan of 10,00,000 from Beta Bank Limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?
- Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?
- Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of 10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit Rs. 1,00,000 for 36 months jointly with his wife and three sons. Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.

Answer.**Answer (i)**

In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall NOT be considered as 'deposit'. In view of the above, the contention of Mr. Sambhav that the term loan of 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

Answer (ii)

Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall NOT be used by a company for any purpose other than repayment of deposits.

Since there is a prohibition, Eklavya Publishing Company Limited is **not permitted** to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.



Answer (iii)

Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.

In view of this provision, Sanjiv can deposit 1,00,000 with Utsah Textiles Private Limited jointly with two other persons ONLY irrespective of the fact that all the five persons are members of the company.

18. Shubhra Chemicals Private Limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to 200% of aggregate of its paid-up share capital, free reserves and securities premium account. What are the conditions it must fulfill before such acceptance?

Answer.

Rule 3(3): Maximum Deposits that every Company may accept from its MEMBERS

The maximum limit in respect of deposits to be accepted from members shall not apply to the PRIVATE company which fulfils ALL of the following conditions, namely:

(a) No body corporate investor: which is not an associate or a subsidiary company of any other company;

(b) Maximum Borrowings Limit: the borrowings of such a company from banks or financial institutions or any body corporate is less than Lower of:-

(i) 2 x PUSC

(ii) 50 crores; and

(c) No subsisting Default: such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under Section 73.

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

Conclusion

In case Shubhra Chemicals Private Limited satisfies all the above conditions, then it can accept 'deposits' from its members amounting to 200% of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

12. CHARGES

IMP THEORY QUESTIONS

1. What is meant by a floating charge? State the characteristics of a floating charge. When does a floating charge crystallise?

Answer.

Floating charge

A floating charge, also known as a floating lien, is a security interest or lien over a group of non-constant assets that may change in quantity and value. Companies will use floating charges as a means of securing a loan.

characteristics of a floating charge

The main characteristics of a floating charge are as follows:

- (i) It is a charge on a class of the company's assets, present and future, that class being one which, in the ordinary course of the business is changing from time to time.
- (ii) Generally, it is contemplated that the company carry on its business in an ordinary way with such a class of assets till some event occurs on which the charge is to settle down on the property as then existing and the charge becomes fixed. The moment the charge crystallises, it becomes a fixed charge.

When Floating Charge Crystallize

A floating charge crystallizes or gets fixed when:

- (1) The company goes into liquidation or
- (2) The company ceases to carry on business or
- (3) A receiver is appointed or
- (4) A default is made in paying the principal and/ or interest and the holder of the charge brings an action to enforce his security.



2. Distinguish between "fixed Charge" and "Floating charge".

Answer.

	Fixed charge	Floating charge
Restriction on Sale	Company <u>CANNOT</u> deal with the assets except with the consent of the charge holder	Company <u>CAN</u> deal with the assets the way it likes until the charge becomes fixed.
Priority of charge	Fixed charge has always <u>PRIORITY</u> over Floating charge	Floating charge is always <u>SECONDARY</u> to Fixed charge.
Form of Asset	The Asset over which Charge is created remains <u>unchanged</u> .	The Asset over which Charge is created is Mobile and <u>shifting in character</u>
Duration of Loan	<u>Long Term Loans</u> usually require Fixed Charge such as Mortgage of Buildings, etc.	Working Capital Loans and Cash Credit is given usually against Floating Charge such as hypothecation of stock.
Present/Future Asset	It is a charge on the <u>PRESENT</u> Assets.	It is a charge on the <u>PRESENT & FUTURE</u> Asset.

3. Is registration of a charge compulsory? If not, what are the effects of non-registration?

Answer.

Section 77-Registration of Charge with ROC

Yes. Non-registration of charge will convert a secured lender who creditor into an unsecured creditor. Any subsequent registers the charge on the property will get priority over the 1st lender in whose name charge was not registered.

Consequence of Non-Registration of Charge1st-Charge void against the Liquidator if NOT registered.

No charge created by a company shall be taken into account by the liquidator unless it is duly registered as above and a certificate of registration of such charge is given by the ROC. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

2nd-Loss of priority in Payment

Another important consequence of non-registration is that the charge-holder loses priority. If the Asset is charged in favour of any subsequent lender, then the first lender will rank below the subsequent lender in the event of winding up of company.

3d-Obligation of company to repay debt even if charge not registered

However, Non-registration of charge shall not prejudice any contract or obligation for the repayment of the money secured by a charge. This means that the debt is valid and may be enforced against the company through the courts by filing a suit, but the security is lost.

4th-Punishment on Company and its officers u/s 86

Further, it may be noted that failure to register charge shall not absolve a company from its liability in respect of any offence under this Chapter.

4. State the particulars to be filed with the Registrar of Companies in case of such debentures secured by a charge on certain assets of the company.

Answers.

Section 77- Charge on issue of debentures

Under section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge with the Registrar within 30days of its creation.

Registration of Charge on issue of debentures

The company shall file the following with the Registrar within 30days of its creation:-

- The particulars of charge;
- Instrument for the creation of the charge [Debenture Trust Deed];

Application in Form CHG-9.

5. How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

Answer.

Rule 3-Verification of Charge

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

- (a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by
- a certificate issued either under the seal, if any, of the company, or
 - under the hand of any director or
 - company secretary of the company or
 - an authorised officer of the charge holder or



- under the hand of some person other than the company who is interested in the mortgage or charge

(b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by -

- a certificate issued under the hand of any director or
- company secretary of the company or

an authorised officer of the charge holder

6. Is the Registrar of Companies is bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

Answer.

Section 82-Company to Report Satisfaction of Charge

The ROC shall send a Show Cause Notice to the Charge Holder calling upon him/it to show cause within 14 days as to why payment or satisfaction in full should not be recorded as intimated to the ROC, and if no cause is shown, by such holder of the charge, the ROC shall order that a memorandum of satisfaction [Form CHG-5] shall be entered in the register of charges kept by him u/s 81 and shall inform the company that he has done so.

Exemption to ROC from sending Show Cause Notice

The Show Cause Notice shall not be required to be sent, in case the intimation to the ROC in this regard is in the Form CHG-4 and signed by the holder of charge.

Conclusion

Hence the ROC is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

7. Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of Charges.

Answer

Section 85-Company's Register of Charges

Register of Charges to be kept in the Registered Office of the Company

Every company shall keep at its registered office

- 1) Register of Charges in Form CHG-7.
- 2) Copy of the Instrument (Loan Agreement) creating the charge.

Inspection of Register by Member/Creditor & Other Person

The Register of Charges and Instrument of Charges shall be open for inspection during business hours-

- (a) by any member or creditor without any payment of fees; or
- (b) by any other person on payment of fees, subject to such reasonable restrictions as the company may, by its Articles, impose.

8. Define the term "charge" and also explain what the punishment for default with respect to registration of charge is as per the provisions of the Companies Act, 2013. (4 Marks) (Nov 2014)

Answer.

Section 2(16) - Definition of Charges

"Charge" means

- (1) an Interest or Lien
- (2) created on the Property or Assets of a company or any of its Undertakings or both
- (3) as SECURITY for repayment of loan
- (4) and includes a mortgage.

Section 86-Punishment

If any company contravenes any provision of this Chapter, the punishment shall be as follows:

On Company	₹ 500000
On officer in Default	₹ 50000

If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.

9. Briefly explain the provisions enforced by the Companies (Amendment) Second Ordinance, 2019 when a charge created before 02-11-2018 is not registered within the prescribed period of thirty days as provided in Section 77 (1).

Answer.

As per section 77(1) of the companies Act, 2013 every company creating a charge

- a) within or outside India,
- b) on its property or assets or any of its undertakings,
- c) whether tangible or otherwise, and
- d) situated in or outside India, [ICAI Module] is required to register the particular of the charge with the registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 and it was not registered within the prescribed period of thirty of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.



Further, if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees.

It is provided that different fees may be prescribed for different classes of companies

10. (i) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

(ii) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

Answer.

(i) According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

(ii) As per section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow Such registration to be made within a period of 300 days of such creation on payment of such additional fees as may be prescribed.

According to clause (a) of the Second Proviso to Section /7 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months 02/11/2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

Hence, the given statement is True

CASE STUDY QUESTIONS

11. Rahul (Private) Limited on 3rd April 2022 obtained 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rahul (Private) Limited, from a financial institution.

(i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

OR

State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the ROC?

Answer. 4

Circumstances under which necessity to create a charge arises

Circumstances under which necessity to create a charge arises in following scenarios: -

- (1) The Company obtains loan from Bank or other Lenders against the security of its assets.
- (2) The Company obtains Cash Credit facility against the security of its working capital.
- (3) The Company hypothecates its assets as a contractual condition against Breach of contract.

Section 77-Time Limit for Registration of Charges

It shall be the duty of EVERY company to register the particulars of the charge together with the

- (1) Form No.CHG-1 (for Loans) or Form No.CHG-9 (for debentures) AND
- (2) Instruments creating such charge (Loan Agreement or Mortgage Deed) in, with the ROC within 30 days of its creation.

Charges created on or after 2nd November 2018

Condo nation	Extra Payment	Enhanced Time Limit
1 st Condonation by ROC	ADDITIONAL fees	Within 60 days of such creation i.e., Next 30 days
2 nd Condonation by ROC	AD-VALOREM fees	Within Further 60 days

Conclusion (i)

(A) Rahul (Private) Limited on 3rd April 2022 obtained 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security. So charge must be registered with ROC within 30 days, i.e., 31 March 2022.



(B) Rahul (Private) Limited is not required to create a charge for 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

Conclusion (ii)

The time limit and extension procedure for registration of charges is described above.

12. NO 1 Soaps and Detergents Limited realised on 2nd May 2019 that particulars of charge created on 12th March 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June 2019 instead of 2nd May 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer. 5

Section 77 Time Limit for Registration of Charges

It shall be the duty of EVERY company to register the particulars of the charge together with the:-

- (1) Form No.CHG-1 (for Loans) or Form No.CHG-9 (for debentures) AND
- (2) Instruments creating such charge (Loan Agreement or Mortgage Deed) in, with the ROC within 30 days of its creation.

Charges created on or after 2nd November 2018

Condo nation	Extra Payment	Enhanced Time Limit
1 st Condonation by ROC	ADDITIONAL fees	Within 60 days of such creation i.e., Next 30 days
2 nd Condonation by ROC	AD-VALOREM fees	Within Further 60 days

Conclusion

Case 1:- Company realizes on 2nd May 2019 (1st Condonation)

Since the initial time limit of 30 days has already expired on 11th April 2019 from the date of creation of charge (12 March 2019), NO 1 Soaps and Detergents Limited should immediately file CHG-1 with the Registrar with ADDITIONAL fees seeking condonation giving sufficient cause for non-registration of charge.

Case 2:- Company realizes on 7th June 2019 (2nd Condonation)

Since the time limit of 60 days (30+ 30) has already expired on 11th May 2019 from the date of creation of charge (12 March 2019), NO 1 Soaps and Detergents Limited should immediately file CHG-1 with the Registrar with AD-VALOREM fees seeking condonation giving sufficient cause for non-registration of charge.

13. Referring to the provisions of the Companies Act, 2013, examine the validity of the following: Blue Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013.

Answer.

Section 77-Duty to Register Charges, etc.

It shall be the duty of EVERY company creating a charge on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India,

to register the particulars of the charge signed by:

- (a) the company (Borrower) and
- (b) the charge-holder (Lender)

together with the:-

- (1) Form No.CHG-1 (for Loans) or Form No.CHG-9 (for debentures) AND
- (2) Instruments creating such charge (Loan Agreement or Mortgage Deed) in, with the ROC within 30 days of its creation.

Conclusion

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Blue Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.



14. Mr. Hardik purchased a commercial property in Delhi belonging to IPL Limited after entering into an agreement with the company. At the time of registration, Mr. Hardik comes to know that the title deed of the company is not free, and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of IPL Limited is correct?

Answer.

Section 80-Date of Notice of Charge = Date of Registration of Charge mentioned in CHG-2
Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Conclusion

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Hardik, therefore, ought to have been careful while purchasing property and should have verified beforehand that IPL Limited had already created a charge on the property.

In view of above, the contention of IPL Limited is correct.

15. HYPER Limited hypothecated its plant to a nationalised bank and availed a term of loan. The Company registered the charge with the registrar of Companies. The Company settled the term loan in full. The Company requested the bank to issue a letter confirming the settlement of the term loan. The bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstances. State the time frame up to which the Registrar of Companies may allow the company to intimate satisfaction of charges.

Answer.

Section 82-Company to Report Satisfaction of Charge

Intimation to ROC on Payment or Satisfaction of Charge

A company shall give intimation to the ROC in Form CHG-4, of the payment or satisfaction in full of any charge within 30 days from the date of such payment or satisfaction.

Condonation of delay

Provided that the ROC may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within 300 days of such payment or satisfaction on payment of such additional fees as may be prescribed.

Intimation by ROC to Charge Holder

The ROC shall send a Show Cause Notice to the Charge Holder calling upon him/it to show cause within 14 days as to why payment or satisfaction in full should not be recorded as intimated to the ROC, and if no cause is shown, by such holder of the charge, the ROC shall order that a memorandum of satisfaction [Form CHG-5] shall be entered in the register of charges kept by him u/s 81 and shall inform the company that he has done so.

If any cause is shown, the ROC shall record a note to that effect in the register of charges and shall inform the company.

Exemption to ROC from sending Show Cause Notice

The Show Cause Notice shall not be required to be sent, in case the intimation to the ROC in this regard is in the Form CHG 4 and signed by the holder of charge.

Conclusion

HYPER Limited should follow the above procedure and time - line to register the satisfaction of charge.

16. Suresh acquired a property from CSK Limited which was mortgaged to MI Bank. He settled the dues to MI Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor MI Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Suresh approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer.

Section 83 Power of ROC to make Entries of Satisfaction & Release in Absence of Intimation from Company

If:

- (a) That the debt for which the charge was given has been paid in whole or in part; or
- (b) The property charged has ceased to form part of the company's property or undertaking then the ROC, [on evidence being given to his satisfaction] shall enter in the register of charges a memorandum of satisfaction of charge [CHG-5].

The ROC shall inform the affected parties within 30 days of making the entry in the register of charges kept u/s 81.

Conclusion

Therefore, Mr. Suresh can follow the above procedure and approach the Registrar to make Entries of Satisfaction & Release of Charge.



17. CSK Limited created a charge in favour of MI Bank. The charge was duly registered. Later, the Bank enhanced the facility by another R 20 crores. Due to inadvertence this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

Answer.

Sec 79: Modification of Charge

In case of any modification in the "terms or conditions" or the extent or operation of any charge registered under that section, the Company shall file CHG-1/CHG-9 with ROC for registration of modification of charge with ROC within 30 days of such modification.

Sec 87: Rectification by Central Government (RD) in Register of Charges

The Central Government on being satisfied that

- (a) the omission to give intimation to the ROC of the payment or satisfaction of a charge, within the time required under this Chapter; or
(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was ACCIDENTAL or due to INADVERTENCE or some other SUFFICIENT CAUSE or it is not of a nature to prejudice the position of creditors or shareholders of the company; it may, on the application of the company or any person interested and on such terms and conditions as the CG deems just and expedient, direct that:

- (1) the time for the giving of intimation of payment or satisfaction shall be extended or
(2) the omission or misstatement shall be rectified.

The application in Form CHG-8 shall be filed by the company or any interested person.

Conclusion

The company is advised to immediately file an application for rectification of the Register of Charges in Form CHG-8 to the Central Government (Regional Director) as described above.

18. Fairness Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:

- (1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
(2) When can the Registrar refuse to register the charges the present scenario?

Answer.

Section 78-Application for Registration of Charge

Where a company fails to register the charge within the period of 30 days referred to in Section 77(1),

- without prejudice to its liability in respect of any offence under this Chapter,
- the person in whose favour the charge [Charge-Holder or Lender] is created may apply to the ROC for registration of the charge
- along with the instrument created for the charge,
- within such time in Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification), and
- the ROC may within a period of 14 days after giving notice to the company, allow such registration, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Re-imbursement of Charge Registration Fees to the Lender by the Company

Where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or ADDITIONAL fees or AD- VALOREM fees paid by him to the ROC for the purpose of registration of charge.

Answer (1)

Registration by Charge Holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in Section 77(1)], the person in whose favour the charge is created (i.e., charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner.

In light of above provisions, the Nationalized Bank can get the charges registered.

Answer (2)

Registrar refuse to register the Charges: The Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.



DEPOSIT & CHARGES MCQ'S

MULTIPLE CHOICE QUESTIONS

OBJECTIVES

- The correct classification of debenture on the basis of security is
 - Secured debentures, unsecured debentures
 - Security debentures, second debentures
 - Secured debentures, naked debentures
 - None of the above.
- The position of unsecured debenture holders are like....
 - Extraordinary secured creditors, Debentures, Deposits and Charges
 - Ordinary secured creditors
 - Ordinary unsecured creditors
 - Extraordinary unsecured creditors
- Debentures forms part of ____
 - capital
 - loan
 - Fund
 - none of these
- Debenture holders are
 - creditors
 - owners
 - debtors
 - shareholders
- _____ is payable even if there is no profit
 - commission
 - dividend
 - debenture interest
 - none of the above
- In case of offer or invitation for it shall be sufficient if the company passes a previous Special Resolution only once in a year, for all the offers or invitation for such debentures during the year.
 - registered debentures
 - naked debentures
 - non convertible debentures
 - convertible debenture
- _____ is issued in acknowledgement of indebtedness whose name appears in certificate.
 - debenture certificate
 - share certificate
 - share warrant
 - none of the above

8. In case of allotment debenture certificate is to be issued within _____ months.

- 1
- 2
- 3
- 4

9. Re issued debentures are treated as new debentures for the purpose of

- debenture certificates
- Income Tax
- stamp duty
- none of the above

10. In case of Partly convertible debentures non convertible portion is classified as

- debt
- equity
- both A&B
- none of the above

11. debentures which have charge on the property of the company

- secured
- unsecured
- registered
- none of the above

12. Debentures payable to person whose name appears both on debenture certificate & company's register is called

- bearer
- unregistered
- registered
- none of the above

13. charges includes

- loan
- securities
- mortgage
- hire

14. State the condition which needs to be fulfilled by a company to accept deposits from members and non members.

- a company having a net worth of not less than 100 crores or a turn Over of not less than 500 crores
- a company which has obtained the prior Consent in general meeting by means of a resolution
- a company which file special resolution with the ROC before making any invitation to the public
- All of these

15. What is the time limit created by the Companies Act 2013 regarding the creation of charge acceptance of deposits by the public?

- 30 days of such acceptance
- 40 days of such acceptance
- 28 days of Such acceptance
- 50 days of such acceptance

16. When it is proved that the deposits had been accepted by the company with an intend to defraud the depositors, who is personally liable?

- Company.
- Shareholders.
- Directors.
- Every officer of the company.



17. Minimum subscription cannot be paid by
 (a) way of premium.
 (b) way of issue of shares.
 (c) way of cash
 (d) way of issue of debentures.
18. Who is a shareholder of a company?
 (a) A person whose name is entered in its register of members.
 (b) A person who holds shares in the company.
 (c) A person whose name is entered in its register of members/holds shares in the company.
 (d) A person whose name is entered in its register of members & holds shares in the company.
19. What should a nominee do if he opt to register as debenture holder in case of a debenture holders death?
 (a) A notice in writing to the company of his intention to the Company.
 (b) An oral message to the company of his intention to the company.
 (c) A notice/ oral message to the company.
 (d) Any of the above.
20. The document issued by a company indicating its indebtedness is
 (a) Debenture.
 (b) Debenture stock.
 (c) Stock.
 (d) Debenture/debenture stock.
21. The document issued by a company indicating its indebtedness is
 (a) Debenture.
 (b) Debenture stock.
 (c) Stock.
 (d) Debenture/debenture stock.
22. Which of the following does not include deposits?
 (a) Receipt of money by way of deposits.
 (b) Receipt of money by way of loan.
 (c) Categories of amount prescribed in consultation with RBI,
 (d) Categories of amount prescribed in consultation with NCLT.
23. Which of the following conditions related to a company for acceptance of deposit from members is incorrect?
 (a) Issuance of circular to its members.
 (b) Filing a copy of the circular within 10 days before the date of issue of the circular.
 (c) Compliance of the rules prescribed by the CG in Consultation with RBI.
 (d) Passing of any Resolution in a meeting.
24. Which of the following is an incorrect condition as to deposits?
 (a) Any deposit shall not be repayable upon receiving a notice within a period of less than 12 months.
 (b) The maximum amount of deposit that can be accepted from public should be 10% of the aggregate of paid up share capital & free reserves.
- (c) The normal rate shall not exceed the maximum rate of interest/brokerage prescribed by the RBI.
 (d) Brokerage shall be paid only to a person who is authorised in writing.
25. Which of the following conditions as to circular relating to the acceptance of deposits of a company is incorrect?
 (a) It should be issued in the name of the Chairman of the company.
 (b) It should be issued on the authority of a Company.
 (c) It should be delivered to ROC for registration.
 (d) It should be signed by majority of directors of the company
26. Until which date, companies may accept deposits without Deposit Insurance Contract?
 (a) 1st Jan 2017.
 (b) 31st Jan 2017.
 (c) 1st March 2017.
 (d) 31st March 2017.
27. What is the amount covered by Deposit Insurance contract if deposit & interest is > 20,000?
 (a) Payment of amount less than 20,000.
 (b) Payment of amount not less than 20,000.
 (c) Payment of amount not greater than 20,000.
 (d) Payment of amount 20,000.
28. What is due date for return of deposits to be filed with ROC?
 (a) On 1st June.
 (b) Before 1st June.
 (c) On/Before 1st June.
 (d) On/Before 30th June every year.
29. What should a company do the amount of any deposit accepted by the company before commencement of this Act remains unpaid
 (a) The company shall file with ROC, a statement within 3 months from such commencement.
 (b) The company shall file with ROC, a statement within 4 months from such commencement.
 (c) The company shall file with ROC, a statement within 5 months from such commencement.
 (d) The company shall file with ROC, a statement within 6 months from such commencement.
30. When should the repayment of Existing deposits be made?
 (a) Within 1 year from the date of such Commencement.
 (b) Within 1 year from the date on which such payments are due,
 (c) Within 1 year from the date of such commencement or from the date on which such payments are due whichever is earlier.
 (d) Within 1 year from the date of such commencement/from the date on which such payments are due whichever is late.



31. When a company makes premature repayment of deposits that is before the expiry period for which such deposit was accepted, the interest rate payable on such deposits shall be

- (a) The same.
- (b) Reduced by 1%.
- (c) Reduced by 2%.
- (d) Reduced by 3%.

32. The charge created on Land, Building, Machinery is

- (a) Floating Charge.
- (b) Fixed Charge.
- (c) Mortgage Charge.
- (d) Crystal charge.

33. The company can deal in assets covered by without obtaining the consent of the charge holder.

- (a) Floating Charge.
- (b) Fixed Charge.
- (c) Mortgage Charge.
- (d) Crystal Charge.

34. The type of charges created on Trade debtors is

- (a) Floating Charge.
- (b) Fixed Charge.
- (c) Mortgage Charge.
- (d) Debtors Charge.

35. In which of the following cases, a floating charge crystallizes & becomes fixed?

- (a) When the company starts its business.
- (b) On the happening of an event unspecified in the deed.

- (c) When the shareholders take steps to enforce their security.
- (d) When the company goes into Liquidation.

36. Which of the following is a non-consequence of non-registration of charges?

- (a) The charges not registered with ROC as per Sec. 78, will be void.
- (b) When a charge becomes void because of non-registration the money secured thereby shall immediately become payable.
- (c) Without a registered charge, a person cannot enforce such a charge.
- (d) The Holder of an Equitable charge has no lien on the title deeds of documents deposited with him.

37. Pari Passu Clause in a Debenture means

- (a) All debentures of the series are to be paid full.
- (b) All debentures of the series are to be paid rateably.
- (c) All debentures of the series are to be paid full/paid rateably.
- (d) All debentures of the series are to be paid full & paid rateably.

38. _____ is an equitable charge.

- (e) Floating Charge.
- (f) Fixed Charge.
- (g) Mortgage Charge.
- (h) Debtors Charge.

39. A mortgage requires registration under ____

- (a) Companies Act 2013
- (b) companies act 1956
- (c) Transfer of Property Act 1882
- (d) Indian contract act 1872

40. The debentures, which are payable to the registered debenture holders is.

- (a) naked debentures
- (b) registered debentures
- (c) secured debentures
- (d) bearer debentures

41. The issue of debentures with an option to convert shall be approved by a ____

- (a) directors
- (b) a special resolution at a general meeting
- (c) company law board
- (d) central government

42. Which of the following reserve must be created for redemption of debentures?

- (a) Debenture redemption reserve
- (b) general reserve
- (c) capital redemption reserve
- (d) dividend equalisation fund

43. Debenture redemption reserve must be utilised only for the purpose of ____

- (a) redemption of debentures
- (b) paying out dividend
- (c) redemption of preference shares
- (d) purchase of fixed assets.

44. A mortgage can be created on

- (a) Specific immovable property
- (b) Movable property

- (c) Stock
- (d) All the above

45. Registration of charges must be filed with the ROC within ____ days

- (a) 30
- (b) 50
- (c) 45
- (d) 25

46. Debentures with voting rights

- (a) cannot be issued
- (b) can be issued with approval of shareholders
- (c) can be issued with the approval of CLB
- (d) can be issued with the approval of the Board

47. Registration of charge in case of debentures is to be filed in Form

- (a) CHG 9
- (b) CHG3
- (c) CHG4
- (d) CHG 8

48. Return paid on debentures is ____

- (a) interest
- (b) dividend
- (c) commission
- (d) tax

49. Interest payable through Coupons attached to the certificate is ____

- (a) bearer debentures
- (b) registered debentures
- (c) unregistered debentures
- (d) secured debentures



50. ROC may on an application by the company or charge holder allow such intimation of payment or satisfaction of charge to be made within ____ days of payment or satisfaction.

- (a) 200
- (b) 150
- (c) 300
- (d) 3 months

51. Debenture holders are ____.

- (a) owners of the company
- (b) creditors of the company
- (c) debtors of the company
- (d) none of the above

52. Which of the following charges must registered?

- (a) A floating charge on the company's assets
- (b) a charge on ship
- (c) issue of debentures
- (d) all the above

53. When the charge is created on the specific fixed property of the company, it is known as

- (a) floating charge
- (b) specific charge
- (c) fixed charge
- (d) lien

54. A floating charge will not become fixed charge in the following case.

- (a) if the company goes into liquidation
- (b) if the company ceases to carry on its business

- (c) appointment of receiver to take possession of property charged
- (d) if the company issues shares

55. All monies received with the application of shares are to be deposited

- (a) with the controller of capital issues
- (b) in the company's bank account
- (c) in a special account opened in a scheduled bank for the purpose
- (d) with the registrar of companies

56. Debentures cannot be ____

- (a) Irredeemable debentures.
- (b) Participating debentures
- (c) Registered debentures
- (d) Bearer debentures

57. Public deposits obtained by a Company means ____

- (a) Deposits received from Government
- (b) Deposits received from public at large.
- (c) Deposits received from stockists and agent as advance.
- (d) All of these.

58. Public deposit matures and claimed but remains unpaid, penal interest will be in case of small deposits :

- (a) 16%
- (b) 18%
- (c) 20%
- (d) 23%

59. A deposit of atleast ____ of amount of its deposits maturing during the current and following Financial year in a separate bank account of a scheduled bank.

- (a) 15%, Deposit Repayment Reserve A/c
- (b) 20%, Deposit Reserve A/c
- (c) 10%, Deposit collection Reserve A/c
- (d) 5%, Deposit Revaluation Reserve A/c

60. A deposit of atleast 15% of amount of its deposits maturing during the current and following Financial year in a separate bank account of a scheduled bank to be called as ____

- (a) Deposit Repayment Reserve A/c
- (b) Deposit Reserve A/c
- (c) Deposit collection Reserve A/c
- (d) Deposit Revaluation Reserve A/c

61. Amount deposited in Deposit Repayment Reserve A/c is called ____

- (a) Crystallised Reserve Company
- (b) Liquid Reserve
- (c) Deposit Reserve
- (d) None of the Above

62. An amount of 25 lakhs or more received by start up company by way of convertible note in a single tranche from a person shall be acceptable as Deposits.

- (a) True
- (b) False

63. ____ includes any amount borrowed by a company:

- (a) Deposits
- (b) Funds

- (c) Both (a) & (b)
- (d) None of the above

64. What is the Overall ceiling limit imposed for Government company to accept any deposits -

- (a) 10%
- (b) 25%
- (c) 35%
- (d) 5%

65. Maximum amount of deposits that can be accepted in case of Private Company shall be

- (a) 10%
- (b) 35%
- (c) 100%
- (d) 25%

66. A charge may be created ____

- (a) Only within India
- (b) Can also be outside India
- (c) Both (a) & (b)
- (d) Either (a) or (b)

67. ____ is a charge created on a class of assets related to ordinary course of business.

- (a) Fixed
- (b) Specific
- (c) Floating
- (d) None of the above

68. Debentures payable to person whose name appears both on Debenture Certificate and company's register is called as :

- (a) Bearer
- (b) Unregistered
- (c) Registered

(d) Non transferable bonds

69. The transfer of an interest by pledging a property as security against an advance as loan; or an existing or future debt; or for performance of an act or engagement, which gives rise to liability is called:

- (a) Mortgagor
- (b) Mortgagee
- (c) Mortgage
- (d) Mortgage Deed

70. Elements of Mortgage are:

- (a) Transfer of interest
- (b) Specific Immovable Property
- (c) Registration
- (d) Security

71. Depositor means:

- (a) Debenture holder
- (b) Shareholder
- (c) Member of a company holding deposit
- (d) Shareholder holding shares.

72. The company shall provide for security by way of a charge of assets excluding

- (a) Tangible assets
- (b) Fixed movable assets
- (c) Intangible assets
- (d) Fictitious assets

73. Debentures which are issued for a specified period of time and after that the company has the right to pay back, is termed as:

- (a) Convertible debenture
- (b) Irredeemable

(c) Bearer debenture

(d) Redeemable debenture

74. No special resolution is required for a particular type of debenture and they become payable on maturity, is generally known as

- (a) Registered debenture
- (b) Redeemable debenture
- (c) Non-Convertible debenture
- (d) Secured Debentures

75. A charge was created on assets of Pram Limited. Such charge is registered on 12th November, 2022. Any person acquiring such assets shall be deemed to have notice of the charge: (Give your answer as per the provisions of the Companies Act, 2013)

- (a) from 12th November, 2022,
- (b) from 13th November, 2022,
- (c) from 12th December, 2022,
- (d) from 12th January, 2023,

76. Debenture with voting rights can be issued only if permitted by the Articles of Association" Is the following statement Correct? -"

- (a) Correct
- (b) Incorrect

77. Can the following persons be appointed as a Debenture Trustee?

1. A, a Shareholder, who has no beneficial interest.
2. A Creditor whom the Company owes 499 only. A person who has given a guarantee for repayment of amount of
3. Debentures issued by the Company.

(a) Can be appointed (1) &(2) cases

(b) Can be appointed (2) &(3) cases

(c) Can be appointed (1) &(3) cases

(d) Can be appointed in all cases

78. The Charge not registered with ROC will be

- (a) Void ab initio
- (b) Void
- (c) Valid
- (d) Voidable

79. A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called:

- (a) Debenture redemption reserve account
- (b) Deposit repayment reserve account
- (c) Capital redemption reserve account
- (d) Free reserve account

80. Normally no deposits are repayable earlier than from the date of such deposits or renewal thereof.

- (a) 3 months
- (b) 6 months
- (c) 12 months
- (d) 1 year

81. In the registration of charge is not done in 30 days, the Registrar may allow registration within

- (a) 300 days
- (b) 365 days
- (c) 120 days
- (d) 90 days



13. REGISTER & RETURNS

ANSWER KEY

1. C	2. C	3. B	4. A	5. C	6. D	7. A	8. B	9. C	10. A
11. A	12. C	13. C	14. D	15. A	16. D	17. D	18. D	19. A	20. A
21. C	22. C	23. B	24. A	25. A	26. D	27. B	28. D	29. A	30. C
31. B	32. B	33. A	34. A	35. C	36. A	37. B	38. A	39. C	40. B
41. B	42. A	43. A	44. A	45. A	46. A	47. A	48. A	49. A	50. C
51. B	52. D	53. C	54. D	55. C	56. B	57. B	58. B	59. A	60. A
61. B	62. B	63. A	64. C	65. C	66. D	67. C	68. C	69. C	70. B
71. C	72. C	73. D	74. C	75. A	76. B	77. A	78. B	79. B	80. B
81. C									

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP Dec. 2017]

[9 Marks]

1. Write notes on the maintenance of register of Members under the Companies Act, 2013.

Answer:

- As per Section 88(1) of Companies Act, 2013, every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:
- ♦ Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
 - ♦ Register of debenture-holders; and
 - ♦ Register of any other security holders.
- As per Section 88(2) of Companies Act, 2013, every register maintained under sub-section (1) shall include an index of the names included therein.
- As per Section 88(3) of Companies Act, 2013, the register and index of beneficial owners maintained by a depository shall be deemed to be the corresponding register and index for the purposes of this Act.
- As per Section 88(4) of Companies Act, 2013, a company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called foreign register, containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.
- As per Section 88(5) of Companies Act, 2013, if a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with:
- Fine which shall not be less than 50000 but which may extend to 3 lakhs &
 - Where the failure is a continuing one, with a further fine which may extend to 1000/day, after the first till the failure continues.



[MTP JUNE 2020/DEC 2022]

[5 Marks]

THEORY QUESTION

2. Indicate what are the particulars to be incorporated in the Annual Return? OR
Discuss about the contents of the Annual Return. OR
What the different information to be contained in annual return required to be filed by a company?

Answer:

Section 92 of the Act requires a company to file Annual Return. This section provides that every company shall prepare a Annual Return in Form No. MGT-7. The Annual Return shall contain the following particulars as they stood at the end of the financial year-

- its registered office, its principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration paid to Directors and Key Managerial Personnel;
- penalty and punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of companies, disclosures as may be prescribed;
- details in respect of shares held by or on behalf of the Foreign Institutional Investors;
- such other matters as may be prescribed.

The return shall be signed by a director and the Company Secretary. Where there is no company secretary, then it shall be signed by a Company Secretary in practice.

The proviso to Section 92(1) provides that the annual return of a OPC and small company, shall be signed by the Company Secretary or where there is no Company Secretary by the director of the Company.

3. As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT-7, Explain the particulars required to be contained in it.

Answer:**Section 92-Annual Return**

Every company shall prepare an annual return in the MGT-7 containing following particulars as they stood on the close of the financial year regarding-

- a. **Principal Activities & Group Companies:** Its principal business activities, particulars of its holding subsidiary and associate companies;
- b. **Shareholding Pattern:** Its shares, debentures and other securities and shareholding pattern;
- c. **Membership & Debenture holders:** Its members and debenture-holders along with changes therein. Since the close of the previous financial year
- d. **Management:** Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- e. **Meetings:** Meetings of members or a class thereof, board and its various committees along with attendance details;
- f. **Managerial Remuneration:** Remuneration of directors and key managerial personnel;
- g. **Punishment Imposed:** Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- h. **Certification of compliances, disclosures:** Matters relating to certification of compliances, disclosures as may be prescribed;
- i. **Foreign Institutional Investors:** Details, as may be prescribed, in respect of shares held by or on behalf of the foreign institutional investors; and
- j. Such other matters as may be prescribed.

**CASE STUDIES**

4. Wednesday Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened Section 92 of Companies Act, 2013 and if so, how it will be penalized.

OR

Due to heavy rains and floods Chennai Lungi Limited was unable to convene AGM upto 30th September 2017. The company has not filed the Annual Financial Statements, or the annual return as the directors of the company are of the view that since the AGM did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct.

OR

Chaddi Buddy Limited is manufacturing premium quality milk based ice cream in two flavours-first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened Section 92 of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

Answer:

Section 92-Annual Return

Time limit for Filing of Annual Return with the RegistrarCase 1:-When the AGM is held

Within 60 days from the date on which the AGM is held.

Case 2:- When the AGM is NOT held

Within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.

Punishment for default

The Company and every officer in default shall be punishable as follows:

On Company	Minimum Penalty	₹10000
	Continuing Penalty	₹100 per day
	Maximum Penalty	₹200000
Officer in Default	Minimum Penalty	₹10000
	Continuing Penalty	₹100 per day
	Maximum Penalty	₹50000

Conclusion

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect. The company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions as described above.

5. M/s. Thanos Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

(ii) Does Mr. Thanos, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

OR

Avengers Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

(i) Explain with the provision of companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

(ii) Does Mr. Tony, holding 400 shares of total worth ₹4000 only, has the right to inspect the Register of Members? Answer:

Section 94: Place of Keeping & Inspection of Registrar, Returns, etc.

Place of Keeping & Inspection of Registrar, Returns, etc

The registers required to be kept and maintained by a company u/s 88 and copies of the annual return filed u/s 92 shall be kept at the registered office of the company.

Such registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

Inspection facility for Registers and Returns

The registers and their indices, except when they are closed u/s 91, and the copies of all the returns shall be open for inspection by

1. Any member, debenture-holder, other security holder or beneficial owner, during business hours (not less than 2 per day) without payment of any fees.
2. Any other person on payment of such fees not exceeding 50 for each inspection.

Conclusion

(i) The company can keep the Registers and Returns at Kolkata (place other than registered office) by complying with the above provisions.

(ii) Mr. Thanos, Director (but not a shareholder), has a right to inspect the Register of Members during business hours on payment of such fees not exceeding ₹50 for each inspection

OBJECTIVES

1. What happens when the variation of rights of any other class of shareholders is affected
 - (a) Consent of 1/4th of the such other class of shareholders shall be obtained
 - (b) Consent of 3/4th of the such other class of shareholders shall be obtained
 - (c) Consent of 2/3rd of the such other class of shareholders shall be obtained
 - (d) None of these
2. Holders of the _____ issued shares of that class who had not assented to the variation may apply to the tribunal to have the variation cancelled.
 - (a) Not more than 10%
 - (b) Less than 10%
 - (c) Not less than 10%
 - (d) Between 10% and 20%
3. Find the correct number of days for making an application to tribunal for cancellation after the date on which the consent was given or the resolution was passed.
 - (a) Within 21 days
 - (b) Within 22 days
 - (c) Within 20 days
 - (d) Within 23 days
4. Application to tribunal for cancellation should be made _____ of the shareholders _____ of their number, as appointed for this purpose by writing.
 - (a) On behalf, by two or more
 - (b) Without the notice, by one or more
 - (c) With the notice, by two or more
 - (d) On behalf, by one or more
5. The minimum and the maximum amount to be paid as fine in the event of default of filing a copy of the Tribunal order with the ROC
 - (a) 25,000, 5,00,000
 - (b) 35,000, 5,10,000
 - (c) 20,000, 50,000
 - (d) None of these
6. Choose the correct rule which is an exception to shares held with a depository:
 - (a) Shares are freely transferrable
 - (b) Shares are movable property
 - (c) Shares held by a member is represented by a certificate issued under the common seal
 - (d) The share of a company having share capital is distinguished by its distinctive number
7. The signatories of an Annual Return for a company
 - (a) Director
 - (b) Company secretary
 - (c) either (a) or (b)
 - (d) (a) and (b)
8. The signatories of an Annual Return for OPC & small company
 - (a) Director
 - (b) Company secretary
 - (c) either A or B
 - (d) A and B
9. The Form to be submitted for Annual Return by a company having paid up share capital > 10 crores
 - (a) MGT 8
 - (b) MGT 7
 - (c) MGT 6
 - (d) MGT 5
10. What is penalty for non-filing of Annual Return within the normal time (Min and Max Limit)?
 - (a) 10,000 & 2,00,000
 - (b) 1,00,000 & 10,00,000
 - (c) 10,000 & 1,00,000
 - (d) None of these
11. What is the benefit of blank transfer?
 - (a) It facilitates the purchase of shares
 - (b) It facilitates the sale of shares
 - (c) Both A & B
 - (d) Either A or B
12. Why Blank is not a negotiable instrument?
 - (a) It passes from one person to another
 - (b) It stays with a single person
 - (c) It serves the purpose of promissory note
 - (d) It serves the purpose of Bill of Exchange
13. When a purchaser wants to retain the shares, he Completes _____ by inserting his name
 - (a) Bill of Exchange
 - (b) Promissory Note
 - (c) Blank Transfer
 - (d) None of these
14. Transfer of shares in a company is
 - (a) restricted
 - (b) freely transferrable
 - (c) prohibited
 - (d) none of these
15. Annual return of a company having share capital is to be filed with the Registrar of Companies in e-form
 - (a) 20A
 - (b) 208
 - (c) 25A
 - (d) 25B
16. Transfer is effected by
 - (a) By Sale
 - (b) By Death
 - (c) Due to Insolvency
 - (d) None of the above
17. Transfer deed should be in form no:
 - (a) 6 B
 - (b) 5 B
 - (c) 7B
 - (d) none of these
18. _____ is voluntary passage of the rights & duties of member from a shareholder
 - (a) transfer
 - (b) transmission
 - (c) Both A & B
 - (d) none of the above
19. The person to whom the rights & duties are endorsed is called _____
 - (a) transferee
 - (b) transferor
 - (c) endorser
 - (d) endorsee



20. ____ is an instrument of transfer signed by the transferor in which the name & date are not filled
- forged transfer
 - blank transfer
 - both A & B
 - none of these
21. ____ transfer is null & void.
- Forged
 - Blank
 - Both A & B
 - None of the above
22. If the ownership of the shares goes to another by operation of law is called as ____
- Transfer
 - Transmission
 - Both
 - None of the above
23. Transmission is affected by ____
- By sale
 - By death
 - Due to insolvency
 - Both
24. In which of the following cases stamp duty & consideration not necessary?
- transfer
 - transmission
 - both A & B
 - None of these
25. ____ gets all liabilities of original owner
- transferor
 - transferee
 - endorser
 - endorsee
26. A share warrant is transferable by _
- execution of transfer deed
 - by delivery
 - both A & B
 - none of the above
27. Name of the member is struck off from the register in the case of
- issue of share certificate
 - share warrant
 - forfeiture
 - none of these
28. which of the following statement is correct
- every company shall prepare its annual return
 - the form annual return is MGT-8
 - for OPC annual return shall signed by a CS
 - both A & C
29. Who can inspect an annual return
- any member
 - debenture holder
 - beneficial owner
 - A OR B OR C
30. Any person acting as Significant beneficial Owner fails to make a declaration u/s 90(1) shall be liable for Penalty (Min and Max limit)-
- 30,000, 100,000
 - 20,000, 300,000
 - 50,000, 200,000
 - 15,000, 150,000
31. The form of annual return is
- MTG-10
 - MTG-8
 - CG-5
 - MTG-11
32. Variation of shareholders right is permissible when ____ contain no provision in respect to such variation
- MOA
 - AOA
 - both A & B
 - A OR B
33. Every shareholder is not a member unless
- he is recommended by any member
 - his name is entered in the register of members
 - he participates in any of the previous company meeting
 - none of these
34. ____ specifies the time limit with in which share certificate is to be delivered
- sec 110
 - sec 111
 - sec 112
 - sec 113
35. ____ is a document showing title
- Share certificate
 - Share warrant
 - Both (a) & (b)
 - None of the above
36. The class of shareholders who have the right to vote on every resolution placed before the company are
- Equity shareholders
 - Preference shareholder
 - Participating shareholders
 - Non participating shareholder
37. On which of the following grounds the voting right of a shareholder is lost on ____
- non payment of calls
 - non payment of the amount guaranteed by him
 - being inactive on managerial decisions
 - All of the above
38. How is the voting right of a preference shareholder determined.
- In proportion to his share in paid up preference capital
 - In proportion to his share in nominal capital
 - In proportion to his share in called up capital
 - In proportion to is share in registered capital
39. Find out which of the following condition is true regarding the voting rights of equity shareholders are:
- voting right shall be in proportion to his share in paid up equity capital
 - The equity shareholders have the right to vote on every resolution placed before the company
 - Voting rights shall not be in proportion to his share in paid up equity capital.
 - (a) and (b)



40. The exception which is made on equity shareholders in the case of *midhi* is that.
- No member shall exercise voting on poll in less than 20% of total voting rights
 - No member shall exercise voting rights on poll in excess of 5 % of total voting rights
 - No member shall exercise voting rights on poll in excess of 10% of total voting rights
 - None of the above
41. When 2 or more persons hold one or more shares in a company jointly, they shall, for the purpose of membership be treated as
- 2 members.
 - Single member.
 - No. of persons who hold shares.
 - 3 members
42. What is CIN?
- Corporate Identification Number.
 - Creditors Identification Number.
 - Corporate Incorporation Number.
 - Corporate Identity Number.
43. Who can become a member of the company?
- Person who have agreed in writing to become a member.
 - Person who have agreed orally to become a member.
 - Person whose name is entered in the Register of Members.
 - Person who have agreed in writing to become a member & whose name is entered in the Register of Members
44. Which of the following creates registration of a person as a member of a company?
- Application.
 - Allotment.
 - Transmission by non operation of law.
 - Application & Allotment.
45. Transfer of shares by law is referred to as
- Transfer of shares.
 - Transmission of shares.
 - Legal transfer.
 - Illegal transfer
46. Which of the following cases require deed?
- Transfer of shares.
 - Transmission of shares.
 - Legal transfer.
 - Illegal transfer.
47. When can a company proceed with registering of the transfer of Partly Paid Shares?
- Upon receipt of No-Objection from the equity shareholder.
 - Upon receipt of No-Objection from any of the shareholder.
 - Upon receipt of No-Objection from the Transferor.
 - Upon receipt of No-Objection from the Transferee.
48. A transfer made by the _____ of the deceased member is valid
- Any family member.
 - Legal representative.
 - Spouse.
 - Daughter or son
49. For transfer of shares under depository system where should a depository register?
- NCLT.
 - ROC.
 - Registered office of the company.
 - SEBI.
50. What will SEBI issue to registered depository for transfer of shares upon fulfilment of prescribed conditions?
- Certificate of commencement of business.
 - Transfer certificate.
 - Transferred deed.
 - Transmission deed.
51. What is the role of depository?
- Custodial promoters of securities.
 - Custodial agents of securities.
 - Custodial agencies of securities.
 - Custodial brokers of securities.
52. What happens if a depository transfers shares with an intention to defraud a person?
- He is liable under section 447 of companies act 2013.
 - He is liable under Depositories Act, 1996.
 - He is liable under section 447 of companies' act 2013 & Depositories Act, 1996.
 - He is liable under section 447 of companies act 2013/Depositories Act, 1996.
53. Forged transfer doesn't give the transferee Concerned _____ to the shares.
- Any possession.
 - Any title.
 - Any ownership.
 - Any right.
54. Why a bonafide Transferee does from a person who has acquired a blank transfer deed by fraud doesn't acquire good title to the shares included in the deed?
- Transfer deed is not a negotiable instrument.
 - Transfer deed is a negotiable instrument.
 - Transfer deed is exchangeable.
 - Transfer deed is not exchangeable.
55. Where can a company maintain its register if special resolution is passed?
- Any place in India in which more than 2/10th of the total members entered in the register reside.
 - Any place in India in which more than 1/10th of the total members entered in the register reside.
 - Any place in India in which more than 3/10th of the total members entered in the register reside.
 - Any place in India in which more than 4/10th of the total members entered in the register reside.
56. When should a company give notice of Register of members regarding its closure?
- Atleast 5 days.
 - Atleast 6 days.
 - Atleast 7days.
 - Atleast 8 days.



57. For which of the following debentures, stamp duty is paid on transfer?
(a) Registered Debentures.
(b) Unregistered Debentures.
(c) Perpetual Debentures.
(d) Redeemable Debentures.
58. The debentures which issued by a charge on the assets/part of assets of the company is
(a) Naked debentures.
(b) Secured debentures.
(c) Unsecured debentures.
(d) Registered debentures.
59. The debentures which are issued with an option of converting into preference shares after a certain period is
(a) Secured debentures.
(b) Naked debentures.
(c) Convertible debentures.
(d) Registered debentures.
60. Which of the following conditions should be complied for issue of secured debentures?
(a) The date of redemption shall exceed 10 yrs from the date of issue.
(b) The issue shall not be secured by creating a charge on the properties.
(c) The company shall execute a debenture trust deed.
(d) The company shall not appoint a debenture trustee.
61. How will the amount credited to DRR be utilised?
(a) Only for redemption of shares.
(b) Only for redemption of debentures.
(c) Any business purpose.
(d) Both for redemption of shares & debentures.
62. Which of the following types of company requires adequacy of about 25% of value of debentures in DRR?
(a) Unlisted company issuing debentures on private placement.
(b) Other companies including Manufacturing & Infrastructure companies.
(c) NBFCs registered with RBI u/s 45-IA of RBI (Amendment) Act, 1997 & housing Finance Co registered with National Housing Bank.
(d) Any type of company.
63. Which of the following type of company requires adequacy of 25% of the value of debentures issued through Public Issue in DRR?
(a) Unlisted company issuing debentures on private placement.
(b) Other companies including Manufacturing & Infrastructure companies.
(c) NBFCs registered with RBI u/s 45-LA of RBI (Amendment) Act, 1997 & housing Finance Cos registered with National Housing Bank.
(d) Any type of company.
64. Transfer of shares in limited company is
(a) Restricted
(b) Freely transferable
(c) Prohibited
(d) Pre-emptive
65. Transmission of shares takes place in the following case
(a) Sale of shares.
(b) Theft of shares.
(c) Operation of any law.
(d) All of these.
66. Section 92 of the Companies Act, 2013 requires a company to prepare and file annual return in form No.:
(a) MGT-12
(b) INC-23
(c) MGT-7
(d) SH-10
67. The annual return of an OPC shall be signed by the company secretary or where there is no company secretary, by the:
(a) Senior executive of the company
(b) Auditor of the company
(c) Director of the company
(d) Advocate of the company
68. The annual return of an OPC shall be signed by
(a) The company secretary
(b) The director
(c) The chief accountant
(d) The auditor
69. The annual return of an OPC shall be signed by the company secretary or where there is no company secretary, by the:
(a) Auditor of the company
(b) Advocate of the company
(c) Director of the company
(d) Senior executive of the company
70. Copies of annual returns prepared & copies of all certificates & documents required to be annexed thereto shall be preserved for a period of.
(a) 8 years
(b) 10 years
(c) 12 years
(d) 15 years
71. The annual return of OPC in absence of the company secretary shall be signed by the of the company.
(a) Banker
(b) Auditor
(c) Legal officer
(d) Director



14. CONVENING MEETING

ANSWER KEY

1. B	2. C	3. A	4. D	5. A	6. D	7. D	8. C	9. A	10. A
11. C	12. A	13. C	14. B	15. B	16. A	17. C	18. A	19. A	20. B
21. A	22. B	23. D	24. B	25. B	26. B	27. B	28. D	29. D	30. C
31. D	32. B	33. B	34. D	35. C	36. A	37. A	38. A	39. D	40. B
41. B	42. D	43. D	44. D	45. B	46. A	47. D	48. B	49. D	50. C
51. D	52. B	53. A	54. B	55. C	56. C	57. A	58. B	59. C	60. C
61. B	62. A	63. B	64. A	65. C	66. C	67. A	68. A	69. C	70. A
71. D									

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP Dec. 2017]

[9 Marks]

1. Discuss the procedure for conducting a poll in a meeting of a company.

Answer:

- As per the provisions of the Companies Act, 2013 where a poll is to be taken, the **Chairman of the meeting shall appoint** such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll to report thereon to him. The **Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.**
- As per Rule 21. of Companies Rules, 2014, the Chairman of a meeting shall, in the poll process, ensure that
 - The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies;
 - The Scrutinizers are provided with all the documents received by the Company;
 - The Scrutinizers shall arrange for polling papers and distribute them to the members and proxies present at the meeting;
 - In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;
 - The polling paper shall be in Form No. MGT-12;
 - The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies;
 - The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over;
 - In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman;
 - The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded;
 - The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman;
 - The Scrutinizers shall submit a signed report to the Chairman in Form No. MGT-13 within 7 days from the date the poll is taken;
 - The Chairman shall counter-sign the same;
 - The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.



[PP June 18, MTP June 18]

[8 Marks]

2. What are the procedures of sending notice through electronic mode under the Companies Act, 2013?

Answer:

- As per Rule 18(1) of Companies Rules, 2014, a company may give notice through electronic mode.
- As per Rule 18(2) of Companies Rules, 2014, notice may be sent through e-mail as text or attachment or as notification providing link or Uniform Resource Locator for accessing such notice

As per Rule 18(3) of Companies Rules, 2014,

- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non-editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- "If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government

[PP Dec 2019]

[7 Marks]

3. XYZ Ltd. issued Notice for holding of its Annual General Meeting on 30th September 2019. The notice was posted to the members on 7th September 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act. Referring to the provisions of the Act, decide:

i. Whether the meeting has been validly called?

ii. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

iii. Can the delay in giving notice be condoned?

Answer:

As per Section 101(1) of Companies Act, 2013, a company may call its AGM by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed.

In calculation of clear 21 days following days shall be excluded:

- The date on which notice is served;
- The date of meeting is excluded and
- In case of delivery by post, such service shall be deemed to have been effected at the expiration of 48 hours after the letter is posted.

In given case, 07/09/2019 (day of posting the notice), 30/09/2019 (day of AGM) & 08/09/2019-09/09/2019 (2 days of post) shall not be counted.

- No, the meeting is not validly called as the clear days of notice served were 20 only.
- The notice shortfalls with 1 day.
- There is no provision for condoning the delay in the Act. So, it cannot be delayed.

[PP Dec. 2017]

[5 Marks]

4. A Ltd. issued a notice for holding of its AGM on 7th November 2022. The Notice was posted to the members on 16th October, 2022. Some of the members alleged that the company had not complied with provisions of the Act with regard to the period of notice and such the meeting was not validity called. Decide.

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall in the number of days by which the notice falls short of statutory requirement, explain by how many days the notice falls short of statutory requirement?

Can the shortfall, if any, condoned?

Answer:

- Day of holding the AGM 7th November, 2022.
- Day of despatch of notice 16th October, 2022.
- Days to be excluded

- Day of holding the AGM (i.e., 7th November, 2022)
- Day of despatch of notice (16th October, 2022)
- 2 days for service of notice (i.e., 17th and 18th October, 2022).

- Number of days' notice given = 19 days.
- Number of days' notice required u/s 101 = 21 days.



(a) AGM has not been validly called - since 21 days' notice of the AGM has not been given to the members.

(b) The notice is short - by 2 days.

(c) The shortfall may be condoned - if consent is given for such shorter notice by at least 5% of the members entitled to vote at such AGM.

THEORY QUESTIONS

5. Can an annual general meeting be held on a national holiday?

Answer:

Section 96- AGM on National Holiday

Day of AGM: AGM can be held on any day that is not a National Holiday.

Explanation: National Holiday means and includes a day declared as National Holiday by the Central Government.

Sudden National Holiday: A day may be declared to be a national holiday after the notices calling the meeting for the day have already been issued. To avoid the difficulties that may be caused from such a situation, no day declared by the Central Government to be a national holiday shall be deemed to be such a holiday in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.

6. Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.

(iv) There shall be a maximum interval of 15 months between two AGMs.

Answer:

Section 96-Annual General Meeting

Answer (i)

According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.

Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

Answer (ii)

According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

Answer (iii)

According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year. Hence, the given statement is correct.

Answer (iv)

According to section 96, the gap between two annual general meetings should not exceed 15 months. Hence, the given statement is correct, that there shall be a maximum interval of 15 months between two AGMs.

7. State the provisions of the Companies Act, 2013 regarding the calling and holding of an extraordinary general meeting with respect to

(i) Number of members entitled to requisition a meeting.

(ii) Power of the NCLT to call meetings of members to be called u/s 98 of the Companies Act, 2013.

Answer:

Section 100-Extraordinary General Meeting

BOD may call EGM on Requisition being raised by the shareholders

The Board shall, at the requisition made by,-

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than 1/10th of Equity shares;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than 1/10th of the total voting power.

Section 98- Power of NCLT to order Extraordinary General Meeting

If it is impracticable to call a meeting of a company, other than an AGM, the Tribunal may,

(i) either suo motu or

(ii) on the application of any director or member of the company order a meeting of the company to be called, held and conducted.

The Power of the Tribunal is over-riding in spite of anything contained in this Act or the Articles of the company.

8. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolution proposed to be passed at the meeting.

(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by both the joint holders of the shares

**Answer:****Section 100 – EGM on Requisition**

The Board shall, at the requisition made by,

- (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than 1/10th of Equity shares;
- (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than 1/10th of the total voting power.
- On receiving Requisition, the Board shall pass Board Resolution for calling EGM.

Manner of sending notice by Requisitionists

- 1 The requisition shall set out the matters [Proposed Resolutions with or without Reasons] for the consideration of which the meeting is to be called and
2. shall be signed by the requisitionists and
3. sent to the registered office of the company.

Answer (i)

In view of the above law, the board of directors cannot refuse to convene the meeting if the reasons for the resolution are not given. What is required to be stated is the objects of the meeting, i.e., the matters for the consideration of which the meeting and resolutions to be passed. In given problem, the Board of Directors cannot refuse to convene the meeting because reasons for the resolution is not given.

Answer (ii)

Where two or more persons hold any shares or interest in a company jointly, a requisition, or notice calling a meeting, signed by one or some of them shall have the same force and effect as if it had been signed by all of them. On the basis of above, the Board of Directors has no right to refuse to convene the meeting in the given problem.

9. Based on the provisions of Companies Act, 2013, answer the following:

- (i) Who are entitled to get notice for the general meeting called by a Public Limited Company?
- (ii) Does the non-receipt of a notice of the meeting by any one entitled to such notice invalidate the meeting and the resolution passed thereat?
- (iii) What would be your answer in case the omission to give notice to a member is only accidental omission?

Answer:**Section 101: Notice of GM**

A general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in the following manner.

Answer (i)

The notice of every meeting of the company shall be given to

- (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

- (b) the auditor or auditors of the company; and
- (c) every director of the company.

Answer (ii)

Deliberate omission to send notice even to a single member shall invalidate the meeting.

Answer (iii)

Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

10. What are the procedures of sending notice through electronic mode under the Companies Act, 2013?**Answer:**

The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government



11. Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the AGM of a Company. What kinds of resolutions need to be passed to transact the 'Ordinary Business' and the 'Special Business' at the AGM of the Company? Explain.

OR

State the ordinary business which may be transacted at an AGM of a public limited company incorporated under the Companies Act, 2013.

Answer:

Section 102 Ordinary Business and Special Business

(i) **Ordinary Business:** Only ordinary business can be transacted at an AGM and comprises of the following business:

- Appointment of directors in place of those retiring.
- Appointment and fixing of the remuneration of the auditors
- Declaration of any dividend.
- Approval of financial statements accounts

(i) **Special Business:** Any other business transacted at the AGM or at any other meeting of the members shall be deemed to be special business.

Resolutions needed for Ordinary Business and Special Business

- (1) Ordinary business can be passed by an ordinary resolution.
- (2) However, special business may be transacted either by passing ordinary resolution or special resolution, depending upon the requirements of Companies Act, 2013.

CASE STUDIES

12. M/s Power Infotech Ltd. was incorporated on 1.4.2014. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

OR

Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer:

Section 96-Timelimit for 1st AGM

In case of the 1st AGM, meeting shall be held within 9 months from the date of closing of the 1st financial year of the company.

Conclusion

Presuming that the first financial year of Power Infotech Ltd is for the period 1st April 2014 to 31st March 2015, the first annual general meeting of the company should be held on or before 31st December, 2015.

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meetings, such power does not apply in the case of the first annual general meeting. Thus, the company and its directors will be liable under section 99.

13. To remove the Managing Director, members holding 40% of the Equity Share Capital of Lion Farms Limited submitted requisition for holding an extra-ordinary general meeting. The Company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of the meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.

Examine the validity of the said meeting and the resolution passed therein under the provisions of the Companies Act, 2013.

Answer:

Section 100-EGM on Requisition for removing MD

BOD shall call EGM on Requisition being raised by the shareholders

The Board shall, at the requisition made by,=

- (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than 1/10th of Equity shares;
 - (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than 1/10th of the total voting power.
- On receiving Requisition, the Board shall pass Board Resolution for calling EGM.

Requisitionists can call EGM if the BOD fails to do so

If the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of 3 months from the date of the requisition.

R. Chettiar v. M. Chettiar [Place of holding meeting]

Moreover, where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in R. Chettiar v. M. Chettiar that the meeting may be held anywhere else. Further, resolutions properly passed at such a meeting, are binding on the company.

Conclusion

Since 40% of members (presumed to have 40% voting right) submitted the requisition for the meeting, the board of directors has violated the provisions of law by not calling the meeting.

Thus, in the given case, since all the above desired provisions are duly complied with, the meeting held by the requisitionists and the resolution passed for removing the Managing Director of Lion Farms Limited shall be valid.



14. Mr. DK, Secretary, of RCB Ltd. called an extraordinary general meeting of the company on the requisition of some members. Mr. DK, Secretary of the Company, issued notice of the meeting without the authority of the Board of Directors. Discuss on the validity of the notice issued by Mr. DK, Secretary of the RCB Ltd.

Answer.

Section 101-Secretary sends Notice of EGM without BOD approval.

- The AGM or the EGM can be called only with authority of Board of Directors i.e. by passing Board Resolution.
- An AGM/EGM cannot be called by an individual director or some of the directors or by CS.
- The Secretary of the company does not have the power to call the meeting by himself by issuing notices. Unless the Secretary is specifically authorized either by the board of directors or by the articles, any meeting called by him, and the business done there at it would be null and void.

Hooper Vs. Kerr, Stuart & Co.

However, the notice of the meeting may be ratified by the Board of Directors of the company before the meeting is held to make it good.

Conclusion

Thus, the notice issued by Mr. DK may be ratified by the Board of Directors of RCB Ltd., to make it valid.

15. IPL Ltd. issued a notice for holding of its Annual general meeting on 7th September 2019. The notice was posted to the members on 16th August 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

- (i) Whether the meeting has been validly called?
- (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the delay in giving notice be condoned (excused)?

Answer.

Section 101 -Length of the Notice of GM

Minimum Time Period before which Notice of GM must be received by members = 21 Days

Calculation of 21 Clear Days:

The following days are not counted in 21 clear days

- (i) Day of Dispatch = 1 day.
- (ii) Deemed Postage Duration u/s 20= 2 Days (48 Hours)
- (iii) Date of meeting =1 day.

Calculation of Length of Notice.

16th August 2019 to 7th September 2019 [16+7= 23]	23
Less: Date of Dispatch	(1)
Less: Deemed delivery time u/s 20	(2)
Less: Date of GM	(1)
Clear Days	19
Length of Notice required u/s 101	(21)
Shortfall	(2)

Conclusion

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served. Therefore, the meeting was not validly called.
- (ii) As explained above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

16. AAC Ltd. issued a notice for holding of its Annual general meeting on 7th September 2019.

The notice was posted to the members on 16th August 2019. The notice was short by 2 days. It was only for 19 clear days. One member holding 20 shares wishes to challenge the resolutions passed at the AGM on the ground that the notice was not valid. What advice would you give to him?

Answer.

Minimum Time Period before which Notice of GM must be received by members = 21 Days

Shailesh Harilal Shahv. Matushree Textiles Ltd

It was held that the requirement of the section as length of notice is directory only and not mandatory. A couple of shareholders cannot be permitted to defeat the interest of the large body of shareholders by saying that the duration of the notice was not sufficient even if the short notice does not indicate any prejudice to the complaining shareholders.

Therefore, the member may be advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.

Conclusion

Therefore, the member is advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.



17. The AGM for 2018-2019 and 2019-20 were convened on 07-10-2020 belatedly and with great difficulty. The notice of the meeting was published in a newspaper of Calcutta on 12-9-2020. The shareholders received the notice 22-9-2020 which was posted on 16-9-2020. The notice was dated 9-9-2020. Kiran sought an injunction that the resolutions passed at the meetings are not given effect to, on the ground that the notice was received by him on 22-9-2020. Kiran held only 7 shares of 10 in the company and was a resident of Kolkata where the meeting was to be held. State whether the shortness of the notice invalidated the meeting? [ignore the effect of COVID-19 while answering the question.]

Answer.**Section 101-Length of the Notice of GM**

Minimum Time Period before which Notice of GM must be received by members = 21 Days

Calculation of 21 Clear Days:

The following days are not counted in 21 clear days:

- (i) Day of Dispatch = 1 day.
- (ii) Deemed Postage Duration u/s 20 = 2 Days (48 Hours)
- (iii) Date of meeting = 1 day.

Following dates are not relevant in calculation:

- (1) The date of the Notice (9-9-2020).
- (2) The date of Receipt of the Notice by the members (22-9-2020).
- (3) The Date of Newspaper Advertisement (12-9-2020) because it is not a prescribed mode u/s 20.

However, the newspaper advertisement shows the good intention of the company in inviting all members to the AGM.

Calculation of length of Notice

16th August 2019 to 7th September 2019 [16+7= 23]	23
Less: Date of Dispatch	(1)
Less: Deemed delivery time u/s 20	(2)
Less: Date of GM	(1)
Clear Days	19
Length of Notice required u/s 101	(21)
Shortfall	(2)

Shailesh Harilal Shah v. Matushree Textiles Ltd

It was held that the requirement of the section as length of notice is directory only and not mandatory.

A couple of shareholders cannot be permitted to defeat the interest of the large body of shareholders by saying that the duration of the notice was not sufficient even if the short notice does not indicate any prejudice to the complaining shareholders.

Therefore, the member may be advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.

Conclusion

Therefore, Kiran who holds only 7 shares of ₹10 in the company will not succeed. Kiran is advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.

18. BCCI Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013.

Answer.**Section 101- Short Notice with 95% consent**

A general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto-

AGM	≥95% of the <u>members (Equity Share Holder)</u> entitled to vote.
EGM	<u>Case1: If the company has a share capital.</u> (A) <u>Majority</u> in number of members (Equity Share Holder) entitled to vote AND (B) who represent ≥ 95% of Equity Share Capital.
EGM	<u>Case1: If the company has no share capital</u> Members holding ≥ 95% of the <u>total voting power.</u>

Conclusion

In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e. less than 95% members). Hence, such meeting cannot be said to be validity called.

19. Company 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. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?

OR

Laal 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. A shareholder complained that the amount of the proposed increase was not specified in the ice. Is the notice valid?

OR

Baal Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'Pal', a shareholder of the Baal Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by Baal Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

OR

Baal Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'Paal', a shareholder of the Baal Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by Baal Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

Answer.

Section 102-Explanatory Statement on Special Business items

Information & Explanation to be given in the Annexure about the Special Business items

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 KMP [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.

Conclusion

The matters proposed to be passed in the above questions are all special Business for which Explanatory Statement u/s 106 is mandatory.

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

20. Money heist limited served a notice of General meeting upon its members. The notice stated that the following resolutions will be considered at such meetings:

(i) Resolution to increase the Authorised share capital of the company.

(ii) Appointment and fixation of the remuneration of Mr. Professor as the auditor.

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

Answer.

Section 102- Explanatory Statement on Special Business items

Information & Explanation to be given in the Annexure about the Special Business items

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 KMP [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.

Conclusion

(i) Special Business: Increase in the Authorized Capital is a special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as INVALID.

(ii) Ordinary Business: Appointment and fixation of the remuneration of the auditor is an Ordinary Business and hence explanatory statement is NOT REQUIRED.

However, considering the 2 resolutions mentioned in the question are to be passed in the same meeting, overall, the notice of the meeting is invalid.

Therefore, it is not a valid notice under Section 102 of the Companies Act, 2013.

21. Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Biwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ?

Answer.

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 am. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate. Provided



that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza.

In the Second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Hence, if consent is given in writing or by the electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

22. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

- (i) EGM be held in India
- (ii) EGM be held in Netherlands

Answer.

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company. Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India. In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

23. P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

Answer.

As per Rule 18 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized. A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice. The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository.

Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email id s are already registered.

In the light of the above provisions of the Act, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant es the case may be, the company shall not be in default for not delivering notice via e-mail.

Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

15. CONSTITUTING MEETING

PREVIOUS YEAR QUESTIONS & MOP & RTP

[MTP JUNE 2018]

1. How is Quorum calculated for conduct of meetings of different classes of companies?
OR

Discuss the provisions relating to Quorum for meetings of a company.

Answer:

- It is usual to calculate a quorum for a meeting for the validity of the transactions taken place in the meeting. The Articles of the company shall provide the quorum for a meeting. If no quorum is mentioned in the Article, Section 103(1) provides that -
- In case of a public company -
 - 5 members personally present if the number of members as on the date of meeting is not more than 1000;
 - 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
 - 30 members personally present if the number of members as on the date of the meeting exceeds 5000;
- In case of a private company 2 members personally present shall be the quorum for a meeting of the company.
- The articles of the company shall indicate the quorum more than this number or otherwise the above will be applicable.
- Section 103(2) provides that if the quorum is not there within half an hour from the time appointed for holding a meeting of the company-
 - the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine;
 - the meeting, if called by requisitions shall stand cancelled.
- In the case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or publishing an advertisement in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not also present within half an hour from the time appointed for holding meeting, the members present shall be the quorum.

THEORY QUESTIONS

2. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Company Act, 2013.

Answer:

Meaning of Proxy

- Proxy means an instrument in writing [MGT-11], signed by a member authorizing another person (whether member or not) to attend and vote at GM on his behalf.
- The person so appointed is also known as Proxy.

Appointment of PROXY

- Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Disabilities of a proxy

- (1) A proxy shall not have the right to speak at such meeting.
- (2) A proxy shall not be entitled to vote except on a poll.
- (3) A proxy shall not be counted in Quorum.

How many Proxy Form can a Proxy Hold

A person can act as proxy on behalf of members not exceeding 50 and holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.

Revocation of Proxy

Once the original Member attends the Meeting, the Proxy is revoked. The votes already cast by the Proxy before the original Member attends the Meeting shall remain valid, however the proxy shall not be allowed to vote on the remaining matters.

Disclosure on Notice of GM

In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that "a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself, and that a proxy need not be a member."

Disclosure on Notice of GM

In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that "a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself, and that a proxy need not be a member."

CASE STUDIES

3. The Articles of Association of AAC Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

- (i) A, the representative of Governor of Uttar Pradesh.
- (ii) B and C, shareholders of preference shares,
- (iii) D, representing Y Ltd. and Z Ltd.
- (iv) E, F, G and H, as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Answer:

Section 103- Quorum Calculation

Unless the Articles of the company provide for a LARGER number, the Quorum shall be as follows:- (mpp -members personally present)

Type of Company	Number of Members	Quorum (mpp)
PUBLIC Company	No. of Members ≤ 1000	5
PUBLIC company	$1,000 < \text{No. of Members} \leq 5,000$	15
PUBLIC Company	$5,000 < \text{No. of Members}$	30
PRIVATE company	Irrelevant	2

Conclusion

The company has 965 members, which as per Sec 103 requires a Quorum of 5. However, Section 103 itself gives priority to Articles of Association when the Articles require a larger quorum. So, AAC Ltd requires a Quorum of 7 members personally present.

Calculation of Members Present in person:

Attendees	Counted as:
A, the representative of Governor of Uttar Pradesh.	1
B and C, shareholders of preference shares	0
D, representing Y Ltd. and Z Ltd.	2
E, F, G and H as proxies of shareholders	0
Total	3

Hence the Quorum is NOT present.

4. Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, 2 members are bodies corporate and one member is the President of India.

Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

Answer:

Section 103-Special Points regarding Quorum

Unless the Articles of the company provide for a LARGER number, the Quorum shall be as follows" (mpp - members personally present)

Type of Company	Number of Members	Quorum (mpp)
PUBLIC Company	No. of Members ≤ 1000	5
PUBLIC company	$1,000 < \text{No. of Members} \leq 5,000$	15
PUBLIC Company	$5,000 < \text{No. of Members}$	30
PRIVATE company	Irrelevant	2

Special Points regarding Quorum

- (1) ARTICLES can prescribe a LARGER Quorum.
- (2) PROXIES are NOT counted in Quorum.
- (3) Representatives of "President of India" or "Governor of the State" are also counted in Quorum. [Section 112]
- (4) Representatives of "Corporate Shareholders" are counted separately for every company they represent. [Section 113]

Conclusion

- (A) The Quorum of a public company having total 30 members is 5 members personally present.
- (B) Representatives appointed by the President of India shall have the same rights and privileges as that of the member personally present. They are counted in Quorum and also, they have the right to cast vote at the general meeting. [Section 112]
- (C) Representatives appointed by body corporate shall have the same rights and privileges as that of the member personally present. They are counted in Quorum and also, they have the right to cast vote at the general meeting. [Section 113]



5. The articles of P Ltd provide that in the event of the quorum being not present within half-an-hour from the time scheduled for the AGM, the meeting shall stand dissolved. At the AGM of P Ltd, the quorum is not formed within half-an-hour from the time fixed therefor. Give the answers of the following

- In the above circumstance, what further steps are necessary to hold the AGM?
- If it is to be convened a fresh, will a fresh resolution of the Board be needed?

Answer:

Section 103- Adjournment due to lack of Quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company-

- Adjournment:** The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
- Cancellation:** If it is called by requisitionists u/s 100, then the meeting shall stand cancelled.

3 Days' Notice for Adjourned Meeting

In case of an ADJOURNED meeting, the company shall give at least 3 days' notice to the members:

- either individually (Send notice by 1 of the 6 ways prescribed u/s 20) or
- by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(a) Steps necessary to hold the AGM

- The provision in the Articles of Association regarding dissolution of the meeting due to lack of quorum is invalid and void.
- The meeting shall stand adjourned to the SAME day in the next week at the same time and place, or to such OTHER date and such other time and place as the Board may determine.
- Company shall send a 3 Days' Notice for Adjourned Meeting to all its members as described above.

The requirement of fresh Board Resolution [BR] is discussed below:-

Case	Need of fresh BR
Meeting is adjourned to same day, time, place next week	No need
Meeting is adjourned to some other day, time, place	Fresh BR needed

6. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

The Board of Directors of Shreya Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

Answer:

Section 103-Adjournment due to lack of Quorum in EGM

If the quorum is not present within half-an-hour from the time appointed for holding EGM called upon Requisition of the members u/s 100, of the company, then the meeting shall stand cancelled.

Interpretation

EGM called upon Requisition shall be cancelled in both cases:

- Whether the EGM is called by BOD upon Requisition, or
- The EGM is called by requisitionists themselves.

Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

7. The Annual General Meeting of AAC Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision.

Answer:

Section 103 Quorum

Unless the Articles of the company provide for a LARGER number, the Quorum shall be as follows:- (mpp - members personally present)

Type of Company	Number of Members	Quorum (mpp)
PUBLIC Company	No. of Members ≤ 1000	5
PUBLIC company	$1,000 < \text{No. of Members} \leq 5,000$	15
PUBLIC Company	$5,000 < \text{No. of Members}$	30
PRIVATE company	Irrelevant	2

Adjournment due to lack of Quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company

- Adjournment:** The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such OTHER date and such other time and place as the Board may determine; or
- Cancellation:** If it is called by requisitionists u/s 100, then the meeting shall stand cancelled.

Conclusion

In the instant case, AAC Limited is a public company with total number of 2750 members, hence at least 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting. So, the quorum is not present.

Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place, as the Board may determine.

Therefore, the decision of the Chairman to adjourn the meeting is valid.

8. Rampal Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice.

(i) Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

(ii) What would be your answer in the above case, if Rampal Limited is a Private company?

Answer:**Section 103 Quorum**

Unless the Articles of the company provide for a LARGER number, the Quorum shall be as follows:- (mpp - members personally present)

Type of Company	Number of Members	Quorum (mpp)
PUBLIC Company	No. of Members ≤ 1000	5
PUBLIC company	$1,000 < \text{No. of Members} \leq 5,000$	15
PUBLIC Company	$5,000 < \text{No. of Members}$	30
PRIVATE company	Irrelevant	2

Adjournment due to lack of Quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company

(a) **Adjournment:** The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) **Cancellation:** If it is called by requisitionists u/s 100, then the meeting shall stand cancelled.

Conclusion

In the instant case, PQ Limited is a public company having 3680 members. So its Quorum is 15 members personally present. However, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. So, the meeting was lawfully adjourned. In the

adjourned meeting also, the required quorum was not present and hence, the members present shall be deemed as quorum. Hence, the AGM conducted by PQ Limited after adjournment is valid.

In case of a private company, 2 members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ is a private company, then only 2 members personally present shall be the quorum for AGM and there will be no adjournment.

9. LMN Limited scheduled its AGM to be held on 11th March, 2018 at 11:00 AM. The Company has 900 members. On 11th March, 2018 following persons were present by 11:30 AM

- (1) P1, P2 & P3 shareholders
- (2) P4 representing XYZ Limited
- (3) P5 representing PQR Limited
- (4) P6 & P7 as proxies of the shareholders

Answer the following:

- (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 XYZ Limited, reached in the meeting after 11:30 AM?
- (iii) In case lack of Quorum, discuss the provisions as applicable for adjourned meeting in terms of date, time & place.
- (iv) What happens if there is no Quorum in the Adjourned Meeting?

Answer:**Section 103 – Quorum**

Unless the Articles of the company provide for a LARGER number, the Quorum shall be as follows:- (mpp - members personally present)

Type of Company	Number of Members	Quorum (mpp)
PUBLIC Company	No. of Members ≤ 1000	5
PUBLIC company	$1,000 < \text{No. of Members} \leq 5,000$	15
PUBLIC Company	$5,000 < \text{No. of Members}$	30
PRIVATE company	Irrelevant	2

Answer (i)

The company has 900 members, which as per section 103 requires a Quorum of 5 members personally present. Calculation of Members present in person:-

Attendees	Counted as:
P1, P2, & P3 shareholders	3
P4 representing XYZ Limited- Representative of corporate member is counted.	1
P5 representing PQR Limited – Representative of corporate member is counted.	1
P6 & P7 as proxies of the shareholders – Proxy is not counted	0
Total	5



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 LMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

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

Answer (iii)

Adjournment due to lack of Quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, then the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

3 Days' Notice for Adjourned Meeting

In case of an adjourned meeting, the company shall give at least 3 days' notice to the members:

- either individually (Send notice by 1 of the 6 ways prescribed u/s 20) or
- by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Answer (iv)

Deemed Quorum

If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding meeting, the members (at least 2) present shall be the quorum.

10. IPL Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. Ambani was the only preference shareholder who attended the meeting. He, however, held proxies from another shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 2013, examine the validity of the meeting and the resolution passed thereat.

Answer,

Section 103-Quorum in PSH meeting

Under section 103, unless the articles of the company provide for a larger number, in case of a public company, 5 members personally present shall be the quorum for a meeting of the company, if the number of members as on the date of meeting is not more than 1,000.

One Person Meeting [SS-2]

Class Meeting: Where a person holds all the shares of a class, that person may alone constitute a valid Quorum for the class Meeting.

Conclusion

Section 103 does not prescribe separate Quorum for Preference shareholders' meeting. So the quorum remain same here also.

In the given case therefore, the applicable quorum will be 5 members personally present. Since all the shares are not held by 1 person but there are 50 members, no quorum is therefore present. The meeting and the resolution passed there shall not be valid.

11. A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

OR

The Articles of Association of a public company require the instrument appointing a proxy to be received by the company 75 hours before the meeting. Is it a valid requirement? If not, what are its effect?

Answer,

Section 105- Time limit for depositing Proxy Form

Time limit for depositing Proxy Form: 48 hours before the commencement of the meeting.

Any provision contained in the articles of a company which requires a longer period than 48 hours for depositing with the Proxy form shall have effect as if a period of 48 hours had been specified.

Conclusion to 1st Question

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provide filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

Accordingly, the proxy holder can compel the company to admit the proxy.

Conclusion to 2nd Question

(1) Therefore, in the given case, the requirement in the Articles is invalid.

(2) It shall have effect as if a period of 48 hours had been specified.



12. Sec 105: Time limit for depositing Proxy Form; Multiple Proxies

A General Meeting to be held on 15.09.2022 at 10.00 A.M

Case 1	Mr. Aman, a member of the company appoints Mr. Pawan as his proxy via proxy form dated 10.09.2022. Proxy Form was deposited by Mr. Pawan with the company at its Registered Office on 11.09.2022. However, Mr. Aman changes his mind and on 12.09.2022 gives another proxy to Mr. Kalam and it was deposited on the same day with the company.
Case 2	Another member Mr. Baman also gives to separate proxies to 2 individuals named Mr. Raman and Mrs. Suman. In the case of Mr. Raman, the proxy dated 12.09.2022 was deposited with the company on the same day and the proxy form in favour of Mrs. Suman was deposited on 14.09.2022.

All the proxies viz., Pawan, Kalam, Raman and Suman were present before the meeting. In the light of the relevant provisions of the Companies Act, who would be the persons allowed to represent at proxies for members Aman and Baman respectively?

Answer.

Section 105 -Time limit for depositing Proxy Form

Time limit for depositing Proxy Form

48 hours before the commencement of the meeting

Multiple Proxies appointed by the same Member

- If a member appoints more than 1 proxy, then the proxy who is appointed at last is regarded as the valid proxy, provided his proxy form was deposited 48 hours before the meeting.
- Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Conclusion

The date of AGM is 15.09.2022. The proxy form must be deposited within 48 hours before the commencement of the meeting. The last date of depositing a valid proxy form is 13.09.2022

Case 1:

The proxy form for Mr. Pawan and Mr. Kalam was deposited on 11.09.2022 and 12.09.2022 respectively, which is within the stipulated time limit (13.09.2022). The latter proxy form will be considered as valid proxy in this case.

Thus, in case of Member Aman, the proxy Kalam (and not Proxy Pawan) will be permitted to vote on his behalf.

Case 2:

The proxy form for Mr. Raman was deposited on 12.09.2022, which is within the stipulated time limit (13.09.2022). Whereas the proxy form for Mrs. Suman was deposited on 14.09.2022 which is after the stipulated time limit (13.09.2022) and is invalid.

Therefore, in the case of Member Baman, the proxy Raman (and not Proxy Suman) will be permitted to vote as the proxy.

13. Karun, a member of MNO Limited, appoints Las his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. Both K (the member) and L (the proxy) voted on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 2013, whether K's objection shall be tenable.

OR

C, a shareholder, after appointing B as his proxy at meeting of the Company, himself attended the meeting and voted on a particular resolution. B thereafter claimed to exercise his vote. Examine his claim in the light of the provisions of the Companies Act, 2013.

Answer.

Section 105-Revocation of Proxy

Once the original Member attends the Meeting, the Proxy is revoked. The votes already cast by the Proxy before the original Member attends the Meeting shall remain valid, however the proxy shall not be allowed to vote on the remaining matters.

Hence, in the given problem, the decision of chairman is invalid. Here K's vote was valid, L's vote was invalid. Therefore, K's objection is legitimate.

14. Sumit, a shareholder, gives a notice for inspecting proxies, 5 days before the meeting is scheduled and approaches the company 2 days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions as per the provisions of the Companies Act, 2013?

Answer.

Section 105 Proxy Inspection

Member shall give 3 days' notice to the company in writing of the intention to inspect the Proxy forms.

Time period for Inspection

Period beginning 24 hours before the commencement of the meeting and ending with the conclusion of the meeting.

Conclusion

(A) In the given case, Sumit has given proper notice.

(B) However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sumit can undertake the inspection only during the above-mentioned period and not 2 days prior to the meeting.



15. Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

- Quorum for the general meeting if the company has 800 members.
- Quorum for the general meeting if the company has 6500 members.
- Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

Answer.

According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- five members personally present if the number of members as on the date of meeting is not more than one thousand,
- fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Thus,

- If the company has 800 members, quorum shall be 5 members personally present.
- If the company has 6500 members, quorum shall be 30 members personally present.
- If the company has 5500 members, quorum shall be 30 members personally present.

However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

16. Conducting General Meeting

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP Dec. 2014]

[5 Marks]

1. Explain the process of e-voting.

Answer:

- The notice of the meeting shall be sent to all the members, directors and auditors of the company either –
 - by registered post or speed post; or
 - through electronic means, namely, registered e-mail ID of the recipient; or
 - by courier service;
- The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- The notice of the meeting shall clearly state –
 - that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
 - that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
 - that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- The notice shall –
 - indicate the process and manner for voting by electronic means;
 - indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
 - provide the details about the login ID;
 - specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
- The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-
 - statement that the business may be transacted through voting by electronic means;

- (b) the date and time of commencement of remote e-voting;
- (c) the date and time of end of remote e-voting;
- (d) cut-off date;
- (e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;
- (f) the statement that -
 1. remote e-voting shall not be allowed beyond the said date and time;
 2. the manner in which the company shall provide for voting by members present at the meeting; and
 3. a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
 4. a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

THEORY QUESTIONS

2. Discuss the procedure for conducting a poll in a meeting of a company

Answer:

- As per the provisions of the Companies Act, 2013 where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll to report thereon to him. The Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.
- **Rule 21** provides that the Chairman of a meeting shall, in the poll process, ensure that-
- The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies;
- The Scrutinizers are provided with all the documents received by the Company
- The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting;
- In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;
- The Polling shall be in **Form No. MGT-12**;
- The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies;
- The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over;
- In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman;
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded;

- The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman;
- The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same;
- The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.
- The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in form No. MGT-13. The report shall be signed by the scrutinizer(s) and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

3. Give the points of distinction between ordinary resolution and special resolution

Answer:

Difference between ordinary resolution and Special resolution Ordinary Resolution:

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution

As per Section 114(2) of the Act, a resolution shall be a special resolution, when

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and
- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

4. Which one of the following required ordinary resolution?

- (1) to change the name of the company
- (2) to alter the articles of association
- (3) to reduce the share capital
- (4) to declare dividends

Answer:

> Ordinary Resolution/Special Resolution

Proposed Dividend	Section	Resolution
(1) to change the name of the company	13	Special Resolution
(2) to alter the articles of association	14	Special Resolution
(3) to reduce the share capital	66	Special Resolution
(4) to declare dividends.	102	Ordinary Resolution

An ordinary resolution is required to declare dividends. The declaration of dividend is one of the ordinary businesses conducted at every AGM of a company u/s 102 (2) of the Companies Act, 2013 and each ordinary business transacted at an AGM requires an ordinary resolution to approve the same.

CASE STUDIES

5. WNS Limited issued a notice with the agenda for 9 businesses to be transacted in the AGM (2 businesses were regarding appointment of Mr. Ravi and Mr. Prashant as directors). The chairman decided to move the resolutions for all the 9 businesses together to save the time of the members present. Examine the validity of the resolutions.

Answer:

For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution [Sec 162]. Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be invalid, except in case of Sec 162.

Conclusion

A) Hence, in the instant case, all the 9 businesses cannot be moved together as 2 businesses were regarding appointment of Mr. Ravi and Mr. Prashant as directors.

(B) Besides these 2 resolutions, other 7 resolutions can be moved together if the members unanimously agree.

6. Members of Khushi Ltd. holding less than 1% of total voting power want to move a company to give a special notice resolution for appointment of an auditor other than have retiring auditor. Explain whether members complied with relevant provisions of the Companies Act, 2013 in making their request

Answer:

Section 115-Special Notice

Where, by any provision contained in this Act or in the articles of a company, special notice is required any resolution, notice of or the intention to move such resolution shall be given to the company by such number of members

- 1) holding > 1% of total voting power or
- (2) holding shares on which such aggregate sum > ₹5,00,000 has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

Special Notice by Members to Company is required in only 4 cases:-

- (1) Removal of Auditors at the AGM u/s 140
- (2) Removal of Auditors and Proposing a NEW Auditor at the AGM u/s 140
- (3) Removal of Directors at the AGM/EGM u/s 169.
- 4) Removal of Directors and Proposing a NEW Director at the AGM/EGM u/s 169.

Conclusion

According to the given facts in the question, there is **non-compliance** of section 115 as stated above i.e., the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of Khushi Ltd. holding less than 1% of the total voting power.

7. At a general meeting of a company, a matter was to be passed by a Special Resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

Answer:

Section 114-Special Resolution

A resolution shall be a special resolution when-

- (1) The intention to propose the resolution has special resolution has been duly specified in the notice calling the general meeting;
- (2) The notice required under this Act has been duly given; and
- (3) The votes cast in favour of the resolution are not less than 3 times the votes cast against the resolution by members.



In short, $V_f > 3V_a$

Conclusion

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), the decision of the chairman is in order.

8. Examine the validity of the following decisions of the Board of Directors with reference to the provisions of the Companies Act, 2013.

(i) In an PQR of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer:

Minimum Number of Members Required for Demanding a Poll

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll:

- (1) MAY be ordered to be taken by the Chairman of the meeting on his own motion, and
- (2) SHALL be ordered to be taken by him on a demand made in that behalf-

Company has a share capital	Demand shall be made by members present in person or by proxy
YES	⇒ Members having >1/10" of the total voting power or ⇒ Members holding shares of >₹ 5,00,000 PUSC
NO	⇒ Members having > 1/10 of the total voting power.

Withdrawal of Demand for Poll

A demand for Poll can be WITHDRAWN at any time before declaration of results by poll.

Conclusion

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

9. If a member of a listed company who has casted his vote through electronic voting can attend GM Or the company and change his vote subsequently and can he appoint a proxy?

Answer:

Section 108- Voting through electronic means

- Double Voting not allowed
- Once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again.
- That the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

Conclusion

In the instant case, a member of a listed company who has casted his vote through electronic voting

- (i) CAN attend general meeting of the company
- (ii) but CANNOT change his vote subsequent and
- (ii) is NOT permitted to appoint a proxy.

10. "Y" a member of AAC Limited is holding 250 shares, which are partly paid. The company held its GM where voting rights was denied to "Y" claiming he has not paid the calls on the shares held by him. Examine the validity of the companies' denial to "Y" w.r.t. the relevant provisions of the Companies Act, 2013, assuming that Articles of the Company do not restrict the voting right of such members.

Answer:

Section 106-Restriction on voting rights

ARTICLES of a company may restrict the voting rights of the members in the following 3 cases:

- (1) Shares on which calls are due but not paid
- (2) Any sum payable by the shareholder has not been paid
- (3) Shares on which the company has exercised any right of lien.

No Prohibition on any other Ground

A company shall not, except on the grounds specified above, prohibit any member from exercising his voting right on any other ground.

Conclusion

In the given question, Mr. Y (member) holding 250 shares of AAC Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.



11. P held 100 partly paid-up shares of Exports Limited. The company asked him to pay the final call money on the Shares. Due to some unavoidable circumstances, he was unable to pay the amount or call money to the company. At a GM of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the Chairman. Decide whether the contention of P is valid.

Answer.Section 106-Restriction on voting rightsGrounds on which Voting Right can be Restricted

ARTICLES of a company may restrict the voting rights of the members in the following 3 cases:

- (1) Shares on which calls are due but not paid
- (2) Any sum payable by the shareholder has not been paid
- (5) Shares on which the company has exercised any right of lien.

No Prohibition on any other Ground

A Company shall not, except on the grounds specified above, prohibit any member from exercising his voting right on any other ground.

Conclusion

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and P's contention is not valid.

12. Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:

- (i) A and his wife B has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?
- (ii) AGM is going to be held on 07.09.2020. Then what will be the e-voting period and the time of closing?

Answer.Regulation 52 Table F

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

Answer (i)-Joint Shareholders must concur in voting unless the Articles provide to the contrary. In the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

Sec 108-Voting Through Electronic Means

The facility for remote e-voting shall remain open for not less than 3 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Answer (ii) - Time Period for E-voting

Thus, if the Annual General Meeting is going to be held on 07.09.2020, the facility for remote e-voting shall open on 03.09.2020 and close at 5.00 p.m. on 06.09.2020.

17. POST MEETING FORMALITIES

PREVIOUS YEAR QUESTIONS & MOP & RTP

[RTP Dec. 2018]

1. In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013.

Answer:

- Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
 - (i) is or could reasonably be regarded as defamatory of any person;
 - (ii) is irrelevant or immaterial to the proceeding; or
 - (iii) is detrimental to the interests of the company;
- Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non - inclusion of any matter in the Minutes on the grounds specified in sub - section (5) above.
- Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons

THEORY QUESTION

2. State the procedure for inspection of Minutes Book of General Meetings of a company, by the members.

Answer:

Section 119-Inspection of Minutes

Inspection of minutes by Member

The books containing the minutes of the proceedings of any GM of a company or of a resolution passed by postal ballot, shall

- (a) Be kept at the registered office of the company; and
- (b) Be open for inspection during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in GM, impose, so, however, that AT LEAST 2 hours in each business day are allowed for inspection.

Copy of minutes demanded by the member

Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the company and on payment of ≤ 10 per page, with a copy of any minutes.

Punishment for Refusal to Allow Inspection and provide copy of minutes

- (a) If any inspection of minutes is refused, or
- (b) If any copy of minutes is not furnished within 7 days of demand, then the punishment shall be as follows:

On Company	Fine ≤ ₹ 25000
On officer in default	Fine ≤ ₹ 5000

Order by Tribunal

In the case of any such refusal or default, the Tribunal [NCLT] may, in addition to the penalty, by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

CASE STUDIES

3. In a General Meeting of XYZ Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, S shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of M is maintainable under the provisions of the Companies Act, 2013?

OR

The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the Chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a Director of the company. The Chairman declines to do so. State how the matter can be resolved.

OR

In a General meeting of Tata Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Suresh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Suresh is maintainable under the provisions of the Companies Act, 2013?

Answer:

Section 118-Chairman's power to remove defamatory matters from Minutes

- There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting-
 - is or could reasonably be regarded as defamatory of any person; or
 - is irrelevant or immaterial to the proceedings; or
 - is detrimental to the interests of the company.

- The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above.
- Hence, in view of the above, the contention of M, S shareholder of XYZ Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

4. Tanvi Ltd. held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr Rohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Mohan Rao, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Rohan Rao and by whom?

OR

PQR Limited held its AGM on September 15, 2022. The meeting was presided over by Mr. T, the Chairman of the Company's BOD. On September 17, 2022, Mr. T, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. T and by whom.

OR

The last GM was conducted by the Chairman on 12th August, 2022. Thereafter, on 19th August, 2022, the Chairman died, before the minutes of the said meeting could be signed. In such an eventuality, how are the minutes book to be dated and signed? Discuss in terms of the provisions of the Companies Act, 2013.

OR

Miraj Limited held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Vikas, the Chairman of the Company's Board of Directors. On September 17, 2022, Mr. Vikas, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Vikas and by whom.

Answer:

Section 118- Signing of Minutes

Each page of every such book shall be initiated or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed-

- (a) **In case of Board Minutes-** The chairman of the said meeting or the chairman of the next succeeding meeting
- (b) **In case of General Meeting Minutes-** The chairman of the same meeting within 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose

- (c) **In case of every resolution passed by Postal Ballot-** The chairman of the Board within 30 days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of Veena Ltd. can be signed in the absence of Mr. Rohan Rao, by any director, authorized by the Board in this respect.

5. Sec 119: Inspection of Minutes

The Board of Directors of Insurance Ltd, have passed resolution to the effect that no member who is indulging in activities detrimental to the interest of the company be permitted to examine the records or obtain certified copies thereof. A member of the Company, considered by the Company to be acting against the interests of the Company, demands inspection of the register of members and minutes of General Meeting and certified true copies thereof. The Company refuses the inspection etc. on the strength of the resolution referred to above. Examine the correctness of the refusal by the Company referring to the provisions of the Companies Act, 2013.

Answer:

Section 119- Inspection of Minutes

The books containing the minutes of the proceedings of any GM of a company or of a resolution passed by postal ballot, shall

- (a) Be kept at the registered office of the company; and
 - (b) Be open for inspection during business hours,
- to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in GM, impose, so, however, that AT LEAST 2 hours in each business day are allowed for inspection.

Conclusion

There is no exception to the above. Every member has the right to inspect and demand copies of minutes of the proceedings of any GM.

Board of Directors cannot pass any Board Resolution contrary to the provisions of the Act.

Any Board Resolution contrary to the provisions of the Act will be null and void. Therefore, the refusal of the company in the present case is illegal.

6. Mr. Harsh, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 201 answer the following:

- (i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?
- (ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

Answer.

**Section 119- Inspection of Minutes**

The books containing the minutes of the proceedings of any GM of a company or of a resolution passed by postal ballot, shall-

- Be kept at the registered office of the company; and
- Be open for inspection during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in GM, impose, so, however, that AT LEAST 2 hours in each business day are allowed for inspection.

Copy of minutes demanded by the member

Any member shall be entitled to be furnished, within **7 working days** after he has made a request in that behalf to the company and on payment of **≤ ₹10 per page**, with a copy of any minutes.

Conclusion

- As in given case, Mr. Harsh, in requirement with law, he can inspect the minutes book and so to have copies of the minutes free of cost.
- As provision does not specify anything on authorizing anyone else to inspect the minutes book. Therefore, Mr. Harsh cannot authorize his friend to inspect the minutes book on behalf of him.

7. Prince Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

Answer:**Section 121-Report on AGM (Listed Company)**

Every listed public company shall prepare in MGT-15, a report on each AGM including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made there under.

Since, Prince Ltd. is a listed company, hence it has to file a copy of Report on AGM with the Registrar within 30 days from 31st August, 2020.

OBJECTIVES**Chapter No. 14,15,16,17 MCO'S Are Covered Here.**

- On which of the following meetings Explanatory Statement u/s 102 is applicable:
 - Annual General Meeting
 - Extra ordinary General Meeting
 - All of the above
 - None of these
- The meeting in which the resolution should be passed by members for voluntary change of name in name clause
 - General Meeting
 - Annual General Meeting
 - Extra Ordinary General Meeting
 - Committee Meeting
- Decisions passed by shareholders are known as.
 - Resolutions.
 - Provisions.
 - Articles.
 - Memorandums.
- Which one of the following statements is incorrect?
 - Notice of meetings must be given to every member and every director.
 - All companies must hold annual general meetings.
 - Directors and secretaries of public companies that fail to hold an annual general meeting are liable to a fine.
 - The directors of a company can be required to hold a general meeting by the company's auditors if the auditors intend to resign.
- Which of the following meetings are all shareholders invited to?
 - annual general meeting.
 - general meeting.
 - class meeting.
 - board meeting.
 - 1 only.
 - 1 and 2 only.
 - 1, 2, and 3 only.
 - 1, 2, 3, and 4.
- What is meant by voting by poll?
 - Where each shareholder or his proxy present at the meeting, has one vote irrespective of the number of shares they hold.
 - Where each shareholder has the right to vote in writing.
 - Where the chairman of the meeting casts the final vote.
 - Where each shareholder or their proxies present at the meeting use as many votes as their shareholding allows them.
- What percentage of shareholders is needed to pass special resolution?
 - It must be unanimous.
 - Not less than 90%.
 - Not less than 75%.
 - More than 50%.



8. Which one of the following statements is correct?

- (a) Where a written resolution is proposed a copy of the resolution must always be sent by post to every shareholder.
- (b) Written resolutions can only be proposed by directors.
- (c) Written resolution can only be proposed by shareholders
- (d) Public companies cannot pass written resolutions.

9. What is a derivative claim?

- (a) A claim brought by a company against one of its directors for negligence, default or breach of duty or breach of trust.
- (b) A claim brought by minority shareholders on the grounds that they have been unfairly treated by the majority of shareholders.
- (c) Where a shareholder, in place of the company, brings a claim against a director of the company for negligence, default or breach of duty or breach of trust.
- (d) A petition to have the company wound up.

10. How is voluntary liquidation of a company Commenced?

- (a) By a Court Order.
- (b) By an ordinary resolution of shareholders.
- (c) By a special resolution of shareholders.
- (d) By a decision of the Board of Directors.

11. The companies to which AGM is not applicable include

- (a) All companies
- (b) OPC
- (c) Government company
- (d) Public company

12. What is the time limit for the first AGM to be held

- (a) within 6 months
- (b) within 12 months
- (c) within 9 months
- (d) within 5 months

13. Arul publisher receives the certificate of incorporation on 20.4.2022. Its financial year ends on 31.3.2023. When is the due date of Arul publishers for holding first AGM

- (a) 30th October 2023
- (b) 31st March 2023
- (c) 30th September 2023
- (d) 30th August 2023

14. Choose the statement which is not correct statement relating to AGM. same day

- (a) 2 AGMs can be held on the same day
- (b) AGM shall be held during business hours
- (c) AGM shall be held on any day including National Holiday
- (d) A and B

15. The authority who decides the date, time and place of AGM

- (a) Company Secretary
- (b) Director
- (c) Shareholders
- (d) BOD

16. State the time limit within which the conclusion of the AGM along with fees or additional fees as prescribed

- (a) 30 days
- (b) 25 days
- (c) 20 days
- (d) 10 days

17. It is not possible to obtain unanimity of opinion on all matters placed before the meeting. So the chairman wants to know the opinion of those present in a meeting. This is called

- (a) B or D
- (b) Ascertaining the sense of the house
- (c) Ascertaining sensibility
- (d) Ascertaining the sense of the meeting

18. While ascertaining the sense of meeting. Based on what principle will a chairman counts the no: of persons in favour & against his verdict

- (a) Majority principle
- (b) Minority principle
- (c) Division of labour
- (d) Delegation of authority

19. The correct rules binding a company regarding execution of contracts through attorney includes

- (a) A company may by writing authorise any person as its attorney to execute other deeds
- (b) A deed signed by the director on behalf of the attorney and under his seal shall bind the Company
- (c) If the company lacks a common seal, the authorisation should be made by 3 directors

(d) B & C

20. The proper authorities to convene meetings include

- (a) Board of Directors
- (b) Shareholders
- (c) A or B
- (d) A & B

21. The authority of BOD regarding convening of meeting include

- (a) AOA empowers Board to convene GM
- (b) Notice given by secretary without Board's sanction is valid
- (c) MOA empowers Board to convene GM
- (d) Notice given by secretary without Board's sanction is invalid

22. The incorrect requirement which makes a notice improper & inadequate

- (a) The length of notice should be 25 clear days
- (b) The accidental omission of a notice does not invalidate proceedings
- (c) The contents should include proxy
- (d) The enclosure should include explanatory statement

23. In case of non profit making companies, notice of GM should be given within _____ days

- (a) 14
- (b) 15
- (c) 21
- (d) 22

24. For every special resolution passed the form attached should be

- (a) Form No:33
- (b) Form No:10
- (c) Form No:23

- (d) None of these
25. The minimum quorum required for private company and public company for general meetings is
- 5 & 2
 - 10 & 2
 - 2 & 5
 - None of these
26. What does sec. 117(3) (g) underlines
- Resolutions passed at the board meetings need not be filed with ROC
 - For ESOP passing of ordinary resolution is sufficient
 - Private company need not appoint directors individually
 - Rights of persons other than directors to stand for directorship shall not apply for private company
27. Notice of statutory meeting should be given with a period not less than
- 21 clear days
 - 14 clear days
 - 7 clear days
 - none of these
28. Notice of statutory meeting should be attested by atleast _____ directors.
- 3
 - 2
 - 4
 - none of these
29. Quorum should be presented at the
- commencement of meeting
 - middle of the meeting
 - end of the meeting
 - any time during the meeting

30. _____ meeting give an opportunity to the member to know, discuss on promotion & formalities of the Company
- general
 - EGM
 - Statutory
 - none of the above
31. In the given below who are not required to hold Statutory General Meeting?
- private company
 - govt company
 - public company
 - both A & B
32. In case of Statutory General Meeting receipts & payments are prepaid upto _____ days before the date of report
- 3
 - 5
 - 7
 - 9
33. In the given below who are required to hold AGM?
- public company
 - private company
 - govt company
 - All the three
34. The company for conducting of AGM is extended by ROC for how many months
- 1
 - 2
 - 3
 - 4

35. Which of the following company can hold AGM on Public Holiday
- public
 - private
 - Government
 - Association Not for profit
36. _____ may grant exception to any class of companies with regard to the time & place of AGM
- CG
 - ROC
 - NCLT
 - BCLT
37. _____ can vote at the meeting even though not a member
- Body corporate
 - president
 - Governor
 - all the above
38. The chairman on his own motion _____ also order a poll
- must
 - should
 - may
 - none of the above
39. Proxy need not to be a _____ of the company
- shareholders
 - members
 - both A & B
 - none of the above

40. If the notice contain a special business then an _____ statement shall be enclosed
- explanatory
 - equity
 - enquiry
 - none of the above
41. Proxy cannot vote on
- show of hands
 - poll
 - Both A & B
 - none of the above
42. _____ is the official recording of the proceedings of a meeting
- quorum
 - minutes
 - Both A & B
 - None of these
43. Minutes should be recorded within _____ days from the day of conclusion of every meeting
- 10
 - 20
 - 30
 - 40
44. Loose-leaf minutes to be bound into the books at regular intervals of _____ months
- 6
 - 7
 - 9
 - 10



45. Within, ____ weeks of requisition requiring circulation of a resolution may be deposited with ROC
- (a) 3
(b) 6
(c) 9
(d) 12
46. A special resolution passed with
- (a) simple majority
(b) 60 % majority of members present
(c) 75%
(d) none of these
47. A poll can be demanded by any member present in persons or by proxies if he has voting powers at least equal to
- (a) 1/5th
(b) 1/10th
(c) 1/20th
(d) 1/30th
48. Which of the following meeting can be held more than once in a calendar year
- (a) EGM
(b) SGM
(c) AGM
(d) none of the above
49. The expenses of holding an EGM by the requisitionists will be ultimately borne by ____
- (a) company
(b) requisitionist
(c) all directors in default
(d) none of the above
50. In which one or more of the following company a member does not have a right to appoint proxy?
- (a) public company having share d
(b) public company not having share capital
(c) private company not having share capital
(d) None of the above
51. In which one of the following cases an ordinary resolution may be passed?
- (a) commencement of a new business
(b) alteration of articles
(c) compulsory winding up of a company
(d) none of the above
52. The companies act 2013 requires that not less than ____ day's notice in writing shall be given to every director at the registered address as available with the company
- (a) 3
(b) 4
(c) 7
(d) 10
53. ____ shall be a quorum for a board meeting
- (a) 1/3rd of total strength or 2 directors, whichever is higher
(b) 1/3rd of total strength or 2 directors, whichever is higher
(c) 1/3rd of total strength or 3 directors, whichever is higher
(d) 1/4th of total strength or 2 directors, whichever is higher
54. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than of ____ the members entitled to vote at such meeting.
- (a) 75%
(b) 90%
(c) 95%
(d) 100%
55. An AGM can be called during business hours only that is between_
- (a) 9 am 8
(b) 10am & 5pm
(c) 9am & 7pm
(d) 9am & 9pm
56. If the board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call an EGM for the consideration of that matter on a day not later than ____ days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves
- (a) 21
(b) 30
(c) 45
(d) 90
57. The requisites of general meeting are
- (a) authority
(b) quorum
(c) A or B
(d) Both A & B
58. In which of the following situations an ordinary resolution is passed
- (a) Alteration of MOA/AOA
(b) Reduction of share capital
(c) A & B
(d) none of these
59. A resolution shall be a ____ resolution if the votes cast in favour of the resolution is not less than 3 times the number of votes, if any, cast against the resolution
- (a) Ordinary resolution
(b) Special Resolution
(c) Resolutions requiring special notice
(d) none of these
60. The simple majority in an ordinary resolution is
- (a) 51%
(b) 75%
(c) not less than 51%
(d) not less than 75%
61. The common points for ordinary & special resolution are
- (a) Votes may be cast only electronically
(b) Voting can be done only by members entitled to do so
(c) The votes of the chairman is considered only for ordinary resolution
(d) B&C
62. The items not considered as ordinary business are
- (a) appointing managers in place of those retiring
(b) appointing auditors & fixing their remuneration
(c) declaration of dividends
(d) B & C



63. All businesses to be transacted at EGMs are

- (a) ordinary business
- (b) special business
- (c) A or B
- (d) A & B

64. An EGM may be called by

- (a) BOD
- (b) Tribunal
- (c) shareholders
- (d) A & B

65. Any reasonable expenses incurred by the requisitionists on account of failure to call the meeting, shall be reimbursed by the _____

- (a) Board's, company
- (b) company's, board
- (c) shareholder's, company
- (d) company's, directors

66. The powers of a Tribunal are

- (a) Tribunal may or may not give consequential directions
- (b) Tribunal can order a meeting of the company
- (c) A or B
- (d) A & B

67. Notice of a meeting should be sent atleast _____ days before the date of meeting

- (a) 30
- (b) 20
- (c) 25
- (d) 20

68. Rules as to quorum in general meetings

- (a) only members present in persons are counted
- (b) All class of shareholders are counted
- (c) Joint holders of shares are treated as single member
- (d) A & C

69. The powers of a chairman in regard to meetings are

- (a) to adjourn the meeting
- (b) to give maximum opportunity to preference shareholders
- (c) to issue notice
- (d) All of the above

70. The restrictions which are not provided on proxies are

- (a) The proxy can have the right to speak at the meeting
- (b) The proxy can have the right to speak at the meeting
- (c) person appointed as proxy shall act on behalf of members not exceeding 50
- (d) A & B

71. The time limit for submission of proxy form is

- (a) 48 hours before a meeting
- (b) 36 hours before a meeting
- (c) 24 hours before a meeting
- (d) no time limit

72. If a shareholder, after appointing proxy himself attends the meeting, who can vote in person?

- (a) proxy
- (b) shareholder
- (c) the director decides
- (d) chairman decides

73. The correct procedure for poll in a company meeting is

- 1. Report of scrutinizers
- 2. Duties of scrutinizers
- 3. documents provided to them
- 4. appointment of scrutinizers
- 5. declaration of result
- (a) 1,2,3,4,5
- (b) 5,4,3,2,1
- (c) 2,3,1,4,5
- (d) 4,3,2,1,5

74. Remote e-voting shall remain open for not less than _____ days and shall close at _____ on the date preceding to the date of GM

- (a) 5 days, 6pm
- (b) 10 days, 4pm
- (c) 3 days, 5pm
- (d) none of these

75. Who may be appointed as a scrutinizer by BOD?

- (a) Chartered Accountant
- (b) Chartered Secretary
- (c) Cost Accountant
- (d) Any of the above

76. Who will keep the register and all other papers relating to electronic voting until the chairman Considers, signs and approves minutes?

- (a) promoter
- (b) director
- (c) shareholder
- (d) scrutinizer

77. _____ exercise his casting vote bonafide in the interest of the company

- (a) Chairman
- (b) shareholder
- (c) proxy
- (d) none of these

78. _____ cannot be appointed as a proxy for a sec 8 company

- (a) member
- (b) Both A & D
- (c) A or D
- (d) non member

79. Under what section of the companies act 2013 does the filing of resolutions & agreements with ROC comes?

- (a) sec.117
- (b) sec.118
- (c) sec.119
- (d) sec.120

80. A director appointed by the Board to hold the office until the conclusion of next annual general meeting is known as

- (a) Additional director
- (b) Alternate director
- (c) Nominee director
- (d) Director retiring by rotation

81. A casual vacancy arising out of resignation of company's auditor can be filled by-

- (a) Company in general meeting by ordinary resolution
- (b) Company in general meeting by special resolution
- (c) Board of Directors
- (d) Audit committee

82. ____ may grant exemption to any class of companies with regard to the time & place of AGM.

- (a) C.G
- (b) ROC
- (c) NCLT
- (d) D.C.A

83. Notice of Adjourn meeting is not required of a meeting is

- (a) Adjourn for want of quorum
- (b) Adjourn sine die
- (c) Adjourn for more than 30 days
- (d) None of the above

84. Notice of statutory meeting should be attested by at least.

- (a) 3 directors
- (b) 2 directors
- (c) 3 directors

85. Postal Ballot means voting by post or electronic means within ____ days of despatch of notice

- (a) 15
- (b) 22
- (c) 30
- (d) 50

86. suspension of a meeting is called

- (a) adjournment
- (b) cancellation
- (c) calling off
- (d) none of these

87. Situation under which meeting are adjourned

- (a) when quorum is not present
- (b) if any member adjourn the meeting
- (c) if chairman adjourn the meeting

(d) both A & C

88. Minutes should not contain

- (a) appointment of officers at the meeting
- (b) details of names of directors
- (c) any matter which in the opinion of chairman detrimental to companies interest
- (d) none of these

89. If the chairman died on 1st april after the AGM who should sign the minutes book

- (a) any shareholder authorised by the board
- (b) any director authorised by the board
- (c) both A & B
- (d) none of these

90. What is the time limit for conducting statutory meeting?

- (a) 1 to 5 months
- (b) 1 to 6 months
- (c) 1 to 9 months
- (d) None

91. Notice of statutory meeting should be attested by at least.

- (a) 3 directors
- (b) 2 directors
- (c) 3 directors
- (d) None of these

92. First AGM must be held with in ____ from the date of the balance sheet

- (a) 6months
- (b) 9months
- (c) 5months
- (d) None of these

93. By which means does a company obtain the prior consent of the company in General meeting

- (a) Ordinary Resolution
- (b) Special Resolution
- (c) All of the above
- (d) None of these

94. The copy of the prospectus which should be filed on a request made by any person before the closing of the subscription list is termed as

- (a) Deemed prospectus
- (b) Shelf prospectus
- (c) Abridged Prospectus
- (d) Information Memoranda

95. Where can the AGM of a govt company be held?

- (a) The registered office of the company.
- (b) Some other place in the same city, town/village as it's registered office.
- (c) A place approved by CG.
- (d) Registered office of the company/ Some other place in the same city, town /village as it's registered office / A place approved by CG.

96. A company in which not less than 2/3rd of directors shall retire by rotation at AGM

- (a) Private company.
- (b) Public company.
- (c) Sec 8 company.
- (d) Registered company.

97. Under which section, a ____ company's not less than 2/3rd of directors shall retire by rotation at AGM

- (a) Sec.152(6), private company.
- (b) Sec 152(7), public company.

(c) Sec 152(8), sec 8 company.
(d) Sec 152(9), sec9 company.

98. The no: of persons to be personally present to constitute a quorum for AGM of a private company.

- (a) Single person.
- (b) 2 persons.
- (c) 3 persons.
- (d) 4 persons.

99. Which of the following can be ratified by the company in General Meeting?

- (a) Acts intra vires company but ultra virus directors.
- (b) Acts ultra vires articles of the company.
- (c) Acts intra vires the Company, but done irregularly.
- (d) A & C.

100. What is the quorum required for a public company if the no: of members exceed 5 thousands?

- (a) 5 members personally present.
- (b) 10 members personally present.
- (c) 15 members personally present.
- (d) 30 members personally present.

101. From the following, which of the given persons can be counted in the quorum of EGM?

1. Mr G, the representative of governor of Gujarat.
2. Mr A & B preference shareholders.
3. Mr L, representing M Ltd, N Ltd, X Ltd.
4. Mr L, representing M Ltd, N Ltd, X Ltd.
5. Mr P, Mr Q, Mr R, Mr S who are proxies of shareholders

- (a) Mr G,N Ltd,X Ltd,N Ltd.
- (b) Mr P,Mr Q,Mr R,Mr S.
- (c) Mr G, Mr A,Mr B,M Ltd.
- (d) Mr P,Mr G,Mr N, Mr R.

102. Which of the following person should not be given notice of every meeting of the company?

- (a) To every member of the company.
- (b) To every director of the company.
- (c) To an auditor/auditors.
- (d) Chairman

103. Identify the law which is not applicable to proxy

- (a) A proxy can vote on behalf of members.
- (b) A proxy has right to speak.
- (c) A proxy can vote on poll.
- (d) A proxy is not permitted for a company not having share capital.

104. When will a nominee acquire right to vote in meetings?

- (a) When he buys at least 2 shares.
- (b) When he buys share.
- (c) When he becomes a registered member.
- (d) When he buys at least 3 shares.

105. Which of the following should be filed by a company within 30 days from the date of every AGM?

- (a) Form AOC-1.
- (b) Form AOC-4.
- (c) Form AOC-3.
- (d) Form AOC-2.

106. The kind of business which can be transacted only at AGMs is

- (a) Ordinary Business.
- (b) Special Business.

- (c) Business
- (d) Ordinary Business & Special.

107. What kind of resolution is passed to increase, consolidate, convert share capital?

- (a) Special Resolution.
- (b) Ordinary Resolution.
- (c) No Resolution.
- (d) Written Resolution.

108. What kind of resolution is passed for further issue of share to persons other than existing shareholders?

- (a) Special Resolution.
- (b) Ordinary Resolution.
- (c) No Resolution.
- (d) Written Resolution.

109. Which one of the following transactions requires the passing of an ordinary resolution?

- (a) To change the name of the company
- (b) To alter the articles of association
- (c) To reduce the share capital
- (d) To declare dividends.

110. Who gives Special Notice to the company for passing certain resolutions?

- (a) A member holding not less than 1% of the Total Voting Power.
- (b) A member holding shares on which aggregate sum amounts to not less than 5 lakhs.
- (c) A member holding not less than 1% of the Total Voting Power/shares on which aggregate sum amounts to not less than 5 lakhs.
- (d) A member holding not less than 1% of the Total Voting Power & shares on

which aggregate sum amounts to not less than 5 lakhs.

111. The kind of company meeting which is convened for transacting some special/urgent business is

- (a) AGM.
- (b) EGM.
- (c) Class Meetings.
- (d) GM.

112. For computing 21 clear days as length of notice-

- (a) Day of notice shall be excluded
- (b) Day of Meeting shall be excluded.
- (c) Day of notice & Day of Meeting are included
- (d) Day of notice & Day of Meeting are excluded.

113. On what condition an AGM called at a Notice shorter than 21 clear days valid?

- (a) If consent accorded thereto by the Chairman.
- (b) If consent accorded thereto by the Director.
- (c) If consent accorded thereto by the BOD.
- (d) If consent accorded thereto by all the members entitled to vote thereat.

114. Which of the following persons are not counted as quorum in General Meeting?

- (a) Proxy.
- (b) Authorised Representatives of companies.
- (c) Authorised Representatives of government
- (d) Member

115. Who should be elected every year at the Board Meeting held immediately after the AGM?

- (a) Director.
- (b) Chairman.
- (c) Scrutinizer.
- (d) Additional Director.

116. What is the time limit for depositing with the company/any other person any instrument appointing a proxy?

- (a) 96 hrs before a meeting of the company.
- (b) 24 hrs before a meeting of the company.
- (c) 48 hrs before a meeting of the company.
- (d) 36 hrs before a meeting of the company.

117. Remote e-voting shall remain open for__

- (a) 3 days.
- (b) Not more than 3 days.
- (c) Less than 3 days.
- (d) Not less than 3 days.

118. When will the remote e-voting period close?

- (a) At 5 pm on the date preceding to the date of the General Meeting.
- (b) At 6 pm on the date preceding to the date of the General Meeting.
- (c) At 5 pm on the date of the General Meeting.
- (d) At 6 pm on the date after to the date of the General Meeting.

119. Which of the following is not permitted in case of e voting situations?

- (a) Voting by poll.
- (b) Voting by show of hands.
- (c) Voting through postal ballot.
- (d) Voting through other means



120. What is the minimum amount of fine charged on a person who is found guilty of tampering with the minutes of the proceedings of the meeting?

- (a) Minimum 25,000 & Maximum 1 Lakh.
- (b) Minimum 35,000 & Maximum 2 Lakhs.
- (c) Minimum 45,000 & Maximum 1 Lakh.
- (d) Minimum 50,000 & Maximum 1 Lakh.

121. Which of the following require ordinary resolution?

- (a) To change the name of the company.
- (b) To alter the AOA.
- (c) To reduce the share capital.
- (d) To declare dividends.

122. Which of the following meeting & resolution is valid?

- (a) A requisition is made by members 49% voting power, the requisitionists themselves convened the meeting.
- (b) A requisition is made by members 9% voting power, the requisitionists themselves convened the meeting.
- (c) A requisition is made by members 10% voting power, the requisitionists themselves convened the meeting.
- (d) A requisition is made by members 4% voting power, the requisitionists themselves convened the meeting.

123. The company cannot refuse inspection of the register of members & Minutes Book of General Meetings, as the resolution passed is Companies act.

- (a) Intra vires.
- (b) Ultra vires.
- (c) Intra vires & ultra vires.
- (d) Extra vires.

124. If ____ is not present within half an hour from the appointed time for holding a meeting of the Company, the meeting called on requisition of members shall stand cancelled.

- (a) Chairman.
- (b) Quorum.
- (c) Director.
- (d) Manager.

125. In which of the following cases, the AGM called at a notice shorter than 21 days valid?

- (a) If the consent is given in writing by not less than 95% of the members entitled to vote at the meeting.
- (b) If the consent is given by electronic mode by not less than 95% of the members entitled to vote at the meeting.
- (c) If the consent is given in writing by not less than 90% of the members entitled to vote at the meeting.
- (d) If the consent is given in writing/by electronic mode not less than 95% of the members entitled to vote at the meeting.

126. The date of EGM is such that it is within maximum ____ days of the receipt of requisition.

- (a) 50 days.
- (b) 40 days.
- (c) 45 days.
- (d) 55 days.

127. Which of the following method can be used to pass resolution?

- (a) voting by show of hands
- (b) voting through electronic means

(c) poll

(d) all the above

128. Notice of Adjourn meeting is not required of a meeting is

- (a) Adjourn for want of quorum
- (b) Adjourn sine die
- (c) Adjourn for more than 30 days
- (d) None

129. Variation of contract is permissible only on approval by way of:

- (a) Approval by top management.
- (b) Ordinary resolution
- (c) Special resolution
- (d) As mentioned in Articles.

130. How many directors of a public company, unless the articles provide otherwise, must be appointed by the company in general meeting?

- (a) All the directors.
- (b) One half of the directors.
- (c) Two-thirds of the directors.
- (d) Three-fourths of the directors

131. Which of the following is not the optional books?

- (a) register of certification
- (b) share application and allotment books
- (c) log book
- (d) minutes book

132. The first meeting of the company after incorporation is ____

- (a) AGM
- (b) extra-ordinary meeting
- (c) statutory meeting
- (d) class meeting

133. Time gap between two annual general meeting should not exceed ____ months.

- (a) 12
- (b) 15
- (c) 18
- (d) 21

134. The first AGM should be conducted within ____ months from the date of incorporation.

- (a) 12
- (b) 15
- (c) 18
- (d) 6

135. ____ days clear notice should be given to hold a AGM

- (a) 7
- (b) 14
- (c) 21
- (d) 28

136. Shorter notice (less than 21 days) is sufficient if ____ of members give their consent.

- (a) 75%
- (b) 80%
- (c) 85%
- (d) 95%

137. Persons authorized to convene extra-ordinary general meeting is ____

- (a) The BOD
- (b) The Board on requisition of members
- (c) Tribunal
- (d) All the above



138. What are the contents of the notice of AGM?
 (a) The place where it is to be held
 (b) the date and hour of the meeting
 (c) a statement of the business to be transacted
 (d) all the above
139. The first board meeting should be held within ____ days of the date of incorporation.
 (a) 30
 (b) 45
 (c) 60
 (d) 75
140. How many board meeting should be conducted in a year?
 (a) 3
 (b) 4
 (c) 5
 (d) 6
141. ____ days notice should be given for Board meeting.
 (a) 7
 (b) 8
 (c) 12
 (d) 15
142. Which of the following matter/s cannot be dealt in a meeting through video conferencing:
 (a) the approval of the annual financial statements
 (b) the approval of the board's report
 (c) the approval of the prospectus
 (d) all the above.
143. According to the companies act, 2013 the resolutions passed in the general meeting are of ____ types.
 (a) three
 (b) four
 (c) two
 (d) five
144. Which of the following is not the right/s of the proxy?
 (a) right to speak
 (b) right to vote
 (c) right to be counted
 (d) A and B
145. Annual General Meeting can be called by ____
 (a) Managing director.
 (b) Shareholders.
 (c) Board of directors.
 (d) company secretary
146. Written record of the business done at a meeting is known as ____
 (a) agenda
 (b) minutes
 (c) reports
 (d) none
147. Annual general meeting need to be called by giving 21 days' clear notice. However it can be called on a shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such case, how many members have to give their consents?
 (a) 75% of members entitled,
 (b) 90% of members entitled,
 (c) 91% of members entitled,
 (d) 95% of members entitled
148. In Annual General Meeting, which one of the follow will be treated as special business?
 (a) declaration of any dividend,
 (b) fixing of the remuneration of the auditors,
 (c) appointment of directors in place of those retiring,
 (d) regularization of Director's Appointment.
149. In case of e-voting, notice shall be sent as attachment in:
 (a) PDF file
 (b) Word file
 (c) Excel file
 (d) Access file
150. Which one of the following is not correct?
 (a) The articles of the company shall provide for the appointment of Chairman in a meeting.
 (b) The members personally present at the meeting shall elect one of themselves to be Chairman on a show of hands, if the article does not provide for the same.
 (c) Managing Director is the Chairman of the meeting.
 (d) The member selected as Chairman as a result of poll, continue the Chairman, who is elected by show of hands.
151. An instrument of the proxy shall be deposited with the registered office of the company within ____ before the conduct of the meeting
 (a) 7 hours
 (b) 21 hours
 (c) 48 hours
 (d) 60 hours
152. Which one cannot be transacted through postal ballot?
 (a) Appointment of auditor
 (b) Election of a Director
 (c) Buy back of shares by a company
 (d) Change in place of registered office outside the local limits of any city, town or village
153. In case of a private company, mention the number of members personally present to form the quorum of a meeting of the company:
 (a) 1 member
 (b) 2 members
 (c) 3 members
 (d) 4 members
154. Which of the following is not a valid medium of sending notice to all shareholders?
 (a) By registered post or speed post
 (b) Through public advertisement
 (c) Through registered email-id
 (d) Through courier service
155. A general meeting may be called after giving a shorter notice if consent is given by not less than of the members entitled to vote at such meeting:
 (a) 95%
 (b) 45%
 (c) 55%
 (d) 65%

156. Which of the following is not a valid method of voting in a meeting of a company?

- (a) Voting through electronic means
- (b) Voting by showing hands
- (c) Voting by poll
- (d) Voting by creating sounds

157. Which of the following is not a valid method of voting in a meeting of a company?

- (a) Voting by show of hands
- (b) Voting through electronic means
- (c) Postal ballot
- (d) Voting by voice

158. The quorum for a public company having the number of members more than 5000 is

- (a) 10
- (b) 20
- (c) 30
- (d) 40

159. In case of e-voting notice shall be sent as attachment in.

- (a) PDF
- (b) Word file
- (c) Excel
- (d) XML

160. Where the equity shares of the company are listed on recognised stock exchange, the issue of such shares shall be approved by the shareholders through the

- (a) Voting by show of hands
- (b) Voting through electronic means
- (c) Postal ballot
- (d) Voting by poll

161. The provisions of Rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means. Here, what does "Mutatis Mutandis" means?

- (a) Make no alteration
- (b) Make necessary alteration
- (c) Make alterations without affecting the main idea of the issue
- (d) None of the above

ANSWER KEY

1. C	2. A	3. A	4. B	5. B	6. D	7. C	8. D	9. C	10. C
11. B	12. C	13. C	14. C	15. D	16. A	17. D	18. A	19. A	20. A
21. A	22. A	23. A	24. C	25. C	26. A	27. A	28. B	29. A	30. C
31. D	32. C	33. A	34. C	35. D	36. A	37. D	38. C	39. C	40. A
41. A	42. B	43. C	44. A	45. A	46. C	47. B	48. A	49. A	50. B
51. C	52. C	53. A	54. C	55. A	56. C	57. D	58. D	59. B	60. A
61. D	62. A	63. B	64. D	65. A	66. B	67. C	68. D	69. A	70. D
71. A	72. B	73. D	74. C	75. D	76. D	77. A	78. D	79. A	80. A
81. A	82. A	83. A	84. B	85. C	86. A	87. C	88. C	89. B	90. B
91. B	92. B	93. B	94. B	95. D	96. B	97. A	98. B	99. D	100. D
101. A	102. D	103. B	104. C	105. B	106. A	107. B	108. A	109. D	110. C
111. B	112. D	113. D	114. A	115. B	116. C	117. D	118. A	119. B	120. A
121. D	122. A	123. B	124. B	125. D	126. C	127. D	128. A	129. C	130. C
131. D	132. C	133. B	134. C	135. C	136. D	137. D	138. D	139. A	140. B
141. A	142. D	143. A	144. D	145. D	146. B	147. D	148. D	149. A	150. C
151. C	152. A	153. B	154. B	155. A	156. D	157. D	158. C	159. A	160. C
161. A									

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



18. DIRECTORS

PREVIOUS YEAR QUESTIONS & MQP & RTP

[PP. Dec 2016]

[5 Marks]

1. How many Independent Directors have to be appointed in a company under the Companies Act, 2013?

Answer:

As per Section 149(4) of Companies Act, 2013,

- Every listed company shall have at least one-third of total number of directors as Independent Directors and
- The CG may prescribe as per Companies Rules, 2014 that following class or classes of public companies to have at least two directors as independent directors -
 - Having paid up share capital of ₹10 crores or more or
 - Having turnover of ₹100 crores or more or
 - Having in aggregate outstanding loans, debentures & deposits exceeding ₹50 crores or more:

Provided that for companies covered under above rule shall appoint higher number of independent directors if higher amount is required for composition of its audit committee.

Any vacancy on seat of independent director will filled up by Board as early as possible but not later than:

- Immediate next board meeting OR
- 3 months from date of such vacancy

Whichever is later.

If a company ceases to fulfil any of three conditions laid down in rule mentioned above for three consecutive years, need not comply with these provisions until such time as it meets any of such conditions. 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. A company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

[MQP Dec 2024]

[7 Marks]

2. Which will not form part of the remuneration of a Director?

Answer:

Section 197(1) provides that the total managerial remuneration payable by a public company to its directors, including Managing Director and a Whole time director in respect of any financial year shall not exceed 11% of the net profits of the company. The company, in general meeting may, authorize the payment of remuneration exceeding 11% of the net profits of the company. Where the company has defaulted in payment to bank/PFI or NCD or any secured creditor, prior approval of the bank/PFI shall be obtained before the special resolution.

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without approval required under this section, he shall refund such sums to the company and until such sum is refunded hold it in trust for the company

Remuneration to MD or WTD

The second proviso to Section 197(1) provides that 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. If there are more than one whole time director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

Remuneration payable to directors

The remuneration payable to directors, who are neither Managing Directors nor Whole Time directors, shall not exceed 1% of the net profits, if there is a Managing Director or Whole time director or manager. In other cases, it shall not exceed 3% of the net profits.

Remuneration when there is no profit

Section 197(3) provides that 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 Directors or whole time director by way of remuneration any sum exclusive of any fees payable. Remuneration may be payable in such a situation in accordance with the provisions of Schedule V.

Sitting fees

A director may receive fee for attending the meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board. Such fees shall not exceed one lakh rupees per meeting of the Board or Committee thereof. The independent directors and women directors may receive the fees not less than the fee payable to other directors.

Professional fee

Any remuneration for services rendered by any such director in other capacity shall not be included if the services rendered are of a professional nature and in the opinion of the Nomination and Remuneration Committee or the Board of Directors, the director possesses the requisite qualification for the practice of the profession.

Periodicity of payment

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



Section 197(6) provides that a director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by other.

Insurance premium

Section 197 (13) provides that where any insurance is taken by a company on behalf of its managing director, whole time director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to such director. If such person is proved to be guilty, the premium paid on such insurance shall be treated as part of remuneration.

[PP. June 2017, MTP June 2019, July 2023, Dec 2022]

[10 Marks]

3. Describe the Procedure for the resignation of Director.

Answer:

As per Section 168 of Companies Act, 2013, the director may resign by following given procedure:

- He may resign by giving a written notice to company.
- The Board will intimate the same in Form DIR-12 along with fees within 30 days from date of its receipt to Registrar of Companies & post the information on its website.
- The fact of such resignation shall also be placed in Director's Report laid in immediately next General Meeting.
- The director may also forward a copy in Form DIR-11 along with reasons & fees to Registrar of Companies within 30 days from date of resignation.
- The Board shall take notice of the resignation on its receipt.
- The resignation shall come into effect:
 - i. From the date on which the notice is received by the company OR
 - ii. From date specified by director

Whichever is later.

A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR - 11 and file the same on his behalf intimating the reasons for the resignation.

The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure i.e. till his resignation.

Where all directors of a company resign from their offices, then:

- The promoter OR
- In his absence, the CG shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

[PP. June 2017]

[6 Marks]

4. Describe the term independent director as per the Companies Act, 2013.

Answer:

As per **Section 2(42)** of Companies Act, 2013 independent director means an independent director referred to in section 149(6).

As per **Section 149(6)** of Companies Act, 2013 independent director means a director other than a managing director or a whole-time director or a nominee director who in Board's opinion is a person of integrity and possesses relevant expertise and experience &

- Who shall not be promoter or related to promoter of the company or its holding, subsidiary, or associate company.
- Who shall not be related to director of the company or its holding, subsidiary, or associate company.
- Who shall not have any pecuniary relationship (other than remuneration) as such director Or
- Shall not have transaction exceeding 10% of his total income or such amount as may be prescribed
With company, its holding, subsidiary, associate or their promoters or directors, during current financial year or immediately 2 preceding years.
- Whose relatives shall not hold any security or interest in company, its holding, subsidiary or associate, during current financial year or immediately 2 preceding years.
- Provided that the relative may hold security or interest in the company of face value not exceeding ₹50 lakhs or 2% of paid-up capital of company, its holding, subsidiary or associate or such higher amount as may be prescribed.
- Whose relatives shall not be indebted in excess of the amount as may be prescribed to the company, its holding, subsidiary, associate or their promoters or directors, during current financial year or immediately 2 preceding years.
- Whose relatives have not given any guarantee or security in connection with indebtedness of 3rd party for such amount as may be prescribed to the company, its holding, subsidiary, associate or their promoters or directors of such holding company, during current financial year or immediately 2 preceding financial years.
- Whose relatives shall not have any pecuniary transaction or relationship of at least 2% of its gross turnover or total income singly OR in combination with above 3 transactions.
- Who along with his relatives
 - i. Shall not hold position of KMP OR
 - ii. Shall not be an employee.

In any of the immediately 3 preceding financial years in the company, its holding, subsidiary or associate.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



This restriction shall not be applicable to relative who is an employee during preceding 3 years.

- Who along with his relatives shall not have been employee, partner or proprietor in any of the immediately 3 preceding financial years of
 - i. Firm of Chartered Accountants or Cost Accountants or Company Secretaries OR
 - ii. Any legal or consulting firm that have transaction of at least 10% of gross turnover of such firm, of company, its holding, subsidiary or associate.
- Who along with his relatives shall not hold at least 2% of total voting power of the company.
- Who along with his relatives shall not be chief executive or director of non-profit organisation that receives at least 25% of its receipts from company, any of its promoters or directors or its holding, subsidiary or associate.
- Who along with his relatives shall not be chief executive or director of non-profit organisation which holds at least 29% of total voting power of the company.
- Who possess such other qualifications as may be prescribed.

[PP. June 2017]

[6 Marks]

5. What are the different duties of a director in a company as per the Companies Act, 2013?

Answer:

As per Section 166 of Companies Act, 2013, a director is bound to perform following duties subject to provisions of the Act & Articles of company:

- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests all its stakeholders & protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- A director of a company shall not assign his office and any assignment so made shall be void.
- If a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than ₹1 lakh which may extend to ₹5lakh.

[PP. June 2017 MQP Dec 2023]

[6 Marks]

6. Enumerate the provisions relating to Restrictions on powers of Board.

As per Section 180 of Companies Act, 2013 the Board can exercise following powers only with consent of the company by passing a special resolution in general meeting:

- a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
The title of buyer or the person who buys or takes on lease any undertaking, property or investment in good faith cannot be affected.
Nothing in this shall affect if such sale or lease of any property of company where the ordinary business of company is of such selling or leasing.
The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act.
- b) To invest (other than investment in trust securities), the amount of compensation received by it as a result of any merger or amalgamation.
- c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, other than temporary loans obtained from the company's bankers in the ordinary course of business.
The excess amount borrowed shall be valid & effectual only if the lender proves that he advanced the loan in good faith & had no knowledge of limit imposed had been exceeded.
This clause is not applicable to banking company in its ordinary cause of business.
The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board.
- d) To remit, or give time for the repayment of, any debt due from a director.



QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



[PP. June 2017 & Dec 2019]

[5 Marks]

7. Write short note on Director Identification Number.

Answer:

As per Section 153 of Companies Act, 2013, every individual intending to be appointed as director of a company shall make an electronic application along with fees as prescribed for allotment of DIN to CG in Form No. DIR-3. The application form downloaded from portal of MCA shall be duly filled in all respects along with photograph and will be signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

As per Section 154 of Companies Act, 2013 & relevant Rules, 2014 on application, the system shall generate an application number after which the CG shall process the application and decide the approval or rejection.

The same will be communicated to the applicant within 30 days from receipt of such application along with the DIN in case of approval by way of a letter by post or electronically or in any other mode.

An intimation of defective or incomplete application shall be given by CG to applicant by email & by placing it on its web site to rectify such defects within 15 days from the date of intimation.

The Government shall reject the application if the defect has not been rectified directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act.

The DIN allotted shall be valid up to the life time of the Director.

The said number shall not be allotted to any other person.

As per Section 155 of Companies Act, 2013, only one DIN shall be allotted to an individual.

As per Section 156 of Companies Act, 2013, the director within 15 days of allotment of DIN shall intimate the receipt of his DIN to every company in which he is director.

As per Section 157 of Companies Act, 2013, the company shall furnish the DIN within 15 days from its receipt to Registrar.

If a company fails to furnish DIN, then:

- The company shall be punishable with fine 25000/- & if failure continues then a further penalty of ₹500/day shall be charged till default continues subject to maximum of ₹1 lakh AND
- Every officer in default shall be liable to penalty of not less than ₹25000/- & if failure continues then a further penalty of ₹100/day shall be charged till default continues subject to maximum of ₹1 lakh.

[PP. June 2018 & Dec 2019 MTP & MQP. Dec 2023]

[7 Marks]

8. Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Or

Enumerate the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Answer:

As per Section 164(1) of Companies Act, 2013, a person shall not be eligible for appointment as a Director of a company, if -

- a) He is of unsound mind and stands so declared by a competent court.
- b) He is an un-discharged insolvent.
- c) He has applied to be adjudicated as an insolvent and his application is pending.
- d) He has been convicted by a Court for any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for at least 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.
If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company for lifetime.
- e) An order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the Order is in force.
- f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and 6 months have elapsed from the last day fixed for the payment of the call.
- g) He has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years.
- h) He has not obtained DIN.
- i) He has not complied with provisions of Section 165(1) regarding number of Directorship.

The disqualifications referred in clauses (d), (e) & (g) shall continue to apply even if appeal or petition has been filed against the order of conviction or disqualification. As per Section 164(2) of Companies Act, 2013, a person shall not be eligible to be re-appointed as a Director of defaulting company or appointed as director in other company for a period of 5 years if the company defaults in following:

- a) The company defaults in filing financial statements or annual returns for any continuous period of 3 financial years OR
- b) The company defaults in repaying the matured deposits & interest thereon or redeem the matured debentures or interest thereon or pay the declared dividend & such failure continues for 1 year or more.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



These disqualifications shall not be attracted on defaulting company's director for a period of 6 months from his appointment.

A private company may by its articles provide for additional disqualifications for appointment as a director.

[PP. June 2018]

[5 Marks]

9. "Directors are agents of the company."-Discuss.

Answer:

The Company being an artificial person can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent.

Contract entered into by a person as a Director of a company will be binding on the Company but directors are not agents of members or of the company.

When Directors act properly on behalf of the Company, they do not incur personal liability if they do not exceed their powers.

Directors would be personally liable under the following circumstances:

- > Director acts in his own name.
- > Director enters into an agreement/contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity of the Company.
- > Rights of the Company: Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.

[PP. Dec 2018, Dec 2023, June 2024 & Dec 2024]

[7 Marks]

10. Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013.
Or

Analyse the powers of board of directors or a director of a company under the Companies Act, 2013.

Answer:

As per Section 179 of Companies Act, 2013 read with Companies Rules, 2014 subject to provisions contained in Act, Memorandum or Articles, the directors of company shall be entitled to all such powers & do such acts as the company is authorised to do. Only such powers can exercised for which no approval of members in general meeting is required.

The following powers can be exercised by passing a Board Resolution in Board Meeting –

- a) Can make calls on shareholders in respect of money unpaid on their shares.
- b) Can buy-back of securities under Section 68.
- c) Can issue securities, including debentures, whether in or outside India.

- d) Can borrow monies.
- e) Can invest the funds of the company.
- f) Can grant loans or give guarantee or provide security in respect of loans given.
- g) Can approve financial statement and the Board's report.
- h) Can diversify the business of the company.
- i) Can to approve amalgamation, merger, or reconstruction.
- j) Can take over a company or acquire a controlling or substantial stake in another company.
- k) Can make political contributions.
- l) Can appoint or remove KMP

The Board may, by a resolution passed at board 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 (d) to (f) above on such conditions as it may specify.

The banking company is not covered under the purview of this section.

The company may impose restriction and conditions on the powers of the Board by passing a resolution in general meeting.

However, unless specifically restricted under the act or Article of Association, Board has all the powers to manage the affairs of the company.

[PP. Dec 2018]

[10 Marks]

11. Enumerate the provisions of the Companies Act, 2013 relating to women director in a company.

Answer:

As per 2nd proviso to Section 149(1) of the Companies Act, 2013 read with Rule 3 of Companies 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 ₹100 crores or more or
 - b) Turnover of ₹300 crores or more.

For this purpose, the paid capital or turnover as on the last date of latest audited financial statements shall be taken into account.

A company incorporated under the Companies Act shall comply with such appointment of woman director within a period of 6 months from the date of its incorporation.

Any vacancy on seat of woman director will be filled up by Board as early as possible but not later than:

- > Immediate next board meeting OR
- > 3 months from date of such vacancy

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



Whichever is later.

[PP. June 2019, July 2023]

[10 Marks]

12. Discuss the rules of appointment of director elected by small shareholders in a company.

Or

Discuss the process of appointment of director elected by small shareholders in a company

Answer:

"Small shareholder" means a shareholder holding shares of nominal value of not more than 20,000 or such other sum as may be prescribed.

As per Section 151 of Companies Act, 2013 read with Companies Rules, 2014,

- A listed company may have 1 director elected by small shareholders.
- A listed company, may upon notice of not less than 1000 small shareholders or one tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by small shareholders.

Such director shall not be liable to retire by rotation.

The tenure shall not exceed a period of 3 consecutive years and on the expiry of the tenure such director shall not be eligible for reappointment.

He shall be considered as an independent director subject to provisions of Section 149(6) of Companies Act, 2013.

He shall not be eligible for such appointment if he is disqualified u/s 164 of Companies Act, 2013 for the appointment of director.

No person shall hold the position of small shareholder's director in more, than two companies at the same time (the 2nd company should not be a rival company of the 1st).

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.

[PP. Dec 2022, MTP Dec 2018 & MTP Dec 2022]

[10 Marks]

13. Can a director be removed? If so, give the procedure in detail as per Companies Act, 2013.

Answer:

As per Section 169(1) of Companies Act, 2013, a company may by ordinary resolution remove a director (not being a director appointed by Tribunal) before expiry of the period of his office after giving him reasonable opportunity of being heard.

An independent director reappointed for a 2nd term shall be removed by company only after passing a special resolution & after giving him reasonable opportunity of being heard.

The provision of removal of director shall not be applicable to director appointed according to principle of proportional representation u/s 163 of the Act.

As per Section 169(2) of Companies Act, 2013, a special notice shall be required to remove director under this section or appoint somebody else in his place at meeting in which the director is removed.

As per Section 169(3) of Companies Act, 2013, as soon as the company receives the notice, it shall forward a copy to concerned director & such director shall be entitled to be heard on resolution at meeting even if he is not a member.

As per Section 169(4) of Companies Act, 2013, after receiving the notice the concerned director can make a written representation to company & requests its notification to members.

The company (if time permits), in notice of meeting given to members shall state the fact of representation having been made & send copy of representation along with meeting's notice to members.

If due to insufficient time or company's default, the copy of representation could not be sent to members, then the director without prejudice to the right to be orally heard require that the representation shall be read out at the meeting.

The copy or representation shall not be sent out or read out orally in meeting if on application by company or aggrieved person, the Tribunal is satisfied that the rights are being abused by the director to secure needless publicity of for defamatory purpose & Tribunal may also order the director to pay the cost of application (in whole or in part) to company.

As per Section 169(5) of Companies Act, 2013, the vacancy created by removal of director under this section may be filled by appointment of another director if a special notice for the same has been given u/s 169(2).

As per Section 169(6) of Companies Act, 2013, the director appointed under section 169(5) shall hold office till the date up to which his predecessor would have held (if not removed).

As per Section 169(7) of Companies Act, 2013, if the vacancy is not filled as per section 169(5), then it shall be filled as casual vacancy u/s 161(4) of the Act.

The removed director shall not be re-appointed.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



As per Section 169(8) of Companies Act, 2013, nothing in this section shall be taken as depriving the director removed from compensation or damages payable to him in respect of termination of his appointment as director as per terms of contract

[PP. Dec 2022, MTP June 2020 & MTP June 2023]

[10 Marks]

14. Discuss the prohibitions and restrictions regarding political contributions made by a company under the Companies Act, 2013.

Answer:

As per Section 182(1) of Companies Act, 2013, notwithstanding anything contained in any other provision of the Act, a company may make political contributions by passing board resolution at board meeting of any amount directly or indirectly to any political parties.

Following companies cannot make political contributions:

- Government Company &
- Company which has been into existence for less than 3 financial years.

As per Section 182(2) of Companies Act, 2013 Following shall be deemed to be political contributions:

- A donation or subscription or payment given by company on its behalf or on its account to a person carrying any such political activity, knowing that such contribution, etc. is likely to affect public support of the party.
- The amount of expenditure incurred whether directly or indirectly on an advertisement in any publication being a publication in nature of souvenir, brochure, pamphlet, etc. by a company for or on behalf of political party & where such publication is not for or on behalf of political party but for its advantage.

As per Section 182(3) of Companies Act, 2013, every such contribution made shall be disclosed by company in its profit & loss account of relevant financial year.

As per Section 182(3A) of Companies Act, 2013, the contribution shall be made by an account payee cheque drawn on a bank, account payee bank draft or electronic clearing system through a bank account.

A contribution can also be made through an instrument issued pursuant to any scheme notified by law for the time being in force.

As per Section 182(4) of Companies Act, 2013, if contributions are made contravention of given provisions, then Company shall be punishable with fine which may extend to 5 times the amount so contributed & Officer at default shall be punishable with imprisonment for term extending up to 6 months AND fine which may extend to 5 times the amount so contributed.

[PP. June 2023]

[5 Marks]

15. Discuss the procedure for rotation of directors.

Answer:

If the articles of association provided for retirement of all directors in the annual general meeting, then all the directors are liable to directors.

According to section 152(6) of the Companies Act, 2013, 2/3rd of the total number of directors is liable to retire by rotation and those directors are called as retiring directors. Out of the retiring directors (2/3rd of total number of directors) 1/3rd of directors are liable to vacate the office.

The directors who were in the office for the longest period are liable to retire first.

Where a director retires by rotation at the annual general meeting of a company, the company at the same meeting may appoint the retiring director; or some other person in the vacancy.

[MQP. July 2023]

[7 Marks]

16. Demonstrate the procedure for rotation and re-appointment of a member of Board of Directors of limited Company

Answer:

If the articles of association provided for retirement of all directors in the annual general meeting, then all the directors are liable to directors. According to sec 152(6) of the Companies Act, 2013, 2/3rd of the total number of directors is liable to retire by rotation and those directors are called as retiring directors. Out of the retiring directors (2/3rd of total number of directors) 1/3rd of directors is liable to vacate the office. The directors who were in the office for the longer period, is liable to retire first. However, if the two or more directors have been appointed on the same day then directors will retire based on the mutual understanding between them and when mutual understanding is not available then they retire based on draw by lots. Section 152(6) provides that unless the articles provides otherwise for the retirement of all directors at every annual general meeting, not less the two third (2/3rd) of the total number of directors (excluding independent directors, whether appointed under this act or under any other law) of a public company shall:

1. be persons whose period of office is liable to determination by retirement of directors by rotation; and
2. have as otherwise expressly provided in this Act, be appointed by the company in general meeting. The remaining directors (i.e. nonrotational/non-retiring/permanent directors) in the case of public company shall be appointed as per provisions contained in the articles of the company. Where a director retires by rotation at the annual general meeting of a company.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



[MTP, Dec 2019 & Dec 2023]

[7 Marks]

17. When the office of a Director shall become vacant?

Answer:

Section 167 provides that the office of a Director shall become vacant in case-

- he incurs any of the disqualifications specified in Section 164; 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.
- he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;
- he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.
- he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;
- he becomes disqualified by an order of a Court or Tribunal;
- he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months, and
 - for thirty days from the date of conviction or order of disqualification;
 - where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
- he is removed in pursuance of the provisions of the Act;
- he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
 - he breaches the limits of maximum directorship allowed.
 - A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to the above.

[MTP, Dec 2020 & Dec 2022]

[7 Marks]

18. What are the qualification of independent directors?

Answer:

Rule 5 prescribes the qualifications of independent directors.

An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option.

He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company.

The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors by rotation shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors maintained by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

[MTP, June 2020 MQP Dec 2023]

[7 Marks]

19. Discuss the procedure for Rotation of Directors and re-appointment of directors.

Answer:

Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two thirds of the total number of directors of a public company shall-

- be persons whose period of office is liable to determination by retirement of directors by rotation; and
- save as otherwise expressly provided in the Act, be appointed by the company in general meeting.

At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed at every subsequent annual general meeting, one third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. The company may fill up the vacancy by appointing the retired director or some other person thereto.

Re-appointment of Director

A director liable to be retired may be re appointed in the general meeting. Section 164(2) provides that 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 3 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 5 years from the date on which the said company fails to do so.

[PP. Dec 2022, MTP Dec 2018 & MTP Dec 2022]

[10 Marks]

20. Analyse different duties & liabilities imposed on the directors of the companies by the Companies Act, 2013.

Answer:

Duties of directors:

As per Section 166 of Companies Act, 2013, a director is bound to perform following duties subject to provisions of the Act & Articles of company:

- > A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests all its stakeholders & protection of environment.
- > A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- > A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- > A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- > A director of a company shall not assign his office and any assignment so made shall be void.

If a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall be not less than of 1 lakh which may extend 5 lakh.

Liabilities of directors:

When Directors act properly on behalf of the Company, they do not incur personal liability if they do not exceed their powers.

Directors would be personally liable under the following circumstances if:

- > Director acts in his own name.
- > Director enters into an agreement/contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity of the Company.

MTP Dec 2023

[8 Marks]

21. How can the directors be removed from the office before expiry of their term?

Answer:

Section 169 of the Companies Act, 2013 came into force partially 4 from 1st April 2014, which provides the provisions for removal of directors. According to this section:

- i. A company may, by ordinary resolution, remove a director other than a director appointed by the Tribunal under section 242 of the Act, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. Independent director appointed for the second term can be removed by the special resolution.
- ii. It is further provided that the directors appointed on the principle of proportional representation under section 163 cannot be removed by an ordinary resolution as aforesaid.
- iii. A special notice shall be required of any resolution, to remove a director under section 169 or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
- iv. On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
- v. The vacancy resulting from the aforesaid removal if he had been appointed by the company in general meeting or by the Board, may be filled in by the appointment of another director at the same meeting at which the director is removed, provided special notice of the proposed appointment has been given under section 169(2).
- vi. A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed.
- vii. If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy in accordance with the provisions of this Act provided that the director who was so removed from office shall not be reappointed as a director.
- viii. Nothing in this section shall be taken to deprive a person removed under this section of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director.
- ix. Nothing in this section shall be derogating from any power to remove a director under any other provisions of this Act.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



MQP Dec 2024

[7 Marks]

22. Analyze the legal provision relating to the company under section 169 of Companies Act 2013.

Answer:

Directors can be either removed by shareholders or by Tribunal.

Under Section 169 of Companies Act, 2013, shareholders have been given the inherent right to remove the directors appointed by them. It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors. Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution.

A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. The vacancy is created under this section after the removal of the director then in the same meeting of the removal another director is being appointed for time being, and a special notice of the intended appointment is provided. The newly appointed director has to hold the post until the duration up to the new formal appointment of the director is made. When a director is removed as aforementioned, his office vacates automatically u/s 167. The removed director is liable for the damages and compensation which is required to be payable to him in lieu of his removal or termination according to the prescribed terms and conditions of the appointment.

In Queen Kuries & Loans (p.) Ltd. vs Sheena Jose [1993], it was held that the notice must disclose the ground on which the director is proposed to be removed.

Under Section 242 of the Companies Act, 2013, where an application has been made to the Tribunal under Section 241, against oppression and mismanagement of a company's affairs, the Tribunal may order for the termination or setting aside of an agreement which the company might have made with any of its directors. It may also order the removal of any of the directors of the company. A director so removed shall not be entitled to claim any compensation from the company for the loss of office under Section 243. Additionally such a director shall not be entitled to serve as a manger, managing director or director of the company without leave of the Tribunal for a period of five years from the date of Tribunal's order terminating or setting aside his contract with the company.

[PP Dec 2024]

[7 Marks]

23. Examine various aspects relating to Director's remuneration as per Companies Act, 2013.

Answer:

Section 198 lays down the overall maximum of managerial remuneration which can be paid by public company or a subsidiary of a public company. The total managerial remuneration payable to directors or manager in respect of a financial year shall not exceed eleven per cent of the net profits of the company. But sometimes a company may make no or inadequate profits in a financial year. This does not mean that its directors shall remain unpaid. In such a case, the company may, with the previous approval of the Central Government, pay by way of minimum remuneration any sum as may be authorized.

It may be noted that the remuneration of directors can be determined only by the articles of a company or a resolution of the general body or a special resolution if the articles so require. The directors cannot themselves fix the remuneration of all or any one of themselves. A managing or whole-time director may be paid either on a monthly basis of a specified percentage of the net profits of the company or partly by one way and partly by the other. But a managing director or whole-time director is not entitled to draw more than five per cent or where there is more than one such director, ten per cent of net profits by way of remuneration, except subject to conditions specified in Schedule XIII or with the approval of the Central Government.

As per Section 2(78) of the companies Act, 2013 'Remuneration' defined as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under income tax Act, 1961. As per Section 197 of the Act, the total managerial remuneration payable by a public company, to its directors, including managing director, whole time director and its manager, in respect of any financial year shall not exceed 11% of the net profits of that company. Accordingly, a public company can pay remuneration to its directors including executive directors and non-executive directors within the limits of 11% of the net profits and this limits can only be exceeded with the prior approval of the members of the company by an ordinary resolution. The remuneration payable to a director shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

So, even if a director is paid remuneration for special services apart from directorial services, such amount must also be included in the total remuneration in order to ascertain the limits of 11% of net profits as prescribed under Section 197(1) of the Act. However, the only exception is when remuneration paid for professional services rendered by a director to the company without any limit is not included in the limit, if the following two conditions are satisfied:

The services rendered are of a professional nature and;

In the opinion of the Nomination and Remuneration Committee the director possesses the requisite qualification for the practice of the profession.

If the company does not require to have such a committee under section 178, the board can form this opinion.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



EXTRA THEORY QUESTIONS

24. Enumerate Rights of shareholders under Companies Act, 2013.

Answer:

A person who is a shareholder of a company has many rights under the Act. Some of them are:

- The right to vote at all meetings [Sec.47]
- he right to requisition an extraordinary general meeting of the company [Sec.100]
- The right to receive notice of a general meeting [Sec.101]
- The right to appoint proxy and inspect proxy register [Sec.105]
- In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- The right to require the company to circulate resolution [Sec.111].
- To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]
- To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].
- To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- To participate in the removal of directors by passing an ordinary resolution [Sec.169]

25. "Directors are agents of the company." – Discuss.

Answer:

The company can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a company, will be binding on the Company. However, Directors are not Agents of Members of the company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement/ contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company.

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.
- When Directors act properly on behalf of the Company, they do not incur personal liability; they do not exceed their powers.

26. Discuss the rules of appointment of director elected by small shareholders in a company.

Answer:

'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. A listed company may have one director elected by small shareholders.

Rules 7 requires that a listed company, may upon notice of not less than 1000 small shareholders or one tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by small shareholders.

Such director shall not be liable to retire by rotation. The tenure shall not exceed a period of three consecutive years and on the expiry of the tenure such director shall not be eligible for reappointment. A disqualified person for the appointment of director shall not be eligible for such appointment. No person shall hold the position of small shareholder's director in more than two companies at the same time. 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.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



CASE STUDY QUESTIONS

27. Mr. A, a national of Nepal, intends to be appointed as a Director of ABC Ltd., an Indian Company. He is desirous of making an application to the Central Government for allotment of DIN (Director Identification Number). State the procedure for Allotment or Rejection of DIN to Mr. A.

Answer:

According to section 154, the Central Government shall allot a Director Identification Number (DIN) to Mr. A in the prescribed manner within one month from the receipt of application. Rule 10 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 provides the following procedure for rejection or allotment of DIN:

(i) Generation of application number- On the submission of the Form DIR-3 on the portal and on payment of the requisite fees, an application number shall be generated by the system automatically. Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number.

(ii) Communication of issue of DIN- After generation of application number, the Central Government shall process the applications received for allotment of DIN and decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(iii) In case of defective/incomplete application- If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application. The applicant shall be directed to rectify the defects or incompleteness by resubmitting the application within a period of 15 days of such placing on the website and email. It is provided that the Central Government shall -

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(iv) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

Note 1: All DINs allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

Note 2: The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Since Mr. A is a national of Nepal, which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India needs to be attached along with application for Director Identification Number for the generation of Application Number.

28. Mr. Sohit, a Director of PQR Limited proceeding on a long foreign tour, appointed Mr. Sohan as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Sohit claims that he has a right to appoint alternate director. Demonstrate whether Mr. Sohit is correct based on legal provisions?

Answer:

Appointment of alternate director can be done by the BOD and not by any individual director.

Mr. Sohit is not correct based on legal provision.

Section 161(2) of the Companies Act, 2013 provides that the Board of Directors of a company may, if authorized by its Articles or by resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than 3 months from the State in which the meetings of the Board are ordinarily held. The alternate director can be appointed only by the Board of Directors and only in cases where the Board is authorized by Articles or by the company in General Meeting. Hence Mr. Sohit the director in question, is not competent to appoint alternate director and the appointment of Mr. Mohan as alternative director is not valid.

29. A company sold one of its flats to one of the directors and received 50% of the price in cash and agreed to receive the balance in installments. Would u consider this as a loan granted to director?

Answer:

As per **section 185** of the Companies Act, 2013, no company shall, directly or indirectly, give any loan to a director.

In the given case, the debt arose not out of an advance but out of a transaction of sale of a flat by the company to its director.

The company gave time to the director to pay a part of the purchase price.

The essential requirement of a 'loan' is the advance of money upon the understanding that it shall be returned back and it may or may not carry interest. Where a company sells a flat to one of its directors and receives half the price in cash and agrees to receive the balance in installments, the transaction amounts to a credit sale; it does not amount to even an 'indirect loan'.

The word 'indirectly' used in section 185 of the Companies Act, 2013 only means that company shall not give a loan to a director through the agency of one or more intermediaries. The word 'indirectly' cannot be read as converting 'what is not a loan' into 'a loan'.

Therefore, in the given case, there is no contravention of Section 185 of the Companies Act, 2013.

QUESTION BANK



CA AKASH AGARWAL

DIRECTOR



30. Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
On the request of bank providing financial assistance the Board of directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power. Further, there is no 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 authorises 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.

31. Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2014 in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2015, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2015. Advise the company on the complaints made by the shareholders.

Answer:

The given problem relates to sections 161(1) and 161(4) of the Companies Act, 2013.

The Legal Position

Additional Directors [Section 161(1) of the Companies Act, 2013]:

- The Board may appoint the additional directors in pursuance of the provisions of section 161(1).
- The Board may, in its discretion, appoint the additional directors whenever it deems fit.
- The appointment of additional directors may be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next annual general meeting. However, if AGM is not held upto the last date for holding AGM as per the provisions of section 96, the additional director shall vacate his office on the last day on which the AGM should have been held.

Director filling a casual vacancy [Section 161(4) of the Companies Act, 2013]

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.

- The director filling a casual vacancy 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.
- A casual vacancy cannot be filled by passing a resolution by circulation under section 175.

The given case

- The Board has appointed Mr. Sachin as an additional director in a casual vacancy.
- The appointment of Mr. Sachin has been made by passing a circular resolution.
- The last date for holding the annual general meeting was 31st March, 2015. The annual general meeting has not been held till 31st March, 2015.
- So it is to be decided, whether appointment of Mr. Sachin is valid or not?; and if he can continue after 31st March, 2015

Analysis of the case

1. Neither section 161(1) nor section 161(4) authorises the Board to appoint an additional director to fill the casual vacancy.

- If appointment of Mr. Sachin is made as an additional director, then, the provisions of section 161(1) apply, and so such appointment cannot amount to filling a casual vacancy.
- If Mr. Sachin is appointed to fill a casual vacancy, then, the provisions of section 161(4) apply to him, and so Mr. Sachin shall not be an additional director.
- Thus, a combined reading of sections 161(1) and 161(4) makes it clear that the appointment of Mr. Sachin as an additional director to fill the casual vacancy is not possible at all.

2. Mr. Sachin has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Sachin is in contravention of section 161(4), and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.
- The appointment of Mr. Sachin is not valid since it is in contravention of sections 161(1) and 161(4). Mr. Sachin cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.



19. AUDITOR

PREVIOUS YEAR QUESTIONS

Internal Financial Control for Financial Reporting (Sections 134, 143 & 177)

PREVIOUS YEAR QUESTIONS & MQP & RTP

[PP Dec 2023]

[7 Marks]

Q1. Critically assess the role of Audit Committee with reference to the Board as per the Companies Act, 2013.

Answer:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,-

- The recommendation for appointment, remuneration and terms of appointment of auditors of the company.
- Review and monitor the auditor's independence and performance and effectiveness of audit process.
- Examination of the financial statement and the auditors' report thereon.
- Approval or any subsequent modification of transactions of the company with related parties.
- The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed:
- Provided that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:
- Provided also that in case any transaction involving any amount not exceeding 1 crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

- Provided also that the provisions of this clause shall not apply to any transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

It also has other powers such as:

- Scrutiny of inter-corporate loans and investments.
- Valuation of undertakings or assets of the company, wherever it is necessary.
- Evaluation of internal financial controls and risk management systems.
- Monitoring the end use of funds raised through public offers and related matters.
- It may call for the comments of the auditors.
- It has authority to investigate into any matters of the company.
- It has power to obtain professional advice from external sources and have full access to information contained in the records of the company

[MQP Dec 2023, MQP Dec 2024]

[7 Marks]

Q2. Write briefly about Audit Committee according to Section 177 of Companies Act, 2013?

Answer:

1. The Board of Directors of [every listed public company] and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
4. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, -
 - i. the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - ii. review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - iii. examination of the financial statement and the auditors' report thereon;
 - iv. approval or any subsequent modification of transactions of the company with related parties;
 - v. scrutiny of inter-corporate loans and investments;
 - vi. valuation of undertakings or assets of the company, wherever it is necessary;
 - vii. evaluation of internal financial controls and risk management systems;



- viii. monitoring the end use of funds raised through public offers and related matters.
5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
 6. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
 7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
 8. The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
 9. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
 10. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:
Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report. The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement
Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with section 177 (2). Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, among other things, include, the recommendation for appointment, remuneration and terms of appointment of auditors of the company; review and monitor the auditor's independence and performance, and effectiveness of audit process; examination of the financial statement and the auditors' report thereon; approval or any subsequent modification of transactions of the company with related parties; scrutiny of inter-corporate loans and investments; valuation of undertakings or assets of the company, wherever it is necessary; evaluation of internal financial controls and risk management systems; monitoring the end use of funds raised through public offers and related matters.

However, the Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company
Additionally, the Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company
The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
Moreover, every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

[PP. June 2024]

[7 Marks]

Q3. Demonstrate the different points to be stated in the auditor's report by the auditor as per the Companies Act, 2013.

Answer:

- As per Section 143(3) of Companies Act, 2013, the auditor's report shall state the following
- Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit.
- Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him.
- Whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section-and the manner in which he has dealt with it in preparing his report.
- Whether the company's balance sheet and P&L account dealt with in the report are in agreement with the books of account and returns.
- Whether, in his opinion, the financial statements comply with the accounting standards.
- The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- Whether any director is disqualified from being appointed as a director under sub-section (2) of section 164.



- Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- Whether the company has adequate internal financial controls system with reference to financial statements in place and the operating effectiveness of such controls.
- Such other matters as may be prescribed.

[PP Dec 2023]

[7 Marks]

Q4. Demonstrate the duties of an auditor provided in section 143 of the Companies Act, 2013.

Answer:

The duties of an auditor have been laid down by the Companies Act, 2013, provided in Section 143. The Act explains the duties in a simplified manner, although the list given is not exhaustive.

1. Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely: –

- a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its member;
- b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debenture and other securities have been sold at a price less than that at which they were purchased by the company;
- d) whether loans and advances made by the company have been shown as deposits;
- e) whether personal expenses have been charged to revenue account;
- f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading;

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies insofar as it relates to the consolidation of its financial statement with that of its subsidiaries its subsidiaries and associate companies.

2. The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement or other document which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into

account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made there under or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statement or other document give a true and fair view of the state of the company's affairs as at the end of its financial year and such other matters as may be prescribed.

3. The auditor's report shall also state–

- a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;
- b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- e) whether, in his opinion, the financial statements comply with the accounting standards;
- f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- i) whether the company has adequate internal financial controls system internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
- j) such other matters as may be prescribed.

4. Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

5. In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under subsection (5) or sub-section (7) of section 139 and direct such auditor the manner in which the



accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

6. The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to—
 - a) comment upon or supplement such audit report, and
 - b) conduct any supplementary audit of the company's accounts by himself or by such person or persons as he may authorise in this behalf and such person or persons shall have the same rights and obligations as the auditor who has submitted the report :
 Provided that any comments given by the Comptroller and Auditor-General on the report of the supplementary audit conducted by him shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
7. Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (2) of section 123, if he so deems necessary, by an order, cause test audit to be conducted of the accounts of such company. The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (56 of 1971), shall apply to the report of such test audit.
8. Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (hereafter in this section referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed.
 Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary
9. Every auditor shall comply with the auditing standards.
10. The Central Government may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards:
 Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.
11. The Central Government may, after consultation with the Advisory Committee, by general or special order, direct, in respect of such class or description of companies, as may be specified in

the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

Provided that until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub-section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of corporate Affairs and the committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor General. (Effective from 10th April, 2015)

12. Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.
 Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:
 Provided further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.
13. No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section if it is done in good faith.
14. The provisions of this section shall mutatis mutandis apply to— a) the cost accountant in practice cost accountant conducting cost audit under section 148; or b) the conducting secretarial audit under section 204.
15. If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall,—
 - a) in case of a listed company, be liable to a penalty of five lakh rupees; and
 - b) in case of any other company, be liable to a penalty of one lakh rupees.



[PP Dec 2013]

[3 Marks]

Q.5 Audit committee is only luxury to the company. Do you agree?

Answer.

Audit committee serves as a communication link among various departments and management, internal auditor, statutory auditor and the public.

Audit Committee provides an independent reassurance to the board through its oversight and monitoring role.

The Audit Committee is a key governance structure charged with oversight over financial reporting and disclosure.

The Audit Committee has a responsibility to ensure that the company's financials are void of any misrepresentation or misleading information.

The role of the Audit Committee in corporate governance has evolved in the wake of the corporate governance failures around the world and the Audit Committee has become increasingly relevant in enhancing confidence in the integrity of an organization's processes and procedures relating to internal control and corporate and financial reporting.

The Audit Committee has become one of the main pillars of corporate governance in checking and forestalling corporate misconduct.

The effectiveness of the Audit Committee determines to a large extent the integrity of a company's financials.

So, it can be said that the given statement is not true. Audit committee is not only luxury to the company. Instead, it is a requirement for a company.

EXTRA THEORY QUESTIONS

Q6. State the provisions relating to Board's report, Directors Report-Financial Statement.

Answer:

- The financial statement, including consolidated financial statement shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or
- In the case of One Person Company, only by one director, for submission to the auditor for his report thereon.
- To this board's report, the auditors' report would be attached to every financial statement whereby the contents would include:
 - a report by its Board of Directors, which shall include:
 - the web address,
 - number of meetings of the Board;
 - Directors' Responsibility Statement;
 - details in respect of frauds reported by auditors under subsection (12) of section 143 other than those which are reportable to the Central Government;
 - a statement on declaration given by independent directors under sub-section (6) of section 149;
- in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
- explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report; and by the company secretary in practice in his secretarial audit report;
- particulars of loans, guarantees or investments under section 186; particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
- the state of the company's affairs; the amounts, if any, which it proposes to carry to any reserves; the amount, if any, which it recommends should be paid by way of dividend; material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;



- a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made, among other things.

CASE STUDY QUESTION

[PP Dec 2024]

[3 Marks]

Q.7 A textile mill appoints M/s Niren Shah & Co., Cost Accountants to get its cost records audited as per section 148 of Companies Act, 2013. State the role of the Audit Committee of the company for such appointment.

Answer.

The company required to get its cost records audited under section 148 of Companies Act, 2013 shall appoint a cost auditor who is a Cost Accountant as defined under Section 2(1)(b) of the Cost and Works Accountants Act, 1959 who holds a valid certificate of practice under section 6(1) of that Act and includes a firm of Cost Accountants.

If there is an audit committee in the company, then the audit Committee shall be the first point of reference regarding the appointment of cost auditors.

The Audit Committee shall ensure that:

- The cost auditor is free from any disqualifications as specified under Section 141 of Companies Act, 2013
- The Audit Committee shall also be responsible for compliances by the cost auditor.

The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.

Rights of a shareholder

[MQP June 2024/PP July 2023]

[7/10 Marks]

Q8. Prepare the list of different rights of a shareholder of a company under Companies Act, 2013.

Or

Discuss the different rights of a shareholder as per Companies Act,

Or

Demonstrate the rights of shareholders under sec 2(55) of the Companies Act 2013?

Answer.

Section 2(55) of the Companies Act, 2013 defines a member as:

1. The Subscribers to the Memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as member in its register of members.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.
In Herdilia Unimers Ltd. v. Renu Jain [1995], it was held that the moment the shares were allotted and share certificate signed and the name entered in the Register of members, the allottee became the shareholder irrespective of the allottee receiving the shares or not
A person whose name is not entered into register of members of company cannot be treated as member or deemed member-Sant Chemicals (P) Ltd. v Aviat Chemicals (P.) Ltd. [2000].
3. Every person holding shares of the company and whose name is entered as beneficial owner in the records of a depository.

A person who is a shareholder of a company has many rights under the Act. Some of them are:

- The right to vote at all meetings [Sec.47];
- The right to requisition an extraordinary general meeting of the company [Sec.100];
- The right to receive notice of a general meeting [Sec.101];
- The right to appoint proxy and inspect proxy register [Sec.105]
- In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- The right to require the company to circulate resolution [Sec.111].
- To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]
- To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].



- To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- To participate in the removal of directors by passing an ordinary resolution [Sec.169].

Key Managerial Personnel

[MQP Dec. 2024]

[7 Marks]

Q9. What do you infer from the term 'Key Managerial Personnel'?

Answer:

The Companies Act, 2013 ('Act') mandates to appoint Key Managerial Personnel (KMP). Section 203 of the Act provides that certain classes of companies must appoint the KMP, which includes:

- the Managing Director or manager or Chief Executive Officer,
- the company secretary and
- Chief Financial Officer.

The company must appoint a whole-time director if it does not have a Chief Executive Officer, manager or Managing Director. Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides the class of companies that must appoint the whole-time KMP, which are as follows:

- Every listed company
- A public company having a paid-up share capital of Rs 10 crore or more
- Further, a private company having a paid-up share capital of Rs. 10 crore or more must appoint a whole-time company secretary.

Every whole-time KMP is appointed through a resolution of the board containing the conditions and terms of appointment, including remuneration. A whole-time KMP must not simultaneously hold office in more than one company except its subsidiary company.

The board is responsible for filling the vacancies in the post of KMP within six months of the vacancy. A company can appoint or re-appoint a person as its managing director, whole-time director or manager for a maximum of five years.

The Act states that a company cannot continue KMP as the employment or appoint a managing director, whole-time director or manager when such person:

- Has attained 70 years or is below 21 years
- Has been convicted as an insolvent or is an uncharged insolvent

- Has suspended payment to the creditors at any time
 - Has been convicted for an offence by a court and sentenced to more than six months' period
 - Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment such other officer as may be prescribed
- a) Chief Executive Officer, manager or Managing Director are responsible for running the company and defined as a director having substantial powers over the company management and its affairs. A Managing Director is appointed through any of the following means:
- By the Articles of Association
 - An agreement with the company
 - A resolution passed in a general meeting
 - By the company board of directors
- The Act defines a manager as the individual who manages the whole company affairs, subject to the board of directors' direction, control and superintendence
- b) Company secretary is responsible for looking after the efficient administration of the company. They take care of the company's compliance and regulatory requirements. The Company Secretaries Act defines a Company Secretary as a person who is a member of the Institute of Company Secretaries of India (ICSI). The company secretary should ensure that the company complies with secretarial standards.
- c) Under the Act, a Whole-Time Director is defined as a director who is in whole-time employment of the company. They are different from an independent director as they are part of the daily operation and have a significant stake in the company. A Managing Director can also be a Whole-Time Director.
- d) Chief Financial Officer is responsible for handling the company's financial status. They keep a tab on cash flow operations, create contingency plans for financial crises and do financial planning. They lead the treasury and financial functions of the company.

**OBJECTIVES****CHAPTER NAME DIRECTOR & AUDITOR MCQ'S ARE COVERED HERE**

1. A Director may be elected by small shareholders upon a notice by
 - (a) not less than 1000 small shareholders.
 - (b) one tenth of the total number of shareholders.
 - (c) not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower.
 - (d) one tenth of 1000 small shareholders.
2. The Regional Director shall communicate the confirmation of shifting of registered office within days of receipt of the application.
 - (a) 15
 - (b) 30
 - (c) 45
 - (d) 90
3. The minimum number of directors for a public company is
 - (a) 1
 - (b) 2
 - (c) 3
 - (d) 7
4. Board of Directors of every listed Company shall constitute an Audit Committee which shall consists of a minimum of
 - (a) 2 Directors
 - (b) 3 Directors
 - (c) 4 Directors
 - (d) 5 Directors
5. Application for Director Identification Number (DIN) is to be made to Central Govt. in Form
 - (a) DIN-1
 - (b) DIN-2
 - (c) DIN-3
 - (d) None of the above
6. The board of directors may appoint additional directors from time to time if so authorized by
 - (a) Articles of Association
 - (b) Memorandum of Association
 - (c) A resolution passed at general meeting
 - (d) A resolution passed at board meeting
7. The appointment of an independent director shall be approved by the
 - (a) Board meeting
 - (b) General meeting
 - (c) Registrar of Companies
 - (d) Central Government
8. The minimum age limit for appointment of managing director and the whole-time director is
 - (a) 18 years
 - (b) 21 years
 - (c) 25 years
 - (d) 30 years
9. A company cannot remove a director appointed
 - (a) at the annual general meeting
 - (b) at the extra ordinary general meeting
 - (c) by the promoter
 - (d) by the tribunal
10. At every AGM, not less than of the total number of directors shall retire/leave by rotation.
 - (a) One third;
 - (b) Two third;
 - (c) Three fourth;
 - (d) Half.
11. The remuneration payable to directors, who are neither Managing Directors nor Whole time directors shall not exceed
 - (a) 1% of the net profits
 - (b) 2% of the net profits
 - (c) 3% of the net profits
 - (d) 5% of the net profits
12. Which one of the following is not the criterion for the appointment of independent director?
 - (a) He shall not be a promoter of the company
 - (b) He shall relate to the promoters of the company
 - (c) He shall not have any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial year
 - (d) His relatives have not held any pecuniary relationship with the company amounting to 2% or more of its gross turnover
13. No independent director shall hold office for more than _____ consecutive terms.
 - (a) 2
 - (b) 3
 - (c) 4
 - (d) 5
14. A director in the whole-time employment of the Company is called Whole Time Director.
 - (a) True
 - (b) False
15. Additional director shall hold office up to the date of next AGM.
 - (a) True
 - (b) False
16. Two thirds of total directors can be given Permanent appointment in the company.
 - (a) True
 - (b) False
17. All companies are required to appoint at least one-woman director.
 - (a) True
 - (b) False
18. The maximum age limit of Managing Director is _____ years.
 - (a) 18 years
 - (b) 50 years
 - (c) 70 years
 - (d) 21 years



19. A person can be appointed as director in a maximum of _____ Companies and a maximum of _____ public company.

- (a) 20 Companies, 10 Public Companies
- (b) 10 Companies, 10 Public Companies
- (c) 20 Companies, 20 Public Companies
- (d) 20 Companies, 30 Public Companies

20. A Company can have a maximum of _____ Directors.

- (a) 10
- (b) 15
- (c) 20
- (d) 3

21. Application of DIN is made in e-form _____

- (a) DIR 3
- (b) DIR 7
- (c) DIR 6
- (d) DIR 5

22. Every company shall have at least one director who has stayed in India for a total period of not less than _____ in the previous calendar year.

- (a) 182 Days
- (b) 365 Days
- (c) 120 Days
- (d) None

23. For resignation of Director the Company files e- form _____ and the resigning director files e-Form _____.

- (a) DIR-12, DIR-11
- (b) DIR-12, DIR-12
- (c) DIR-10, DIR-12
- (d) None

24. Women Director is appointed in a Listed Company and in unlisted public company having _____ Paid up Share Capital of _____ or Turnover of _____.

- (a) ₹ 100 Crore, ₹300 Crore
- (b) ₹ 300 Crore, ₹100 Crore
- (c) ₹ 50 Crore, ₹100 Crore
- (d) None

25. The Board of Directors of every listed public company shall constitute:

- (a) A finance committee
- (b) A welfare committee
- (c) An audit committee
- (d) An enquiry committee

26. The tenure of director appointed by small shareholders, shall be:

- (a) Up to date of next AGM
- (b) 1 year
- (c) 3 years
- (d) 5 years

27. The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of with or without seeking leave of absence of the Board.

- (a) 6 months
- (b) 3 months
- (c) 9 months
- (d) 12 months

28. In audit committee has four-fold relationship and therefore has to interact with management, internal auditor, public and:

- (a) Cost auditor
- (b) Statutory auditor
- (c) Tax auditor
- (d) Management auditor

29. Where the auditor is dissatisfied with the information provided and finds that he cannot express a proper opinion on the statements, he will issue a report.

- (a) Clean
- (b) Adverse
- (c) Disclaimer
- (d) Qualified

30. Every listed company shall establish a vigil mechanism for genuine concerns. to report

- (a) Directors & employees
- (b) Auditors & employees
- (c) Customers & employees
- (d) Financers & employees