

MODULE 1 – THE COMPANIES ACT, 2013

UNIT 1 – Company Formation and Conversion

Main Questions

Question 1

(C2) (2M) (Dec 2018 Old PQ)

The common seal is a seal used by the Corporation as the symbol of its incorporation and also a statutory requirement for a company. Comment

Answer

The common seal acts as the **official signature of the company**. Prior to the **companies (amendment) Act, 2015**, the common seal is a seal used by corporation as the **symbol of its incorporation** and also a statutory requirement for a company. As a departure from this concept, the companies (amendment) Act, 2015 has **deleted the requirement of having common seal compulsorily**. After this Amendment, in case a company does not have a common seal, the **Authorisation shall be made by two directors or by a director and a company secretary**, wherever the company has appointed a company secretary.

Question 2

(C4) (7M) (MQP June 2025) (SM)

Ramesh, Rohit and Madan, all graduate in pharmacy, decide to form a start-up business of manufacturing rare medicine for cancer. Rohit plans big and wants to go to public for finance in course of time. Madan has requested his uncle, an NRI based at USA to invest in the company which he has agreed. Ramesh feels that they should go for section 8 company as the target is not to make money. Madan's uncle wants to know the advantages and disadvantages of public and private company in India. You are advised to critically assess the following issues.

- (i) In order to fulfil Rohit's plan, what kind of entity should be preferred and why?
- (ii) Can Madan's uncle invest in the company as an NRI?
- (iii) Ramesh's idea of section 8 company is ok?
- (iv) Prepare small note for Madan's uncle.

Answer

(i) **Since Rohit plans to raise public finance in the future, a Private Limited Company (Pvt Ltd) or a Public Limited Company (Ltd) would be the best choice.**

- A Private Limited Company allows limited liability, ease of management, and flexibility in ownership. However, it cannot raise capital from the public.
- A Public Limited Company can issue shares to the public, making it ideal for large-scale fundraising through an IPO. However, it involves stricter compliance and regulations.

Recommendation: Start as a Private Limited Company and later convert it into a Public Limited Company when planning an IPO.



(ii) **Yes**, Madan's uncle can invest in the company, **subject to FDI restrictions**.

(iii) **No**, a **Section 8 company is not suitable** because:

- Section 8 companies are non-profit organizations (NPOs) meant for **promoting commerce**, art, charity, education, etc.
- They **cannot distribute profits or declare dividends**.
- Since the business is about manufacturing rare medicines, it requires significant investment and an option to raise capital through private or public funding

(iv) **Note for Madan's uncle**.

Advantages of private company

- limited liability
- ease of management
- flexibility in ownership

Disadvantages of private company

- Cannot invite** fund from **public**.
- Cannot increase** number of shareholders **over 200**.
- Restriction on Share Transfers

Question 3

(C4) (7M) (Dec 2023 PQ) (ICAI SM)

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

- Directors and their relatives = 50
- Employees = 15
- Ex-Employees (Shares were allotted when they were employees) = 10
- 5 couples holding shares jointly in the name of husband and wife (5x2) = 10
- Others = 145

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

Answer

According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, **limits the number of its members to 200**.

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

It is further provided that -

- persons who are in the **employment** of the company; and
- 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.

In the instant case, KFR 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 (5x1) - 5

c) Others - 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.

Question 4

(C4) (ICAI SM)

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and turnover of ₹ 60 crore. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹ 30 crore?

Answer

According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:

- a) **paid-up share capital** of which does not exceed ₹ 50 lakhs or such higher amount as may be prescribed which shall not be more than ₹ 10 crores and
- b) **turnover** of which as per its last profit and loss account does not exceed ₹ 2 crores or such higher amount as may be prescribed which shall not be more than ₹ 100 crores.

Nothing in this clause shall apply to—

- a) a holding company or a subsidiary company.
- b) a company registered under section 8 or
- c) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Amendment Rules, 2022, paid up capital and turnover of the small company shall not exceed ₹ 4 crore and ₹ 40 crore respectively.

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

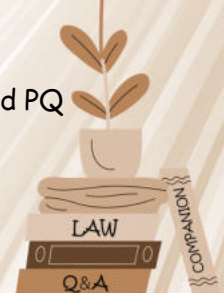
Question 5

(C4) (4M) (Dec 2017 Old PQ)

(ii) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

(iii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company



Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held 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 and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company. In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

Question 6

(C4) (4M) (June 2023 Old PQ)

Examine with reference to the provisions of the Companies Act, 2013 whether the following Companies can be treated as foreign companies:

- (i) A company incorporated outside India having share registration office at Mumbai.
- (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

Answer

As per Section 2(42) of the Companies Act, 2013 foreign company means any company or body corporate incorporated outside India which-

- a) Has a place of business in India by itself or through an agent, physically or through an electronic mode; and
- b) Conducts any business activity in India in any other manner.

The answer to the given problem is as follows:

- (i) A Share transfer office or share registration office constitutes a place of business. However, a body corporate incorporated outside India does not become a foreign company merely by having a place of business in India. It becomes a foreign company only if it carries on business in India. Thus, the company incorporated outside India having a share registration office at Mumbai shall be a foreign company only if it carries on business in India.
- (ii) In this case, Indian citizens have formed the company outside India. Since, the company has not established any place of business in India, and the company does not conduct any business activity in India in any other manner, the company cannot be said to be a foreign company. The



fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

Question 7

(C7) (7M) (Dec 2024 PQ)

Gautam of Uttar Pradesh incorporated a One Person Company (OPC). In compliance to law, he appointed his brother Rohit as nominee. Both are resident Indian citizens. On 12/02/2024, Rohit left India permanently to settle in Dubai and he has withdrawn his nomination. You are required to answer the following in the light of the provisions of the Companies Act, 2013:

- (i) What action shall be taken by Gautam when he gets notice of withdrawal of nomination and within what time limit?
- (ii) Gautam wants to appoint his minor son (Abhijit). Can Gautam appoint his minor son (Abhijit) as nominee in OPC? Examine, with relevance, the correctness of the same.
- (iii) In case Gautam fails to appoint a new nominee, what shall be the legal consequences?

Answer

- (i) As per the Rule 4 of the Companies (Incorporation) Rules, 2014,
 - a) The sole member of a One Person Company (OPC) shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the member's death or incapacity to contract, become the member of that OPC.
 - b) The person nominated by the member of a OPC may, withdraw his consent by giving a notice in writing to such sole member and to the OPC.
 - c) The sole member shall nominate another person as nominee within 15 days of the receipt of such notice and shall send an intimation of such nomination in writing to the OPC, along with the written consent of such other person so nominated which shall be filed in form of a declaration in Form no. INC.4.
 - d) The OPC shall within 30 days of receipt of the notice of withdrawal of consent file such notice and the intimation of the name of another person nominated by the sole member with the Registrar in Form No. INC-4 along with fees.

In the given case, based on the above provisions, the company shall

 - nominate of another person as nominee
 - File in the details mentioned above in the Form no. INC 4
- (ii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest. In view of this, Gautam's minor son Abhijit Cannot be appointed as nominee.
- (iii) In case of failure to do so, the OPC and any officer of the company will be liable for fine which may extend to ₹ 5,000 and with a further fine which may extend to ₹ 500 for every day after the first offence during which such contravention continues.

Question 8

(C7) (4M) (Dec 2021 PQ)

Write a short note on allotment of Corporate Identification Number (CIN)

Answer



On and from the date mentioned in the **certificate of incorporation**, the registrar shall allot to the company a **Corporate Identification Number (CIN)** which shall be **distinct Identity** for the company and is crucial for **legal and regulatory compliance** in India.

Question 9

(C7) (ICAI SM)

XY 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

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, **does not result in the alteration of the Memorandum** and hence the provisions of section 13 **do not apply** in this case.

However, **under section 12 of the Companies Act, 2013** which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a **special resolution of the company**.

Further, registered office is shifted from one ROC to another, therefore company will have to seek **approval of regional director**.

Question 10

(C7) (ICAI SM)

The object clause of the Memorandum of Vivek Industries Limited., 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 Memorandum, 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?

Answer

According to Section 13(1) of The Companies Act, 2013, a company may, by a special resolution alter the provisions of its Memorandum.

In the case of alteration to the objects clause, requires the **filing of the Special Resolution** by the company with **the Registrar**. The **Registrar** shall register any **alteration to 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 by the company.

No alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Question 11

(C7) (ICAI SM)



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

According to Section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

- the details in respect of such resolution shall also be **published in the newspapers** which is in circulation at the place where the registered office of the company is situated and
- shall also be placed **on the website** of the company, if any, indicating therein the justification for such change;
- the **dissenting shareholders** shall be given an **opportunity to exit** by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to **file copy of special resolution with ROC** and he will certify the registration within a period of 30 days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that Anushka security equipments limited can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Question 12

(C8) (7M) (June 2024 PQ)

Mr Paras deals with a company in a manner incompatible with the some of the articles mentioned in the Articles of Association of the company. What will be the consequences of the same? Is there any exception in this regard?

Answer

Doctrine of Constructive Notice - Under the Companies Act, 2013, the Memorandum of Association (MOA) and Articles of Association (AOA) are public documents once registered with the Registrar of Companies (ROC). This means that anyone dealing with the company is presumed to have knowledge of their contents, even if they have not actually read them.

If Mr. Paras enters into a transaction that is inconsistent with the AOA or beyond its provisions, he does so at his own risk, as the company is not bound by such unauthorized actions. However, this doctrine applies only against outsiders, meaning the company's management **cannot** evade liability by claiming ignorance of the AOA.

Doctrine of Indoor Management (Exception to Constructive Notice) - The doctrine of indoor management, established in Royal British Bank v. Turquand, protects outsiders dealing with the



company in good faith. It assumes that internal company procedures have been properly followed, allowing outsiders to rely on the company's representations without verifying compliance.

Exceptions to the Doctrine of Indoor Management

Despite its protection, the doctrine of indoor management is not absolute and has certain limitations:

- If an outsider had actual knowledge of **irregularity**, they cannot claim protection.
- If **circumstances raise suspicion**, the outsider must verify compliance.
- If a transaction is completely **outside the company's powers** (ultra vires the MOA), the doctrine will not apply.
- Forgery or fraud** committed by company officials is not covered under this rule.
- Acts requiring **compliance with public law** (such as government approvals) are not presumed valid under indoor management.

Thus, while **constructive notice binds Mr. Paras**, he may still rely on the doctrine of indoor management unless exceptions apply.

Question 13

(C8) (4M) (June 2018 Old PQ)

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

Answer

The doctrine of Indoor Management, established in *Royal British Bank v. Turquand*, protects outsiders dealing with a company by allowing them to assume that internal company procedures have been duly followed. However, this protection does not extend to cases of forgery.

In the given case, the doctrine of indoor management will not apply as the share certificate issued to Prem was forged by the Secretary. Since forgery is void and conveys no legal title, Prem never acquired a valid title to the shares. Consequently, Amar, who relied on this forged certificate, also cannot claim any rights over the shares. Therefore, Amar will not succeed in getting the shares registered in his name.

Question 14

(C10) (ICAI SM)

A group of individuals intend to form a club namely 'Budding 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 ten 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

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

- 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;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;

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

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 10 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. Therefore, the proposal is not feasible.

Question 15**(C10) (ICAI SM)**

Alfa 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 2024, 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 Alfa School, in such a case?

Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Question 16**(C10 & C11) (7M) (MQP - Dec 2024 Set 1 & June 2024 Set 1)**

United Social Services Ltd is a company formed by 10 professionals with ₹ 1 lakh paid up capital by each promoter. The company intends to give various services to NGOs and social sector organisations with marginal profit. Though the registered office is in Delhi, the company wants to work on pan India basis.

Critically assess the following perception of the company and advise the management of the company, in line with the provisions of law.

- (i) The company claims that it is a non-profit company.
- (ii) If not, can it be converted as NPO?
- (iii) What is to be done for conversion?
- (iv) Once converted, would the promoters get dividend out of profit?

Answer

- (i) The perception of the management of United social service is being classified as follows - the company is **not a non-profit company** as it is for the **gain of marginal profit**, to qualify as NPO the company needs to be **registered under section 8 and obtain separate license from MCA**.
- (ii) **Yes, it can be converted into NPO.**
- (iii) **In order to convert itself into NPO, it has to take following steps for conversion:**
 - a) **Alter the memorandum** by incorporating **objects** for promotion of art, science, education etc. or any charitable purpose;
 - b) Application to MCA has to be made in the **Form Inc. 12** along with memorandum of articles and association financial statement of last 2 years;
 - c) **Statement of asset and liabilities** which are estimated income plans by practicing advocate of the resolution of board meeting;
 - d) Make a **public notice** of such proposed consortium with also need to be filled with ROC.
 - e) after being satisfied, shall **issue license** to operate as sec 8 company.
- (iv) Once the company is converted into a non-profit organization (Section 8 company), the promoters or any members **cannot receive dividends** from profits. Section 8 mandates that the **profits** are used **solely for promoting the company's objects** and cannot be distributed to members.

Question 17

(C13) (7M) (MQP Dec 2024 Set 2 & Dec 2023)

X & Co. is a LLP firm wants to convert their firm into a corporate entity as per the provisions contained in Section 366 of the Companies Act, 2013 and the Companies (Authorized to registered) Rules, 2014. They have conducted a meeting for conversion of and to decide the name of the company summoned for the purpose of registering the LLP. In the meeting 1/4th partners want for the conversion into a Private Ltd company, and 3/4th partners want for a new corporate entity with the word "Public Limited". There are 6 partners in the firm. Recommend an appropriate decision and steps to be taken by the firm.

Answer

An LLP can be converted into a Private limited Company as per the provisions contained in section 366 of the companies act 2013 and the companies (Authorised to Registered) Rules, 2014.

This step can be initiated in 2 ways as enumerated below:



- (i) Incorporation of a new corporate entity.
(ii) Conversion of existing entity (e.g. LLP/Partnership Firm) into a Company.

There are various requirements which need to be satisfied for converting an LLP into a private Ltd.

- An LLP must have **at least 7 partners or 2 partners**.
 - Approval from all partners** is required.
 - Advertisement in newspaper is to be done in a local and national newspaper.
 - No objection certificate (NOC)** is required from ROC where such LLP is registered
- Further that a company with less than 7 members shall register as a private company.

The following steps to be taken by the firm:

- Hold a **meeting of the partners** to decide the **name of the company**.
- To authorize partners to take all steps necessary and to **execute all papers**, deeds, documents etc. pursuant to register of the LLP as a Company.
- Apply for Digital Signature Certificate (DSC) and Director Identification Number (DIN)** for the member of the LLP who will be the directors of the Private Limited Company after conversion.
- Further, **Form URC-1 needs to be filed by the applicant**; furnish the following list of documents along with the form URC-1.
 - List of **members** with name, address, and shareholding details.
 - List of **directors** with name, address, DIN, and passport details.
 - An affidavit from the **first directors** stating that they **are not banned** from being a director.
 - File all mandatory documents with the Registrar of Companies for the registration of the company.
 - Copy of **Limited Liability Partnership agreement** and a certified copy of registration which is duly verified by at least 2 designated partners of LPP.
 - The statement with the details of the nominal share capital of the firm.
 - The **no-objection certificate from all the creditors**.
- Draft the Memorandum of Association (MOA) and Articles of Association (AOA) and submit to the Registrar of Companies**. After the approval of the company name, the Register of Companies sanctions the form URC-1.

Question 18 (C16) (8M) (June 2017 Old PQ) (6M) (Dec 2021 Old PQ)

What are the documents etc. to be delivered to the Registrar of Companies (MCA) by foreign companies for registration?

(or)

Delegare Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013. State the documents which are required to be furnished on behalf of the company, on the establishment of a place of business at Mumbai.

Answer



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

- (i) a certified copy of the **charter, statutes or memorandum** and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English Language, a certified translation thereof in the **English Language**.
- (ii) the **full address of the registered** or principal office of the company.
- (iii) A list of the **directors and the secretary** of the company containing such particulars as may be prescribed.
- (iv) The **names and address** of one or more persons resident in India **authorised to accept** on behalf of the company service of process and any notices or other documents required to be served on the company.
- (v) The **full address of the office of the company in India** which is deemed to be its principal place of business in India.
- (vi) Declaration that none of the **directors of the company or the authorised representative** in India has ever been **convicted or debarred** from formation of companies and management in India or abroad and
- (vii) Any other information as may be prescribed.

Any alteration of the above documents shall be informed to **Registrar within 30 days of alteration**. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the **Registrar** shall be delivered to the Registrar having **jurisdiction over New Delhi**.

Question 19

(4M) (June 2018 Old PQ)

Universal, a foreign company, incorporated in Australia was carrying on its business in Delhi related to manufacturing of automobile parts. Due to failure of its compliance with the respective law of the country under which it was incorporated, it was ceased to exist. Decide in the light of the Companies Act, 2013 the status of the company and the effect on the Conduct of Business in India.

Answer

According to Section 376 of the Companies Act, 2013 where a body corporate incorporated outside India which has been carrying on business in India, **ceases to carry on business in India**, it may be **wound up as an unregistered company**, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

As per the facts given in the question, Universal, a foreign company, incorporated in Australia ceased to exist as per the law of the country, also ceased to carry on business in Delhi. Accordingly, Universal Company may be wound up as an unregistered company although it ceased to exist in Australia.



Additional Questions

Question 1

(C4) (2M) (Dec 2018 Old PQ)

A company incorporated outside India having shareholders who are all Indian citizens. Examine and state whether the above company can be considered as "Foreign Company" under the Companies Act, 2013.

Answer

A company incorporated outside India, will not be deemed to be a foreign company even though all the shareholders are Indian citizens, unless it has a place of business in India.

Question 2

(C8) (5M)

Explain the doctrine of indoor management. How it is opposite to doctrine of constructive notice?

Answer

Doctrine of Indoor Management

The doctrine of indoor management **protects outsiders** dealing with a company in good faith by allowing them to assume that the company's internal procedures have been properly followed. Once a company's **Memorandum of Association (MOA) and Articles of Association (AOA)** are publicly registered, outsiders **are not required to check whether internal approvals**, resolutions, or procedures have been duly completed.

This principle was established in **Royal British Bank v. Turquand**, where it was held that third parties dealing with a company are not responsible for verifying internal corporate compliance unless there are suspicious circumstances.

Doctrine of Constructive Notice (Opposite to Indoor Management)

The doctrine of constructive notice states that once a company's MOA and AOA are registered with the Registrar of Companies (ROC), they become public documents. This means that anyone dealing with the **company is presumed to have knowledge of their contents**, even if they have not read them. Outsiders **cannot claim ignorance of these documents** and must ensure that their transactions comply with the company's stated powers.

Question 3

(C4) (5M)

Differentiate between a private company and a public limited company. What steps the private company need to take if it wants to be converted into a public limited company?

Answer

Private Company

According to **Section 2 (68)**, a 'private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- restricts the right** to transfer its shares.
- except in case of OPC, limits the **number of its members to 200**
- prohibits any invitation to the public** to subscribe for any securities of the company.

Public Company



According to Section 2 (71), a 'public company' means a company which,

- a) is **not a private company** and
- b) has a minimum paid-up share capital, as may be prescribed
- c) **7 or more members** are required to form the company.

Conversion of private company into public company

Similarly, where a private company alters its articles by **passing special resolution** in such a manner that they no longer includes the restrictions and limitations which are required to be included in the articles of a private company, then such company **shall cease to be a private company** from the date of such alteration.

Filing with the Registrar

Every alteration of the articles and a copy of the order of the **Tribunal approving the alteration** of articles in respect of conversion of **private company into public company** shall be filed with the Registrar, together with a printed copy of the altered articles, **within a period of 15 days**.

Question 4

(2M) (June 2019 Old PQ)

Although Company is an artificial person, it can still own property and enter into contracts – Comment.

Answer

It is true that **Company is an artificial person as it is created by law**. However, like a natural person a Company **may also own property and enter into contracts**. Being an artificial person, Company, enters into contracts through its Board of Directors (BOD). BOD enters into an agreement with others and indicates Company's approval through a common seal.

Question 5

(2M) (June 2019 Old PQ)

State briefly the requirements relating to filing of accounts with the Registrar of Companies by the Foreign Company in respect of Global Business as well as Indian Business.

Answer

According to Section 381 of the Companies Act, 2013, **Every Foreign Company shall in every calendar year,**

- a) make out a **Balance Sheet and Profit & Loss account** in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed under Rule 4 & 5 of the Companies (Regulation of foreign Companies) Rule 2014, and
- b) deliver a **copy of those documents to the Registrar**.



UNIT 2 – Dividends

Main Questions 

Question 1

(C2) (6M) (Dec 2022 Old PQ)

XYZ Ltd. having inadequate profits, proposes to declare 10% equity dividend out of its current profits and its free reserves.

Following are the data drawn from the latest audited financial statements as at 31st March,2019:

17,500 Preference Shares of ₹ 100 each fully paid: (Dividend @ 9%)

7,00,000 Equity Shares of ₹ 10 each

General Reserves: ₹ 21,00,000

Capital Reserves: ₹ 3,50,000

Securities Premium: ₹ 3,50,000

Surplus (P&L): ₹ 63,000 (Excluding current year's profit given below)

Net Profit for the year: ₹ 3,57,000

Average Rate of Return for the last three years: 15%

Average Rate of Dividend during the three years: 15%

The company has declared dividends in each of the 3 preceding financial years.

In the light of the information given above, analysing and applying the provisions of the Companies Act, 2013 and the applicable Rules made thereunder, calculate the minimum amount that is required to be withdrawn from free reserve by XYZ Ltd. for declaring 10% dividend to the equity shareholders.

Answer

Suggested Answer

The minimum amount that the Company is required to withdraw from free reserves is Rs 4,37,500.

My Interpretation

According to Section 123 of the Companies Act, 2013, a company may declare a dividend even when it has inadequate profits, but it must comply with the conditions prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Condition 1 - The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

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

Condition 3 - The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

Condition 4 - The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as per the latest audited financial statement.

Based on the above provisions and facts of the given case,

The Total Dividend Requirement is calculated below:



- Preference Dividend (9% on 17,500 shares of ₹100 each) = $(17,500 \times ₹ 100) \times 9\% = ₹ 1,57,500$
- Equity Dividend (10% on 7,00,000 shares of ₹10 each) = $10\% (7,00,000 \times 10) = ₹ 7,00,000$
- **Total Dividend Payable = $1,57,500 + 7,00,000 = ₹ 8,57,500$**

Profit Availability:

- Net Profits for the year = ₹ 3,57,000
- Surplus in P&L (excluding current year profit): ₹ 63,000
- **Total available profit = $1,57,000 + 63,000 = ₹ 4,20,000$**

Short fall in Profits = $8,57,500 - 4,20,000 = ₹ 4,37,500$

Thus, the company needs to withdraw ₹ 4,37,500 from free reserves.

Condition 1 - The rate of dividend should not exceed the average of the last three years' rate of dividend, i.e., 15%.

Since the proposed 10% equity dividend is within this limit, **the condition 1 is satisfied**

Condition 2 - The amount withdrawn from free reserves shall not exceed 10% of the sum of paid-up share capital and free reserves.

- Paid-up share capital = ₹ 87,50,000
- Free reserves before withdrawal = ₹ 21,00,000
- Total (Paid-up share capital + Free reserves) = ₹ 1,08,50,000
- 10% of this amount = ₹ 10,85,000
- **The shortfall in profit is ₹ 4,37,500, which is within this limit.**
- **Condition 2 is satisfied.**

Condition 3 - Since there are no losses incurred in the financial year, there is no requirement of set off. **Condition 3 is satisfied**

Condition 4 - The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital.

- Total Free reserves = ₹ 21,00,000
- Balance in reserves after withdrawal = $21,00,000 - 4,37,500 = ₹ 16,62,500$
- 15% of Paid up share capital = $₹ 87,50,000 \times 15\% = ₹ 13,12,500$

The balance in the reserves has not fallen below the prescribed limit, **condition 4 is satisfied.**

Since all conditions are satisfied, XYZ Ltd. can withdraw ₹ 4,37,500 from free reserves and declare the proposed 10% dividend.



Question 2

(C2) (ICAI SM)

Alex limited is facing loss in business during the financial year 2023-2024. In the immediately preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid?

Answer

According to Section 123(3) of the Companies Act, 2013, Interim dividend may be declared by the Board of Directors at any time during the period from closure of financial year till holding of the annual general meeting. Out of the

- Surplus in the profit and loss account or
- Profits of the financial year in which such dividend is sought to be declared or
- Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

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

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2023-2024. In the immediately preceding 3 financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates ($7 + 11 + 12 = 30/3 = 10$) at which dividend was declared by it during the immediately preceding 3 financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2023-2024 is not valid.

Question 3

(C2) (4M) (Dec 2018 Old PQ)

BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

Answer

According to Section 123(3) of the Companies Act, 2013, Interim dividend may be declared by the Board of Directors at any time during the period from closure of financial year till holding of the annual general meeting. Out of the

- Surplus in the profit and loss account or
- Profits of the financial year in which such dividend is sought to be declared or
- Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

If the company has incurred loss during the current financial year up to the end of the quarter



immediately preceding the date of declaration of interim dividend, "such interim dividend shall not be declared at a rate higher than the average rate of dividend declared by the company during the immediately preceding three financial years".

In the instant case, since the company has incurred loss up to current quarter of financial year, interim dividend by BET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(11+16+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Question 4**(C2) (ICAI SM)**

YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2023-2024 out of the profits of current year. The company has earned a profit of ₹ 910 crore during 2023-2024. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment.

Answer

According to Section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of ₹ 910 crore for the financial year 2023-2024. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Question 5**(C2) (ICAI SM)**

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2024. Mr. Chopra 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

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

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



Question 6 (C2) (3M) (Dec 2023 Old) (4M) (June 2017 Old PQ) (ICAI SM)

The Board of Directors of Big Ltd. proposes to transfer more than 10% of the profits of the Company to the Reserves for the current year. Advise the Board of Directors of the said Company mentioning the relevant provisions of the Companies Act, 2013.

Answer

As per the provisions of Section 123 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company (its Board of Directors).

Based on the above provisions and facts of the given case, the company is free to transfer any part of its profits to reserves as it deems fit.

Question 7 (C2) (4M) (Dec 2017 Old PQ) (ICAI SM)

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

Answer

Section 123(6) of the Companies Act, 2013, provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, although the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

Question 8 (C3 & C5) (6M) (Dec 2019 Old PQ) (ICAI SM)

The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:

- (i) whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.
- (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?

Answer

According to section 124 of the Companies Act, 2013,



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

According to section 127 of the Companies Act, 2013,

- a) where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration
 - b) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of 2 years and shall also be liable for a minimum fine of ₹ 1000 for every day during which such default continues.
 - c) The company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.
- (i) Since, declared dividend has not been paid within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend to a special account called the Unpaid Dividend Account.

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

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

- a) every director of the company shall, if he is knowingly a party to the default, be liable for punishment state above in the provision.
 - b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Section 127.

Question 9

(C5) (ICAI SM)

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2024, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2024. Mr. Ranjan filed a suit against the company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the director's liability in this regard under the Act

Answer

According to section 127 of the Companies Act, 2013,

- a) where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration



- b) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of 2 years and shall also be liable for a minimum fine of ₹ 1000 for every day during which such default continues.
- c) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum. The directors of the company shall be liable as stated above in the provision.

Question 10

(C5) (3M) (June 2023 PQ) (ICAI SM)

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2023-24, except in the following two cases:

- (i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly, remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.
- (ii) Dividend amount of ₹ 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Answer

- (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non-compliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend.

Hence, the penal provisions under section 127 will be applicable.

- (ii) Section 127 provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law. In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession.

Hence, there will not be any liability on the company and its directors, etc.

Question 11

(C5) (ICAI SM)

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The



company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with, but the non-compliance was not communicated to him.

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

Additional Questions

Question 1

(C2) (SM)

Dividend must be paid only out of profits. Explain.

Answer

According to Section 123 of the Companies Act, 2013, Where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the conditions given below, but it must comply with the conditions prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Condition 1 - The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

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

Condition 3 - The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

Condition 4 - The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as per the latest audited financial statement.

All the above conditions must be satisfied to declare dividend in case of inadequacy or absence of profits.

Question 2

(C3) (SM)

Explain the law relating to treatment of unpaid dividend.

Answer

According to section 124 of the Companies Act, 2013,

a) where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration,



- b) the company shall, within **7 days from the date of expiry** of the said period of 30 days, **transfer the total amount of dividend which remains unpaid** or unclaimed to a special account to be opened by the company in any scheduled bank to be called the **Unpaid Dividend Account**.
- c) Within **90 days of transferring** any amount to the Unpaid Dividend Account, the company shall prepare a **statement containing the names, last known addresses** and the amount of unpaid dividend to be paid to each person and place such statement **on its website**, if any, and also on any other website approved by the Central Government for this purpose.
- d) If the **company fails to transfer** the unpaid or unclaimed dividend to the Unpaid Dividend Account within the prescribed time, it will be required to pay interest at the rate **12% per annum on the amount not transferred**, starting from the date of default.

Question 3

(C4) (7M) (MQP Dec 2024 Set 1)

Describe the procedure which has to be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF.

Answer

The following procedure should be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF:

- a) **Section 124(5) of the Act** provides that any money transferred to the **unpaid dividend account** of a company which remains unpaid or **unclaimed for a period of 7 years** from the date of such transfer is required to be transferred by the company along with interest accrued, if any, thereon to the **Investor Education and Protection Fund (IEPF)** established under **Section 125** **within a period of 90 days** after expiry of 7 years.
- b) The company shall send a statement of amount credited to Investor Education and Protection Fund in "**Form DIV 5**" to the authority which administer the fund.
- c) The company shall keep a **record consisting of names, last known addresses**, the amount to which each person is entitled, folio number, etc. of the persons in respect of whom amount has been remain unpaid or unclaimed for 7 years and transferred to IEPF. Such **record shall be maintained for a period of 8 years** from the date of such transfer to **IEPF and authority** administering the fund shall have the **powers to inspect** such records.



UNIT 3 – Accounts of Companies

Main Questions

Question 1

(C2) (ICAI SM)

The registered office of the Bharat Ltd. is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advice.

Answer

According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office. These books of account must be kept on accrual basis and according to the double entry system of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within 7 days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of account or other relevant papers in electronic mode.

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the above-mentioned procedure.

Question 2

(C2) (ICAI SM)

- (i) Ravi Limited maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?
- (ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Account of a company.
- (iii) Whether a company can keep books of Account in electronic mode accessible only outside India?

Answer

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

(ii) As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:



- a) Managing Director,
 - b) Whole-Time Director, in charge of finance
 - c) Chief Financial Officer
 - d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
- (iii) A Company has the option of keeping such books of account or other relevant papers in electronic mode, by ensuring the following rules.
- a) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India.
 - b) There shall be a proper system for storage, retrieval, display or printout of the electronic records.
 - c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

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

Question 3

(C2) (7M) (Dec 2024 PQ)

Examine the provisions of the Companies Act, 2013 relating to maintenance of the books of account in electronic form under section 128.

Answer

Section 128 of the Companies Act 2013 and Rule 3 of the companies (Accounts) Rules 2014, every company must maintain proper books of Accounts. Rule 3 of the Companies (Accounts) Rules, 2014 provides that the company may keep its books of account or other relevant papers in electronic mode.

The books of account and other relevant books and papers maintained in electronic mode shall:

- a) remain accessible in India so as to be usable for subsequent reference.
- b) be retained completely in the format in which they were originally generated, and
- c) the information contained in the electronic records shall remain complete and unaltered.
- d) Branch Accounts shall be kept intact in line with registered office.
- e) The information in the electronic record of the document shall in a legible form.
- f) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- g) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement:

- a) the name of the service provider.
- b) the internet protocol address of service provider.
- c) the location of the service provider.



- d) where the books of account and other books and papers are **maintained on cloud**, such address as provided by the service provider.

Question 4

(C5) (ICAI SM)

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a Company Secretary. The financial statements of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

Answer

According to section 134(1) of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, **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.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a Company Secretary, he should also sign the financial statements. Therefore, the authentication is incomplete and not compliant with Section 134(1).

Question 5

(C5) (3M) (Dec 2021 Old PQ)

Write short note on Boards report in case of OPC. [Section 134(4)]

Answer

According to this Section 134(4) of the Companies Act, 2013, In case of a one-person company, the **report** of the Board of Directors to be attached to the financial statement under this section shall mean a report containing **explanations or comments** by the Board on **every qualification, reservation** or adverse remark or disclaimer made by the **auditor in his report**.

Question 6

(C5) (4M) (June 2019 Old PQ)

Explain the particulars required to be contained in Directors Responsibility Statement as per provision of the Companies Act, 2013.

Answer

According to this Section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement shall state that:



- in the preparation of the annual accounts, the **applicable accounting standards** had been followed along with proper explanation.
- the directors had selected such **accounting policies** and **applied them consistently** and made estimates that are reasonable and prudent so as to give a **true and fair view of the state of affairs of the company**.
- the directors had taken proper and sufficient care for the maintenance of adequate accounting records for **safeguarding the assets of the company** and detecting fraud.
- the directors had prepared the annual accounts on a **going concern basis** and in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- the directors had devised proper systems to ensure **compliance** with the provisions of all **applicable laws** and that such systems were adequate and operating effectively.

Question 7**(C6) (7M) (June 2024 PQ)**

RRR Ltd, is a public limited company, having its registered office is Bengaluru, and as been in existence since March, 2010. The following is the summarized position of its financial results for the past four years (₹ in Cr):

Particulars	2019-20	2020-21	2021-22	2022-23
Net worth	303	319	368	503
Turnover	500	490	680	890
Net profit	6.1	6.9	7.9	8.9

In the light of above facts, examine the following issues:

- Does the company come within the purview of CSR regulations?
- Is CSR Committee required to be formed?
- What will be the minimum budget for CSR compliance, for the year 2023-24?
- What are the other CSR obligations under the provisions of the companies Act, 2013?

Answer

- Section 135 of the Companies Act, 2013 provides for the applicability of the CSR provision on corporates. Sub section (1) lays down that every company having**
 - Net worth of Rs 500 crores or more; or
 - Turnover of Rs 1000 crores or more; or
 - Net Profit of Rs 5 crores**during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee.**
For the year 2022-2023, the company's net profit is ₹ 8.9 crore, which exceeds the ₹ 5 crore threshold. Therefore, RRR Ltd. comes under CSR obligation.
- Yes, where a company comes under the purview of section 135 of the Act, CSR Committee is required to be formed.**
- According to Section 135(5) of the Companies Act, 2013, the Board of every company to which Section 135 is applicable, shall ensure that the company spends, in every financial year at least 2% of average net profits of the company made during the 3 immediately preceding financial**



years, in pursuance of its CSR policy.

Minimum expenditure for CSR for 2023-24 is:

- average profits for the last 3 years = $6.9 + 7.9 + 8.9 = 23.7/3 = ₹ 7.9$ crores
- Minimum expenditure for CSR for 2023-24 = 2% of 7.9 = ₹ 15.8 lakhs

(iv) Other CSR obligations

- The amount has to be spent before the end of the financial year.
- The details of the CSR obligations to be furnished in the Report of the Board of Directors.
- Form CSR 1 has to be filed.

Question 8

(C6) (8M) (June 2023 PQ)

M/S ABC Ltd. Manufactures of Tyres of all types of vehicles, is a Public Limited Company manufacturing units, one at Durgapur, West Bengal, Palej, Gujarat and Munnar in Kerala with Corporate office at Kolkata. The company is professionally managed, the promoter being the chairman, only comes in Board meeting and does not interfere in day to day management. The other directors are independent. The company has sales offices and dealers in India.

The financial performance of the company is as follows:

Parameters	2017 - 2018	2018 - 2019	2019 - 2020	2020 - 2021
Turnover	700	650	920	1010
Net worth	402	423	480	530
Net Profit	14.5	15.7	16.8	18

Queries:

- Do the company comes under CSR obligation?
- Is CSR committee required?
- What are the other obligations for CSR under the Act?
- What will happen if the stipulated/amount is not spent within the year?
- What will happen if a project is taken up but full allocated amount is not spent ?

Answer

- Section 135 of the Companies Act, 2013 provides for the applicability of the CSR provision on corporates. Sub section (1) lays down that every company having
 - Net worth of Rs 500 crores or more; or
 - Turnover of Rs 1000 crores or more; or
 - Net Profit of Rs 5 crores
 during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee.
 For the year 2020-2021, the company's turnover is ₹1010 crore, which exceeds the ₹1000 crore threshold. Therefore, ABC Tyres Ltd. comes under CSR obligation.
- Yes, the CSR Committee is required to be formed as it comes under the purview of Section 135 of the Act.
- According to Section 135(5) of the Companies Act, 2013, the Board of every company to which Section 135 is applicable, shall ensure that the company spends, in every financial year at least 2% of average net profits of the company made during the 3 immediately preceding financial



years, in pursuance of its CSR policy.

Other obligations are spending the amount prescribed above within the financial year. The details have to be disclosed in the Board's Report as annexure. Form CSR 1 needs to be filed.

- (iv) The unspent amount will have to be transferred to a special account.
- (v) If a project is taken up and the full amount is not spent, the amount shall be kept separately for financing which will be called an "ongoing project".

Question 9 (C6) (7M) (Dec 2023 PQ) (8M) (June 2017 Old PQ)

Briefly narrate the provisions of Section 135 of the Companies Act, 2013 relating to minimum contribution w.r.t Corporate Social responsibilities.

Answer

- a) According to Section 135(5) of the Companies Act, 2013, the Board of every company to which Section 135 is applicable, shall ensure that the company spends, in every financial year at least 2% of average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR policy.
- b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.
- c) If the company fails to spend such an amount, the Board shall, in its report, specify the reasons for not spending the amount.

Question 10 (C6) (4M) (Dec 2017 Old PQ)

XYZ. Ltd. is a listed company having turnover of ₹ 1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5% of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise.

Answer

According to Section 135(5) of the Companies Act, 2013, the Board of every company to which Section 135 is applicable, shall ensure that the company spends, in every financial year at least 2% of average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR policy. As per Rule 7 of the Companies (Corporate Social Responsibility) Rules, 2014, Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediately succeeding three financial years. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered in the subsequent financial years as part of CSR expenditure.

Question 11 (C6) (3M) (June 2019 Old PQ)

ABC Ltd., is a company which has a net worth of INR 200 crores, it manufactures rubber parts for automobiles. The sales of the company are affected due to low demand of its products.



The previous year's financial state:

₹ in crore)

	March 31, 2019 (Current year)	March 31, 2018	March 31, 2017	March 31, 2016
Net Profit	3.00	8.50	4.00	3.00
Sales (turnover)	850	950	900	800

Does the company have an obligation to form a CSR Committee since the applicability criteria is not satisfied in the current financial year?

Answer

According to Section 135 of the Companies Act, 2013, Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee.

A company which meets the net worth, turnover of net profits criteria during the immediately preceding financial year, but which does not meet the criteria in the relevant financial year, will still need to constitute a CSR committee and comply with provisions of sections 135 and the CSR rules.

As per the criteria to constitute CSR committee -

- Net worth greater than or equal to ₹ 500 Crores: This criterion is not satisfied.
- Sales greater than or equal to ₹ 1000 crores: This criterion is not satisfied.
- Net profit greater than or equal to ₹ 5 crores: This criterion is satisfied in financial year ended March 31, 2018.

Hence, the company will be required to form a CSR committee.

Question 12

(C8) (SM) (7M) (MQP Dec 2024 Set 1)

Jyoti industries is a public limited company. Due to some IR Problem the factory and office was closed. Two accounts officers dealing with finalization of accounts left the company in quick succession and accounts could not be prepared. It is likely that the financial statements will not be placed within the last date of AGM, i.e. 30th September. MD wants to know the consequences in following situations.

- Accounts is not ready and cannot be placed in AGM.
- AGM to be deferred after 30th September
- Accounts are ready but AGM could not be held
- AGM held accounts placed but not approved

Answer

According to Section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such un-adopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.



The financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

- (i) Company has to adjourn the meeting to a date where the accounts shall be ready, but such meeting also shall be within 30th September.
- (ii) AGM cannot be deferred by the Company. Approval of extension is given by Registrar of Companies. However, the approval for extension shall have to be taken within 30th September.
- (iii) If AGM could not be held, it would amount to violation of law and extension to be sought.
- (iv) If the AGM is held but the accounts are not adopted, the unadopted accounts shall be filed with the Registrar.

Question 13

(C8) (ICAI SM)

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2022-23 were placed at its annual general meeting held on 31st August 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2023 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 12th November, 2023. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

Answer

According to Section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such un-adopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

The financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October 2023 and filing of financial statements with Registrar was done on 12th November, 2023 i.e. within 30 days of the date of adjourned AGM. But Sun Ltd. has not filed its un-adopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2023.

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



Question 14

(C9) (5M) (Dec 2017 Old PQ)

Interior Pvt. Ltd. is a manufacturing company having turnover of ₹ 210 crore but having maximum outstanding loan from public financial institution of ₹ 90 crore only during the preceding financial year. You are required to state whether the company is liable for internal audit as per the provisions of the Companies Act, 2013.

Answer

As per Section 138 of the Companies Act, 2013, read with rule 13 of Companies (Audit and Auditors) Rules, 2014 every private company shall be required to appoint an internal auditor or a firm of internal auditors, having-

- (i) turnover of ₹ 200 crores or more during the preceding financial year or
- (ii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crores or more at any point of time during the preceding financial year.

Thus, either of the condition is required to be satisfied for the applicability of the provision. The internal auditor to be appointed shall either be a chartered accountant whether engaged in practice or not or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the companies auditor may or may not be an employee of the company.

Interior Pvt. Ltd. is having turnover of ₹ 210 crore and maximum outstanding loan from public financial institution of ₹ 90 crore during the previous financial year, here in the case, the turnover is above ₹ 200 crores i.e. either of the condition in respect of turnover or outstanding loans is satisfied. Therefore, the company is liable for internal audit as per section 138 of the Companies Act, 2013.

Additional Questions

Question 1

(C6) (6M) (June 2018 Old PQ)

Explain the concept of Corporate Social Responsibility and its meaning to different people.

Answer

Corporate Social Responsibility (CSR) is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental consequences of their activities, especially taking into consideration the needs of future generations.

CSR can mean different things to different people:

- a) for an employee it can mean fair wages, no discrimination, better working conditions etc.



- b) for a shareholder it can mean **making responsible and transparent decisions** of the use of capital.
- c) for suppliers it can mean **receiving payment on time**.
- d) for customers it can mean **delivery on time**, etc.
- e) for local communities and authorities it can mean taking measures to protect the **environment** from pollution.
- f) for non-governmental organisations and pressure groups it can mean disclosing business practices and performance on issues ranging from **energy conservation and global warming**.
- g) to human rights and animal rights, from **protection of the rainforests** and endangered species to **child and forced labour**, etc.

For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and whom the company can Impact through its business activities, processes and products.

Question 2

(C7) (7M) (MQP June 2024)

Discuss the provisions of Companies Act, 2013 on right of member to copies of Audited Financial Statement.

Answer

According to Section 136 of the Companies Act, 2013, A copy of the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following:

- a) every **member** of the company,
- b) to every **trustee for the debenture holder** of any debentures issued by the company, and
- c) to all persons other than such member or trustee, being the **person so entitled**.

Consolidated financial statements, if any, auditors' report and every other document required by law **shall be attached** with financial statements.

These financial statements shall be sent in **not less than 21 days before the date of the meeting**. May be sent **less than 21 days** before if shareholders with **95% voting agree**.

Question 3

(C8) (5M)

Discuss the provisions relating to placing of accounts in AGM and filing with the Registrar.

Answer

According to this Section 137(1) of the Companies Act, 2013, A copy of the financial statements, including **consolidated financial statement**, if any, along with all the documents, duly adopted at the AGM of the company, shall be filed with the **Registrar within 30 days of the date of AGM**

If Financial Statements are not adopted

- a) Where the financial statements are not adopted at AGM or adjourned AGM, such **unadopted** financial statements along with the required documents shall be **filed with the Registrar** within 30 days of the date of AGM.
- b) The Registrar shall take them in **his records as provisional** till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

If the financial statements are **adopted in the adjourned AGM**, then they shall be **filed** with the **Registrar within 30 days of the date of such adjourned AGM**.



UNIT 4 – Audit & Auditors

Main Questions

Question 1

(C1) (7M) (MQP Dec 2023) (ICAI SM)

Explain how the auditor will be appointed in a government company as per the Companies Act, 2013.

Answer

As per the provisions of Section 139 of the Companies Act, 2013, In case of a Government Company,

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

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

Question 2

(C1) (ICAI SM)

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2024 by an ordinary resolution. Mr. Sanjay, a shareholder of the company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

Answer

As per the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor shall be done by the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not valid. The appointment is valid under the Companies Act, 2013.



Question 3

(C1 & C2) (ICAI SM)

State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:

- (i) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.
- (ii) Removal of Statutory Auditor (appointed in last AGM) before the expiry of his term.

Answer

- (i) Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company. If the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.
- (ii) Under section 140 (1) of the Companies Act, 2013, the auditor appointed under section 139 may be removed from his office before the expiry of his term only,
 - a) by a special resolution of the company,
 - b) after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.
 - c) Provided that before taking any action, the auditor concerned shall be given a reasonable opportunity of being heard.
 - d) The application to the Central Government for removal of auditor shall be made in Form ADT-2.
 - e) The application shall be made to the Central Government within 30 days of the resolution passed by the Board.
 - f) The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

Question 4

(C2) (SM) (10M)(June 2023 PQ)

Mr. Ravinder Nath is Managing Director of ABC Ltd. The Audit is going and there are many issues which the Auditor has pointed out and the same are being clarified by the Company Management, but the Auditor is not satisfied with the explanations. MD wants to consult you as the CFO of the Company on how the current Auditor can be removed. Auditor is also not feeling comfortable and has threatened to resign.

Please advise MD on the legal provisions under the Companies Act, 2013 in respect of the following:

- (i) Can the Auditor be removed? Please state the procedure.
- (ii) As the Auditor is not satisfied and what if he resigns?
- (iii) If the Auditor decides to continue with the assignment and he issues a qualified report on the observations found by him during the course of the Audit.

Answer

- (i) Under section 140 (1) of the Companies Act, 2013, the auditor appointed under section 139 may be removed from his office before the expiry of his term only,
 - a) by a special resolution of the company,



- b) after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.
 - c) Provided that before taking any action, the auditor concerned shall be given a reasonable opportunity of being heard.
 - d) The application to the Central Government for removal of auditor shall be made in Form ADT-2.
 - e) The application shall be made to the Central Government within 30 days of the resolution passed by the Board.
 - f) The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.
- (ii) Under section 140 (2) of the Companies Act, 2013, If the Auditor has resigned from the company, He shall file within a period of 30 days from the date of resignation, a statement in the Form ADT - 3 with the Company and the concerned Registrar. The Auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation in his statement.
- (iii) If the Auditor gives a qualified Report, the same has to be replied by the Board of Directors as annexure to Board's Reports and shall be circulated and placed in AGM.

Question 5

(C3) (ICAI SM)

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2023. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of EF Limited on 15 October 2023. But Naresh & Company continues to function as statutory auditors of the company. Advice.

Answer

According to Section 141 of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding ₹ 1 lakh.

In the case Mr. Naresh, Chartered Accountant, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit. Hence, Naresh & Company can continue to function as auditors of the company even after 15 October 2023 i.e. after the investment made by his wife in the equity shares of EF Limited.

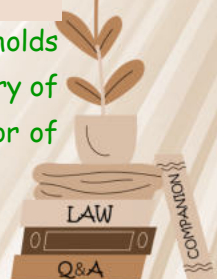
Question 6

(C3) (ICAI SM)

Examine the following situations in the light of the Companies Act, 2013: "Mr. Abhi", a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

Answer

According to Section 141 of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of



the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding ₹ 1 lakh.

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

Question 7

(C3) (ICAI SM)

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

- (i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company.
- (ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
- (iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company

Answer

- (i) According to Section 141 of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding ₹ 1 lakh.
In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the specified limit. Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.
- (ii) According to Section 141 of the Companies Act, 2013, a person is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh. In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd as he indebted to MNP Ltd. for ₹ 6 Lakh.
- (iii) According to Section 141 of the Companies Act, 2013, a person is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the storekeeper (not a director or KMP) of PRC Ltd. Hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Question 8

(C3) (6M) (June 2019 Old PQ)

M/s RST and Co., a firm of Chartered Accountants, comprising of three partners R, S and T are Statutory Auditors of 50 companies as per details given below:

- (i) Small Companies — 10
- (ii) Private Companies having paid-up share capital of less than 100 Crores — 20
- (iii) Private Companies having paid-up share capital of more than 100 Crores — 15



(iv) Public Companies — 5

Mr. R signs the Balance Sheet of 10 Small Companies and 10 Private Companies having paid-up share capital of less than 100 Crores. Mr. S signs the Balance Sheet of 10 Private Companies having paid-up share capital of less than 100 Crores and 5 Private Companies having paid-up share capital of more than 100 Crores. Mr. T signs the Balance Sheet of 10 Private Companies having paid-up share capital of more than 100 Crores and 5 Public Companies.

What is the maximum number of audits that the firm as a whole can accept and what is the maximum number of audits each individual partner can accept?

Answer

As per Section 141 of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 Companies other than one person companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

- a) As per section 141, this limit of 20 Company audits is per person.
- b) In the case of an audit firm having 3 partners, the overall ceiling will be $3 \times 20 = 60$ Company audits.
- c) Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 Company audits on his account.
- d) Therefore, maximum number of audits that the firm M/S. RST & CO. as a whole can accept is 60 and maximum number of audits each individual partner can accept is 20 i.e. other than one person Companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

In the given case, in aggregate all three partners are having 50 audits.

As per section 141 applying the above provisions, companies in which partners are already holding appointments as auditors, are,

- (i) CA R can accept 20 more audits.
- (ii) CA S can accept $20 - 5 = 15$ more audits and
- (iii) CA T can accept $20 - 15 = 5$ more audits.

As per the facts of the case, M/S. RST & CO. is already having 20 Company audits and they can also accept 40 more Company audits. In addition, they can also conduct the audit of one person Companies, small Companies, dormant Companies and private Companies having paid up share capital less than 100 crores.

As per section 141(3)(g) of the Companies act, 2013, M/S. RST & CO. can accept appointment as an auditor of 40 more Companies as under:

Total number of Audits available to the Firm	= 20×3	= 60
Number of Audits already taken by all the partners in their individual capacity	= $0 + 5 + 15$	= 20
Remaining number of Audits available to the firm		= 40



Question 9

(C5) (7M) (MQP June 2025)

Explain the provisions related to Audit of government companies.

Answer

- a) According to Section 143 of the Companies Act, 2013, In the case of a Government company or any other company owned or controlled by the Central Government, or by any State Governments, or partly by one or more of the other.
- b) the Comptroller and Auditor General of India shall direct auditor the manner in which the accounts of the Government company are required to be audited and
- c) thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor General of India.
- d) The audit report among other things, include the following:
 - (i) the directions, if any, issued by the Comptroller and Auditor General of India
 - (ii) the action taken thereon and
 - (iii) its impact on the accounts and financial statement of the company.
- e) The Comptroller and Auditor General of India shall within 60 days from the date of receipt of the audit report have a right to:
 - (i) conduct a supplementary audit of the financial statement of the company
 - (ii) comment upon or supplement such audit report.

Any comments given by the Comptroller and Auditor General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements and also be placed before the AGM of the company.

The Comptroller and Auditor General of India may by an order conduct test audit of the accounts of government company.

Question 10

(C5) (7M)(Dec 2018 Old PQ)

Mr. Faithful is an auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. for 2016- 2017, he finds manipulation of fund around Rs. 2 crore committed by the officers of the company against the Daga Ltd. Examine in the light of the Companies Act, 2013 the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. in relation to reporting of such frauds.

Answer

As per section 143(12) of the Companies Act, 2013, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of ₹ 1 crore or above, is being or has been committed against the company by its officer or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as under:-

- (i) The auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within 45 days;



- (ii) On receipt of such reply or observations, the auditor shall **forward his report** and the reply or **observations** of the Board or the Audit Committee along with his comments **to the Central Government within 15 days** from the date of receipt of such reply or observations;
- (iii) In case the auditor **fails to get any reply** or observations from the board or the Audit Committee **within the stipulated period of 45 days**, he shall **forward his report to the Central Government** along with a **note containing** the details of his report that was earlier forwarded to the Board or the Audit Committee for which **he has not received** any reply or observations ;
- (iv) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an email in confirmation of the same;
- (v) The report shall be on the **letter-head of the auditor** containing postal address, **email address** and contact telephone number or **mobile number** and be **signed by the auditor** with his seal and shall indicate his **Membership Number**; and
- (vi) The report shall be in the form of a statement as specified in **Form ADT-4**. Details of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in **the Board's Report** by the company :-
- Nature of Fraud with description;**
 - Approximate Amount involved ;**
 - Parties involved, if remedial action not taken; and**
 - Remedial actions taken.**

Question 11**(C6) (ICAI SM)**

The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer

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

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

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013. In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.



Question 12 (C6) (SM) (6M) (June 2023 Old PQ) (4M) (June 2018 Old PQ)

X Ltd. appointed CA Innocent as a statutory auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. Comment.

(or)

Are there any restrictions to the appointment of a statutory auditor of a private limited company becoming the consultant of the same company? Explain.

(or)

What are the services which an auditor is not supposed to take up?

Answer

According to section 144 of the Companies Act, 2013, An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services, namely:

- a) accounting and book keeping services.
- b) internal audit
- c) design and implementation of any financial information system
- d) actuarial services
- e) investment advisory services
- f) investment banking services.
- g) rendering of outsourced financial services.
- h) management services and
- i) any other kind of services as may be prescribed.

Further section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

In the given case, CA Innocent was appointed as an auditor of X Ltd. He was offered additional services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. The auditor is advised not to accept the services as these services are specifically notified in the services not to be rendered by him as an auditor as per section 144 of the Act.

Question 13 (C8) (5M)(Dec 2017 Old PQ)

The Board of Directors of a company have filed a complaint with the Institute of Chartered Accountants of India against their Statutory Auditors for their failing to attend the Annual General Meeting of the Shareholders in which audited accounts were considered. Comment.

Answer

As per Section 146 of the Companies Act, 2013, it is right of the auditor to receive notices, and other communications relating to any general meeting and to be heard at such meeting, relating to the matter of his concern, however, it is duty of the auditor to attend the same or through his authorised representative unless otherwise exempted.



In the instant case, the Board of Directors of a company have filed a complaint with the Institute of Chartered Accountants of India against their statutory auditors for their failing to attend the Annual General Meeting of the Shareholders in which audited accounts were considered.

In view of above discussed provisions of section 146, the statutory auditor of the company should attend the general meetings either through himself or through his authorised representative.

Additional Questions

Question 1

(4M) (June 2017 Old PQ)

The auditors of a company refuse to make their report on the annual accounts of a company before it is signed on behalf of the Board of Directors. Advise the company.

Answer

The auditor is right. Theoretically, accounts are presented to auditors only after they are approved by the Board and signed by authorized persons. The auditor is only expected to submit his report on the accounts presented to him for audit after conducting an examination of the necessary documents, analysing relevant information and test checking accounting records in order to be able to form an opinion of the financial statements presented to him. In practice, the checking of accounts is already completed before accounts are approved by the Board. Auditor informally approves the draft account with notes etc., before the accounts are approved by the Board. However, auditor signs the accounts only after these are approved by Board and signed by persons authorized by Board of the company.

Question 2

(C3) (SM) (MQP June 2024)

Discuss the disqualifications of an Auditor.

Answer

According to Section 141 of the Companies Act, 2013, The following persons shall not be qualified for appointment as auditor of a company:

- A **body corporate** other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008.
- an **officer or employee** of the company.
- a person who is a **partner**, or who is in the **employment, of an officer or employee** of the company.
- A **person who, or his relative or partner**
 - is holding **any security** of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: (Provided that the **relative may** hold security or interest in the company of **face value not exceeding ₹1 Lakh.**)
 - is **indebted** to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, **in excess of ₹5 Lakhs**, or



- iii) has given a **guarantee or provided any security** in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, **in excess of ₹1 Lakh.**
- e) a person or a firm who, whether directly or indirectly, has **business relationship with the company**, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. **Exceptions:**
 - i) **commercial transactions** which are in the nature of **professional services** permitted to be rendered by an auditor or audit firm.
 - ii) commercial transactions which are in the **ordinary course of business** of the company at arm's length price.
- f) a person who's **relative is a director** or is in the employment of the company as a director or **key managerial personnel.**
- g) a person who is in full time employment or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of **more than 20 companies** other than **OPC, dormant companies and private companies having paid-up share capital less than ₹ 100 crore rupees**
- h) a person who has been **convicted by a court** of an offence involving fraud and a period of **10 years has not elapsed from the date of such conviction.**
- i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in **Section 144**

Question 3**(C11) (7M) (MQP Dec 2023)**

Describe the classes of companies which are outside the purview of the Company Auditor Report Order (CARO) under the Companies Act 2013.

Answer

MCA has notified now **Companies (Auditor's Report) Order, 2020** on 25th February, 2020 which replaced **CARO, 2016**. It is a new format of reporting of statutory audit having additional reporting requirements decided in **consultation with National Financial Reporting Authority (NFRA) CARO, 2020** is applicable for all statutory audits commencing on or after 1.4.2020 corresponding of Financial Year 2019-20.

The following classes of companies are outside the purview of the CARO 2020.

- a) **Banking** company
- b) **Insurance** company
- c) Company licensed to operate under **Section 8**
- d) A **one-person** company
- e) A **small** company
- f) The auditor of following type of **Private Companies** are not required to comment on the matter prescribed under CARO 2020:
 - (i) is **not holding or subsidiary company of a public company**, and
 - (ii) having a paid up capital and reserve and surplus **not more than ₹ 1 crore** as on the balance sheet date and



- (iii) which **does not have total borrowing exceeding ₹ 1 crore** from any bank and financial institution at any point of time during the financial year, and
- (iv) which **does not have total revenue exceeding ₹ 10 crores** during the financial year.



UNIT 5 – Board of Directors

Main Questions →

Question 1

(C2) (ICAI SM)

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

Answer

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

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

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

In the given case since the number of directors is proposed to be increased from 8 to 16, the company will be required to comply with the following provisions:

- a) Alter its Articles of Association by passing a special resolution, so as to increase the number of directors in the Articles from 10 to 16;
- b) Also take approval for increasing the maximum number of directors to 16 by means of a special resolution passed by the members at a duly convened general meeting.

Question 2

(C2) (ICAI SM)

XYZ Limited is an unlisted public company having a paid-up share capital of twenty crore rupees as on 31st March, 2019 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2019. The total number of directors is thirteen. Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) State the minimum number of independent directors that the company should appoint.
- (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company?

Answer

- (i) According to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

- a) the Public Companies having paid up share capital of ₹ 10 crores or more or
- b) the Public Companies having turnover of ₹ 100 crores or more or



- c) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crores.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ₹ 20 crore as on 31st March, 2019 and a turnover of ₹150 crore during the year ended 31st March, 2019. It is assumed that 31st March, 2019 is the last date of latest audited financial statements. Accordingly, as per stated Rules it must have at least 2 directors as independent directors.

- (ii) According to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. Any fraction contained in such one-third numbers shall be rounded off as one.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited must have at least 5 directors ($1/3$ of 13 is 4.33 rounded as 5) as independent directors.

Question 3

(C2) (7M) (Dec 2024 PQ)

Mirinda Ltd., is an unlisted company with paid-up capital of ₹ 40 cr. and turnover of ₹ 350 cr. The Company has the following top management personnel:

- Mr. Rajib Mishra, who is promoter and Managing Director of the company.
- Mr. Pritam is the Non-executive Chairman.
- Mr. Charan Chadha - Director (Finance)
- Mr. Anurag Sinha - Director (Operation) is related to the promoter.
- Ms. Supriti - Company Secretary

The company is in a plan for expansion and therefore wants to avail sizeable loan from a nationalised bank. The bank wants to nominate a director in the Board.

The MD seeks your advice in the following points:

- Is the present Board properly constituted? If not, what is the non-compliance?
- Can Mr. Anurag Sinha be considered as independent director?
- What will be the status of the director if nominated by bank? If the said nominated director is a woman, would she satisfy the requirement of women director?
- Is there any requirement of a CFO?

You are required to advise the MD suitably.

Answer

Suggested Answer

- (i) **Correctness of the Composition of the BOD**

The Company is an unlisted company with four directors which is properly constituted. According to Section 149 of the Companies Act, 2013, A public company will be required to mandatorily appoint at least 1 woman director if it fulfils any of the following criteria:

- having paid-up capital of ₹ 100 crores or more, or
- a turnover of ₹ 300 crores or more.

However, since the turnover is more than ₹ 300 crores, a women director is required.



- (ii) The **relatives** of an independent director should **not hold the position** of Key Managerial Personnel (**KMP**). Mr. Anurag Sinha is relative of the MD, who is otherwise KMP. **Hence, he cannot be called as Independent Director.**
- (iii) He or she will be classified as **nominee director**. Yes, if she **will be considered** to fulfil the requirement as per Rule 3 of companies (appointment and qualification of directors) Rule 2014.
- (iv) As per Sec 203 & as per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of **₹ 10 crores or more** shall have **whole-time KMP**. **As per Sec 203, CFO is to be appointed as a KMP since Paid up Capital is more than ₹ 10 crores.**

My Interpretation

- (i) In the Given case, Mirinda Ltd. is an unlisted public company with:

- Paid-up share capital: ₹40 crore
- Turnover: ₹350 crores.

As per Section 149(1) and Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, an **unlisted public company must appoint at least 2 independent directors** if:

- a) Paid-up share capital is ₹10 crore or more,
- b) Turnover is ₹100 crore or more, or
- c) Outstanding loans, debentures, and deposits exceed ₹50 crore.

Mirinda Ltd. exceeds the turnover threshold of ₹100 crore, so it requires at least 2 independent directors. From the given data, there's no mention of any independent directors, so there is non-compliance with the requirement of appointing independent directors.

According to Section 149 of the Companies Act, 2013, A public company will be required to mandatorily appoint at least 1 woman director if it fulfils any of the following criteria:

- a) having paid-up capital of ₹ 100 crores or more, or
- b) a turnover of ₹ 300 crores or more.

So Additionally, such a company must appoint at least 1 woman director. There is no mention of a woman director, so this is another non-compliance. The Board is not properly constituted.

- (ii) No, Mr. Anurag Sinha cannot be considered an independent director because: He is the Director (Operation) and he is related to the promoter, Mr. Rajib Mishra, which disqualifies him under the definition of an independent director in Section 149(6).
- (iii) A director nominated by the bank will be classified as a **Nominee Director** under Section 161(3) of the Companies Act, 2013. If the nominated director is a woman, she cannot be counted as the mandatory woman director required under Section 149(1), as a woman director needs to be **appointed independently by the company** and not nominated by external entities
- (iv) As per Section 203 of the Companies Act, 2013 & as per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of **₹ 10 crores or more** shall have **whole-time KMP (including CFO)**. **As per Sec 203, CFO is to be appointed as a KMP since Paid up Capital is more than ₹ 10 crores.** So, there is a requirement for a CFO.



Question 4

(C8) (3M) (Dec 2017 Old PQ)

B Ltd. is a listed company and it has been served with a notice for appointment of small shareholders director. Referring to the provisions of the Companies Act, 2013, advise on the following:

What is the tenure of small shareholders director and whether he can be re- appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.

Answer

According to Section 151 of the Companies Act, 2013, The tenure of small shareholders director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.

A small shareholders director shall not, for a period of 3 years from the date on which he ceases to hold office on 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 5

(C5) (ICAI SM)

ADJ Limited has 10 directors on its Board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned till the same day in the next week, at the same time and place. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'. Referring to the provisions of the Companies Act, 2013, decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been re- appointed at the adjourned meeting?
- (ii) What will be your answer in case at the adjourned meeting, the resolutions for re- appointment of these directors were lost?
- (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?

Answer

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

Section 152(7) further provides that if at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless

- at the adjourned meeting or at the previous meeting a resolution for the re - appointment of such director was put and lost or
- he has given a notice in writing expressing his unwillingness, or
- he is disqualified.



Therefore, in the given circumstances answers to the asked questions shall be as under:

- (i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.
- (iii) Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM. Accordingly, the directors will retire as soon as the AGM is held on its due date. Further, it is necessary for the company to hold the AGM, where the directors liable to retire by rotation shall retire. In case AGM is not held till the last date on which it should have been held, the term of retiring directors ends on this last date and it cannot be extended till the new date when the AGM shall be held.

Question 6

(C5) (5M) (June 2019 Old PQ)

The Promoters of M/s Soma Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time Directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:

- (i) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?
- (ii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received.

Answer

- (i) According to Section 152(6) of the Companies Act, 2013, Out of total number of directors, at least 2/3rd shall be liable to retire by rotation. Articles may provide that more than 2/3rd or all directors shall be rotational directors. Out of such 2/3rd, 1/3rd must retire in every AGM, the number nearest to the 1/3rd shall retire from office. Therefore, the Directors liable to retire by rotation are $11 \times \frac{2}{3}$ i.e., 7.3 or 8, and No. of directors to retire at AGM: $8 \times \frac{1}{3}$ i.e., 2.67. Hence, nearest is 3.

- (ii) According to section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the Company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e., 14th day. Hence, the contention of the directors are valid.



Question 7

(C7) (7M) (June 2024 PQ)

The Board of Directors of Mckinsy Ltd., a listed company, appointed Dinesh, as an Executive Director at the Board Meeting held on June 1, 2023. The Company took up this appointment of Dinesh, for approval of the shareholders at its Annual General Meeting (AGM) held on September 29, 2023, but the same was not approved by the shareholders. However, he was appointed as an Additional Director on whole time employment by the Board at its meeting held on September 30, 2023 by passing a resolution to hold the office of directorship till the conclusion of the next AGM, to be held for the year 2024. Is appointment of Dinesh as an Additional Director, by the Board justified? Examine the correctness of the aforesaid appointment.

Answer

- According to section 161(1) of the Companies Act, 2013, the Articles of a company may provide that the Board of Directors shall have the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.
- As per the provisions of the SEBI (LODR) Regulations, 2015, a listed entity shall ensure that approval of shareholders for appointment of a person on the Board of the company as a director or as a manager is taken at the next general meeting or within a time period of 3 months from the date of appointment, whichever is earlier.
- Further it provides that the appointment or a reappointment of a person, including as a managing director or a whole-time director or a manger, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of shareholders.

In the light of above, the appointment of Dinesh as Director is not justified.

Question 8

(C7) (ICAI SM)

Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:

- Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?
- Can the power of appointing additional director be exercised at the Annual General Meeting by the members?
- As the Company Secretary of the company what checks would you make after M is appointed as an additional director?

Answer

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



- (i) M cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting should have been held.
- (ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company.
- (iii) As a Company Secretary, I would put the following checks in place in respect of M's appointment as an additional director:
- He must have got the Directors Identification Number (DIN).
 - He must furnish the DIN and a declaration that he is not disqualified to become a director.
 - He must give his written consent in Form DIR-2 on or before his appointment as director and such consent stands filed with the Registrar within 30 days of his appointment.
 - His appointment is made by the Board of Directors.

Question 9

(C7) (ICAI SM)

The Board of Directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2019 which was subsequently approved by the members in the immediate next general meeting. Unfortunately Mr. C expired on 15th May, 2019 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard keeping in view the provisions of the Companies Act, 2013.

Answer

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

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

- In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.
- However, Mr. C expired on 15th May 2018 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board and approved by members to fill up the casual vacancy resulting from P's demise.
- Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly



mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting.

- d) Hence, the Board cannot fill the vacancy arising from the death of Mr. C who was appointed to fill a casual vacancy.
- e) The Board may however appoint Mrs. C as an additional director provided the articles of association authorise the Board to do so, in which case Mrs. C will hold the office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Question 10

(C7) (ICAI SM) (6M) (Dec 2019 Old PQ)

Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the Board of the company for a period of three years. On 2nd October, 2017, Mr. Anmol suffered a severe heart failure and expired. The Board of Directors of the company on 16th October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the Board. Subsequently at the AGM held on 29-09-2018, Mr. Prateek's appointment was not proposed or approved as the Board was of the view that it is not required. But the CFO of the company is of the opinion that the Board of Directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide.

Answer

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

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

- a) In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years.
- b) However, the appointment of Mr. Prateek for a period of three years is in **contravention of above stated provisions** as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.
- c) Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018.
- d) Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013. Therefore, the opinion of CFO is correct.



Question 11

(C7) (ICAI SM)

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

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

Answer

- According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorized by its articles, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than 3 months from India.

According to Section 165, no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Hence, in the instant case, a person can be appointed as an alternate director for only 1 director in the same company but maximum 20 different companies. An alternate director will have only 1 vote as he can hold alternate directorship for 1 director only in the same company.

- According to Section 161(2) of the Companies Act, 2013, an alternate director shall not hold office for a period longer than that permissible to the original director and shall vacate the office when the original director returns to India. If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Hence, in the instant case, the alternate director shall hold office till the time original director returns to India, even if the period is as long as 3-4 years.

- From the above provision stated in a), it is clear that an alternate director can be appointed for any director. Hence, an alternate director can be appointed for Executive director/ Whole Time Directors / Managing Director however, not by them but by the Board of Directors.



Question 12

(C7) (6M) (Dec 2023 Old PQ) (5M) (Dec 2018 Old PQ)

Comment with reference to the provisions of the Companies Act, 2013 in respect of the following:

- (i) Mr. A who is not qualified to be appointed as an independent director is appointed by the Board of Directors of IJK Limited, for an independent director, as an alternate director.
- (ii) On the request of bank providing financial assistance, the Board of Directors of ABC Limited decides to appoint on its Board, Mr. P, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination.

Answer

- (i) According to Section 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

In the present case, Mr. A who is not qualified to be appointed as an independent director is appointed by the Board of Directors of UK Limited, for an independent director, as an alternate director. Thus, the said appointment is not valid.

- (ii) According to 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 or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.

In the present case, on the request of bank providing financial assistance the Board of Directors of ABC Limited decides to appoint on its Board Mr. P, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power and further there is no agreement between the company and the bank. Thus, the appointment of Mr. P as nominee director is not valid as Articles do not confer upon the Board of Directors any such power.

Question 13

(C7) (4M) (June 2023 Old PQ)

Mr. X Vice President of ABC Ltd. was appointed as an additional director on 1st January, 2022. On the office of managing director falling vacant he was appointed as managing director on existing remuneration. Whether Mr. X will cease to be managing director in the next Annual General Meeting?

Answer

- a) According to Section 161(1) of the Companies Act, 2013, An additional director holds office up to the date of next annual general meeting.
- b) As per Explanation to Section 152(7), "retiring director" means a director retiring by rotation. So, he is not a "retiring director" as per Explanation to Section 152(7). Therefore, an additional director may be appointed as a regular director in the annual general meeting only if the conditions prescribed under section 160 are complied with.
- c) The opening words of section 2(54) of the Companies Act, 2013 defines a "managing director" as "Managing director means a director who.....". Thus, the definition suggests that a managing director has to be a director first.



- d) In the given case, Mr. X will hold office upto the date of next annual general meeting. Since, he will cease to be a director, he will also vacate the office of managing director.
- e) Further, even if the annual general meeting is not held, he will cease to be an additional director on the last day, on which the annual general meeting should have been.
- f) However, if a notice is given of the candidature of Mr. X under section 160 and at the annual general meeting he is appointed as a director, he shall continue as a managing director.

Question 14

(C10) (ICAI SM)

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

Answer the following in the light of the relevant provision of the Companies Act, 2013:

- (i) Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of XT Limited scheduled to be held in September, 2019?
- (ii) Mr. Dhruv is proposed to be appointed as an Additional Director of MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in MN Limited? Decide.

Answer

According to section 164(2) of the Companies Act, 2013, person who is or has been a director of a company,

- a) which has not filed financial statements or annual returns for any continuous period of 3 financial years; or
- b) 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 1 year or more,

shall not 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.

Provided that where a person is appointed as a director of a company which is in default, he shall not incur the disqualification for a period of 6 months from the date of his appointment.

Also, according to section 167(1), 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 section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default.

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

- (i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as LT Limited did not file financial statements for a period of three years. Also, the LT Limited has defaulted in the repayment of matured deposits taken from public since 1st April, 2017.



Mr. Dhruv can continue as a director in LT Limited in the light of the above provisions since it is the company in default. Whereas he has to vacate the office of director in XT Limited. Mr. Dhruv cannot be reappointed as director in XT Limited.

- (ii) Mr. Dhruv cannot be appointed as an Additional Director of MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of 5 years from the date of such default.

Question 15

(C10) (ICAI SM)

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

Answer

Section 164 (2) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be appointed as a director of any other company for a period of 5 years from the date on which such company, in which he is a director, failed to repay its deposits.

In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than 1 year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd.

Question 16

(C10) (3+3+2+4= 12M) (Dec 2021 Old PQ)

Mr. Vikram, a Director of M/S Tubelight Limited has made default in filing of annual accounts and annual returns with the Registrar of Companies for a continuous period of 3 financial years ending on 31st March 2016. Examine the validity of the following under the Companies Act, 2013.

- (i) Whether Mr. Vikram can continue to be a Director of M/S Tubelight Limited (defaulting company) and also M/S Green light Limited where he is also a director.
- (ii) State Whether he can be reappointed as Director in these two companies.
- (iii) What would be your answer be in case Mr. Vikram is a nominee Director of a Public Financial Institution?
- (iv) what would be your answer in case the defaulting company (i.e. M/S Tubelight Limited) is a private limited company ?

Answer

According to section 164(2) of the Companies Act, 2013, person who is or has been a director of a company

- c) which has not filed financial statements or annual returns for any continuous period of 3 financial years; or



d) 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 1 year or more,

shall not 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.

Provided that where a person is appointed as a director of a company which is in default, he shall not incur the disqualification for a period of 6 months from the date of his appointment.

Also, according to section 167(1), 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 section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default.

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

(i) In the first case Mr. Vikram can continue to be director of the defaulting company namely M/s Tubelight Ltd. whereas in Green light Ltd., he cannot continue as a director because that company is not defaulting company.

(ii) Further, Mr Vikram is a Director of Tubelight Ltd. and Green Light Ltd. Tube Light Ltd did not file financial statements for a continuous period of 3 financial years ending 31 March 2016. This failure constitutes a disqualification under Section 164(2) and consequently Mr Vikram will not be eligible for reappointment in Tubelight Ltd. and Green light Ltd for a period of 5 years from the date on which the said company incurs the default.

(iii) In case Mr. Vikram is a nominee director of a Public Financial Institution then in such case section 164 is not applicable.

(iv) In case Tubelight Ltd is a Private Ltd Company. According to Section 164(3) a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub section (1) and (2) of Section 164

Thus, in this case the answer would be same as above i.e., Mr Vikram has to vacate his office of directorship from Tubelight Ltd and Green light Ltd and cannot be reappointed in both the companies for a period of 5 years from the date on which the said company incurs the default.

Question 17

(OS) (4M) (Dec 2018 Old PQ)

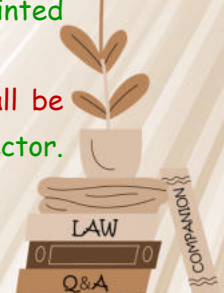
Excel Limited is a listed company with a turnover of Rs. 60 crores in Financial Year 2016-2017. The Company appoints Ms. R as the Women Director on 1st March 2017. Ms. R is already a Director in twelve companies including ten Public Companies. State briefly whether the appointment of Ms. R in Excel Limited is valid as per provision of the Companies Act, 2013.

Answer

As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Private companies that are, either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.



In the instant case, Ms. R was appointed as a women director on 1st March, 2017 in Excel Limited. She was already holding directorship in 12 companies including 10 public companies.

As Ms. R was already a director in 10 public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies to maintain the limit of holding of directorship.

Question 18

(C13) (4M) (June 2018 Old PQ)

Vijay, a director, resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies within the prescribed time. What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to RoC?

Answer

- According to Section 168 of the Companies Act, 2013, A director may resign from his office by giving a notice in writing to the company.
- The Board shall on receipt of such notice take note of the same.
- The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR -12 and post the information on its website, if any.
- Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in Form DIR-11 along with the prescribed fee.
- The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar within the prescribed time.

If the company fails to intimate about the resignation of Vijay to Registrar, even then the resignation of Vijay shall take effect from the date on which the notice is received by the company or the date, if any, specified by Vijay in the notice, whichever is later.

Additional Questions

Question 1

(C2) (SM)

ABC limited is a company with paid up capital of ₹ 50 cr. and turnover of ₹ 310 cr. Mr. Rajesh Kumar, who is promoter and MD of the company wants to run the company complying with all laws and regulations. The chairman is non-executive and is an eminent academician. There are two more directors, one is Director (Finance), Mr Joshi and Director (commercial) Mr. Nirmal Kumar, who is related to the promoter. Company is in the process of taking substantial loan for capital investment from SBI, where SBI will nominate a director in the Board.

The MD wants to clarify the following issues from you. Pl clarify with references, if any.



- (i) Is the present Board properly constituted? If not, what is the non-compliance.
- (ii) Can Mr. Nirmal Kumar be considered as independent director?
- (iii) Is there any need of women director?
- (iv) What will be the status of the director nominated by SBI? If she is a woman, would satisfy the requirement of women director.

Answer

- (i) Company is an **unlisted company** with four directors which is **properly constituted**. However, since the turnover is more than ₹ 300 cr., a **women director is required**.
- (ii) **No**, since he is **related to the promoter**.
- (iii) **Yes**, Answered in (i) above.
- (iv) He or she will be classified as nominee director. **Yes, if she will be considered to fulfil the requirement.**

Question 2 **(C8) (7M) (MQP Dec 2024 Set 1) (MQP June 2024)**

Explain how the directors are elected by small shareholders appointed under Section 151?

(or)

'There was persistent demand from the small shareholders to have a director nominated by them to look after the interest of small shareholders.' - discuss procedure of appointment of such director.

Answer

There was persistent demand from the small shareholders to have a director nominated by them to look after the interest of small shareholders.

According to Section 151 of the Companies Act, 2013, A listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed.

"Small Shareholders" means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for appointment of small shareholders' director according to which:

- a) **A listed company**, may upon notice of not less than
 - (i) **1000 small shareholders**, or
 - (ii) **1/10th of the total number of such shareholders**, whichever is lower have a small shareholders' director elected by the small shareholders.
- b) However, a listed company may opt to have a director representing small shareholders' **suo moto**.
- c) The small shareholders intending to propose a person as a **candidate for the post** of small shareholders' director shall leave a notice of their intention with the company at **least 14 days** before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.
- d) The **notice** shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating:



- (i) his **DIN**
- (ii) that he is **not disqualified** to become a director under the Act
- (iii) his **consent** to act as a director of the company.

Question 3

(C7) (5M)

Discuss the appointing authority and tenure of additional director and normal director.

Answer

According to Section 161(1),

- a) The **Board of Directors** of a company may, if so authorised by its articles, can appoint an additional director at any time.
- b) In order to get the services, **guidance and expertise** of such persons, Board of directors have been given the power to select a person as director till next AGM.
- c) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.
- d) Additional director **shall hold office up to the date of the next AGM** or the last date on which the AGM should have been held, whichever is earlier.

According to Section 152(2), Every director shall be **appointed by the company in general meeting**, unless any specific method of appointment is provided in the Articles of Association.

Question 4

(7M) (MQP June 2025)

Describe how alternate director and nominee director can be appointed by companies.

Answer

According to Section 161(2),

- a) The **Board of Directors** of a company may, if so **authorised by its articles** or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a period of **not less than 3 months from India**.
- b) A person who is holding any **alternate directorship for any other director** in the company cannot be considered for appointment as above.
- c) No person shall be appointed as an alternate director for an independent director unless he is **qualified to be appointed** as an independent director.
- d) An alternate director shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed and **shall vacate the office if and when the original director returns to India**.
- e) Any provision for the **automatic re-appointment** of retiring directors in default of another appointment shall **apply to the original**, and not to the alternate director.
- f) whether an alternate director shall be appointed or not and who shall be appointed is the prerogative of the Board and not the decision of the original director.

According to Section 161(3),

- a) subject to the **articles of a company**, the **Board may appoint**



- b) 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 or by the Central Government or the State Government by virtue of its shareholding in a government company.
- c) It is worth mentioning here "nomination" do not mean "appointment".
- d) The person appointed shall have to be appointed in the proper manner.

Question 5

(C10) (7M) (MQP Dec 2023)

Summarize the disqualifications of a director under section 164 of the Companies Act 2013.

Answer

According to this Section 164(1), A person shall not be eligible for appointment as a director of a company, if:

- a) he is of **unsound mind** declared by a competent court.
- b) he is an **undischarged insolvent**.
- c) he has applied to be adjudicated **as an insolvent** and his application is pending.
- d) he has been **convicted** by a court of any offence and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. However, if a person has been convicted of any offence and sentenced to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company.
- e) an order disqualifying him for appointment as a director has been passed **by a 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 and 6 months have elapsed from the last day fixed for the payment of the call.
- g) he has been **convicted of the offence** of dealing with related party transactions under section **188** at any time during the last preceding 5 years.
- h) he is not **allotted DIN**
- i) he has **not complied with Section 165** relating to holding of maximum number of directorship.

According to Section 164(2), Person who is or has been a director of a company which:

- a) has **not filed financial statements** or annual returns for any continuous period of **3 financial years** or
- b) has **failed to repay** the deposits or pay interest or to redeem any debentures on the due date or **pay any dividend** declared on preference shares and such **failure continues for 1 year or more**. shall not be eligible to be re-appointed as a director of that company or appointed in other company **for period of 5 years** from the date on which the said company fails to do so. However, such director shall not incur the disqualification for a period of 6 months from the date of appointment.

Question 6

(C15) (SM)

Discuss situations when the office of director shall become vacant.

Answer

According to Section 167(1), The office of a director shall become vacant in case,



- a) he incurs any of the **disqualifications specified in section 164**. Provided that where he incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, **other than the company which is in default** under that sub-section.
- b) 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.
- c) 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
- d) 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.
- e) he becomes disqualified by an **order of a court or the Tribunal**.
- f) 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.
- g) he is **removed** in pursuance of the provisions of this Act.
- h) 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.



UNIT 6 – Board Meetings and Procedures

Main Questions

Question 1

(C2) (7M) (MQP Dec 2023)

Three Board meeting of A Ltd. were held on 01.01.2022, 01.04.2022, 01.07.2022. In the fourth Board meeting scheduled for 27.10.2022, no matter could be discussed since the required quorum was not present, and so it was adjourned till 03.11.2022. In the adjourned Board meeting held on 03.11.2022, 5 matters were discussed and voted upon. Assess the situation, Has the company contravened any of the provisions of the Companies Act, 2013?

Answer

According to Section 173(1), Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation and subsequently minimum of 4 meetings shall be held every year provided that the gap between two consecutive board meetings shall not be more than 120 days.

- a) In the present case, the Board meeting held on 27.10.22 was adjourned, and the adjourned Board meeting was held on 03.11.22.
- b) The Board meeting held on 27.11.22 and adjourned Board meeting held on 03.11.22 shall not be deemed to be separate Board meetings, since an adjourned meeting is a mere continuation of the original meeting.
- c) Accordingly, the Board meeting held on 27.10.22 and the adjourned Board meeting held on 03.11.22 shall be counted as one Board meeting only.

Thus, the company has held 4 Board meetings during the calendar year 2022.

- a) The gap between 1st and 2nd Board meeting was not more than 120 days.
- b) Similarly, the gap between the 2nd and 3rd Board meeting was not more than 120 days.
- c) Regarding the gap between the 3rd and 4th Board meeting, the date of 3rd board meeting and 4th original board meeting should be considered.
- d) This is so because, it shall be deemed that only one Board meeting was held on 27.10.2022 (date of 4th meeting).
- e) As is evident, the gap between the 3rd Board meeting 1.07.22 and 4th Board meeting is not more than 120 days.

Since A Ltd has held four Board meetings during the calendar year 2022, and the gap between no two consecutive Board meetings is more than 120 days, A Ltd has complied with section 173.

Question 2

(C2) (7M) (MQP June 2024)

Fair Tech Ltd is a public limited company formed 15 days before, to manufacture computer parts, having a small factory at Durgapur, West Bengal and registered office at Kolkata. There 4 directors, two from promoter and balance 2 as professionals, one being full time and the other as



non-functional. One of the promoter director is named as MD. Advise the company by interpreting the provisions of Company law, and help the by clarifying the following.

- (i) Is there any necessary to call a Board meeting?
- (ii) If so, within what time?
- (iii) Suggest at least two important agenda items for the meeting.
- (iv) 3 directors want the meeting to be held in Delhi. Examine the legal provision.
- (v) Is necessary to appoint a CFO?
- (vi) Is written notice necessary?
- (vii) If so, how many days notice?

Answer

According to Section 173(1), Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation and subsequently minimum of 4 meetings shall be held every year provided that the gap between two consecutive board meetings shall not be more than 120 days.

According to Section 173(3), Every board meeting shall be called by giving at least 7 days notice in writing to all the directors at their registered address.

Based on the situation as mentioned in the case the following clarification is as noted below:

- (i) The first Board meeting to be held within 30 days from the day of incorporation. As the company is incorporated 15 days before, then the first meeting to be held within 15 days.
- (ii) The appointment of first auditor and disclosure of interest of that director may be important agenda.
- (iii) Board meeting can be held anytime in India.
- (iv) As per Section 203 of the Companies Act, 2013, If the paid-up share capital is ₹ 10 crore or more, appointment of CFO is mandatory being important KMP as required.
- (v) As per the section 173, written notice of board meeting in necessary.
- (vi) Minimum 7 days notice to be given provided there is exemption under certain condition.

Question 3

(C2) (4M) (SM) (June 2023 PQ)

The last Board meeting of ABC Structurals Ltd., a public limited company was held on 25th January, 2022. The MD wants that in the next Board meeting the annual financial statements to be placed and approved. The Accounts manager feels that the financial statements shall be ready latest by 15th June only. Mr Ahuja is the chairman of audit committee, who will not be in India during the whole of June. MD feels that we get the financial statements approved through video board meeting. Presently, there is no chairman in the company/ MD chairs the Board meetings. State your views.

Answer

MD of the company needs to know and understand and comply with the following.

- a) As per section 173(1) of the Companies Act, 2013, next board meeting should have to be held within 120 days of the previous meeting. Therefore, next Board cannot be held in June. There shall be another meeting to be held when financial statements are ready.



- b) Rule 4 of Companies (meeting of Board and its powers) Rules prohibits approval of annual financial statements through video meetings. Therefore, financial statements cannot be approved through video board meeting.

Question 4

(C2) (6M) (June 2017 Old PQ) (ICAI SM)

Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

- (i) An interested Director
- (ii) A Director who has expressed his inability to attend a particular Board Meeting
- (iii) A Director who has gone abroad (for less than 3 months).

Answer

- (i) Section 173(3) of the Companies Act, 2013 makes it mandatory that every director needs to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an interested director, notice must be given to him even though in terms of Section 184 he is restricted from engaging himself in discussion or voting at the meeting on the business in which he is interested.
- (ii) In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting, notice must be given to that director also.
- (iii) A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The Companies Act, 2013, allows delivery of notice of meeting by electronic means also i.e. through e-mail. Since, it permits a director to participate in a meeting by video conferencing or any other audio- visual means also, in addition to physical presence.

Question 5

(C2) (4M) (Dec 2022 Old PQ) (ICAI SM)

Mr. K and Mr. L who are the directors of RR Limited informed the company about their inability to attend the Board meetings because the notice thereof was not served on them. Discuss whether there is any default on the part of RR Limited and the consequences thereof.

Answer

- a) According to Section 173(3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.
- b) Section 173(4) further provides that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ₹ 25,000.

In the given case, as no notice was served on Mr. P and Mr. Q who are the directors of C-Tech Limited, every officer responsible for such default in serving notice shall be punishable with fine of ₹ 25,000 as required by Section 173 (4).

There are no specific provisions addressing the validity of a resolution passed by the Board of Directors when notice was not served to all directors. However, it is explicitly stated that notice must be sent to every director. A supreme court judicial order has established that resolutions passed in a board meeting are invalid if written notice is not provided to all directors. Consequently,



even if the directors were aware of the meeting, it would not be considered valid, and any resolutions passed during such a meeting would also be invalid.

Question 6

(C2) (7M) (June 2018 Old PQ)

Examine the following aspect related to convening of board meeting with reference to the provisions of the Companies Act, 2013:

- (i) The Chairman of Greenhouse Limited convened a board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.
- (ii) Purple Florence Limited proposes to hold its board meeting at a shorter notice through video conferencing.

Answer

- (i) According to section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

In the given case, two of the independent directors on the Board has objected on the grounds that no proper agenda for the meeting was circulated. The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting. However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting. Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.

Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e., more than 7 days). Hence, the meeting shall be valid.

- (ii) According to Section 173 of the Companies Act, 2013,
 - a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio-visual means.
 - b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company. Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final, only on ratification thereof by at least one independent director, if any.



Question 7

(C2) (4M) (Dec 2018 Old PQ) (7M) (MQP Dec 2024 Set 1)

The Board of Directors of Best Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May 2017. They seek your advice in respect of the following matters:

- (i) Can the board meeting be held in Chennai, when all the Directors of the Company reside at Kolkata?
- (ii) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?

Advice with reference to the relevant provisions of the Companies Act, 2013

Answer

(i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. The Companies Act lays down the provisions for holding meetings by video conferencing, sending notices, procedures at the meeting etc. Therefore, there is no difficulty in holding the board meeting at Chennai even if all the directors of the company reside at Kolkata and the registered office is situated at Kolkata provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, etc. are complied with.

(ii) According to section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. There is no provision in the Act laying down the contents of the notice.

Hence, the notice may be interpreted as intimation of the meeting. However, considering the importance of Board Meetings and the responsibilities on the Directors for decisions taken at the meetings, it is crucial for them to be properly prepared and informed about the items to be discussed at the Board Meetings. As a matter of good secretarial practice, the notice should include full details and particulars of the business to be transacted at the Board Meetings. The articles of association of the company may make it mandatory to do so in almost all cases.

Question 8

(C2 & C3) (7M) (Dec 2023 PQ)

The Board of Directors of PQR Limited met thrice in the year 2022 and 4th meeting though called but could not be held for want of quorum. Examine with reference to the relevant provisions of the Companies Act, 2013, whether any provision of the Act has been contravened.

Answer

According to Section 173(1), Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation and subsequently minimum of 4 meetings shall be held every year provided that the gap between two consecutive board meetings shall not be more than 120 days.

As per section 174(4) of the Act, if a meeting of the Board could not be held for want of quorum then, unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a National Holiday till the next succeeding day which is not a national holiday, at the same time and place.



If there is **no Quorum at the adjourned Meeting also**, the Meeting shall stand **cancelled**. An adjourned Meeting being a continuation of the original Meeting, the **gap** in such a case, **shall be counted from the date of the original Meeting**.

In this case, the Board meeting of PQR limited was held 3 times and for the 4th time the meeting was called but could not be held for want of quorum.

Hence, as per the provisions of the Companies Act, 2013 the Company (PQR) has **violated** the provisions with respect to convening the Board Meetings. But if the 4th Board meeting was adjourned due to want of quorum and the **adjourned meeting was duly held within the stipulated time**, then the company has **not contravened** the provisions of the Act.

Question 9 (C3) (7M) (June 2024 PQ) (MQP Dec 2024 Set 2)

What is the quorum of Company's Board Meeting in the following cases (explain as per the provisions of the Companies Act, 2013)?

- (i) A public company has 10 directors (including 4 non-executive directors). But 8 directors (including 4 non-executive directors) attended the BOD meeting.
- (ii) Start-up Odisha Ltd. is a section 8 company which has 8 non-executive directors. 3 directors attended the meeting.
- (iii) BOD of X Ltd. consists of 9 executive directors and 3 non-executive directors. Total 6 executive directors and 3 non-executive directors attended the BOD meeting. A business was transacted in which one director was interested. Articles of Association has fixed the quorum as 5.

Answer

- (i) According to Section 174 of the Companies Act, 2013 the quorum for a Board Meeting shall be **one-third of its total strength or two directors, whichever is higher**. Here the strength is 10. $1/3$ rd of total strength is 3.33 or 4. So the quorum is 4. (Any fraction rounded as one)
- (ii) The companies covered under section 8 of the Act shall constitute quorum for the Board meeting, **either 8 members or 25% of its total strength whichever is less**. Provided that quorum shall not be less than 2 members. As Start-up Odisha Ltd. is a section 8 company, the quorum will be decided as per above. Here 25% of total directors is 2. Hence the quorum is 2.
- (iii) The Act prohibits an **interested director** from participating in the **discussion of or voting on**, any contract or arrangement entered into, or to be entered into, by or on behalf of the company in which his presence **shall not be counted** for the purpose of forming a **quorum** at the time of any such discussion or vote and if **he does vote**, his vote shall be **void**.
There is requirement of $12/3$ i.e., 4 directors to be quorum, However, now 8 directors are present (excluding the interested director). Hence quorum is available for a valid BOD meeting of X Ltd.

Question 10 (C3 & C4) (ICAI SM)

- (i) What is the procedure to be followed, when a board meeting is adjourned for want of quorum?
- (ii) How is a resolution by circulation passed by the Board or its Committee?

Answer



- (i) As per section 174(4) of the Act, if a meeting of the Board could not be held for want of quorum then, unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a National Holiday till the next succeeding day which is not a national holiday, at the same time and place. If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.
- (ii) Board's approvals can be taken in two ways - one, by a resolution passed at a Board Meeting and the other, by means of a resolution passed by circulation.

As per Section 175(1) of the Companies Act, 2013, no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the following provisions have been complied with:

- the resolution has been circulated in draft, together with the necessary papers, if any,
- the draft resolution has been circulated to all directors, or members of the committee.
- the Draft resolution has been sent at their addresses registered in India.
- such delivery has been made by hand or by post or by courier, or through electronic means.
- such resolution has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

However, if at least 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the Chairperson shall put the resolution to be decided at a meeting of the Board (instead of being decided by circulation).

A resolution that has been passed by circulation shall have to be necessarily noted in the next meeting of Board or the Committee and made part of the minutes of such meeting.

Question 11

(C5) (SM) (7M) (MQP June 2025)

Kapoor and Sons Ltd is a listed company with Mr. S K Kapoor as CMD and main stakeholder. Board comprises of the following.

- Mr. S K Kapoor, as CMD
- Mr. K Murli, Director (Finance)
- Mr. B B Singh, Director (Commercial)
- Mr. K Shekhar, ind. Dir. Appointed in AGM in Sept, 2020
- Mr. B. Ramesh, Ind. Dir., appointed in AGM is August, 2019
- Mr. Mahesh Singh, nominee of IDBI
- Smt. Rekha Singh, ind. Director, appointed in AGM in Sept 2019
- Ms. Rukmini Mathur, non-executive, non-independent, appointed as additional director in March 22.

With the above directors, please suggest constitution of CSR committee, Audit Committee and Nomination and Remuneration committee as per the Act and Rules.

Answer

Suggestion regarding constitution of CSR committee, Audit Committee and Nomination and Remuneration committee as per the Companies Act, 2013 and rules.

CSR committee:



In case of CSR committee, there will be **at least 3 directors** in the committee with **at least 1 independent director**. CSR committee shall be as follows.

- (i) Mr. B Ramesh, as chairman
- (ii) Ms. Rekha Singh, Independent Director, member
- (iii) Mr. K Murli, Director (Finance), member

Since the company has adequate number of independent directors, we can have two instead of one. Since financial issues are involved, Director (Finance) is made member.

Audit committee:

The Audit Committee shall consist of **a minimum of 3 directors** with **independent directors** forming a **majority**.

- (i) Mr K Shekhar, Independent Director as chairperson
- (ii) Mr. Mahesh Singh, nominee of IDBI
- (iii) Ms. Rekha Singh, Independent Director

As per rule, there has to be 3 directors, the chairman to be independent and majority shall be independent. **This has been complied here.**

Nomination and Remuneration committee:

The Nomination and Remuneration Committee shall be constituted with **three or more non-executive directors** out of which **not less than one-half shall be independent directors**:

- (i) Ms. Rekha Singh, Independent Director chairperson
- (ii) Mr. B Ramesh, Independent Director, member
- (iii) Ms. Rukmini Mathur, Independent Director, member

All members need to be non-executive and /or independent.

Question 12 (C5) (4M) (Dec 2018 Old PQ) (3M) (Dec 2023 Old PQ) (ICAI SM)

An Audit Committee of a listed company constituted under Section 177 of the Companies Act, 2013, submitted its report containing the recommendations in respect of certain matters to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyse whether:

- a) The Board is empowered not to accept the recommendations of the Audit Committee.
- b) If so, what alternative course of action, would the Board resort to?

Answer

- a) **According to Section 177(8) of the Companies Act, 2013, the Board's Report shall, under the provisions of Section 134 which is laid before the general meeting, disclose the composition of the Audit Committee and where the Board has not accepted any recommendations of the Audit Committee, the same shall also be disclosed along with the reasons. Hence, the Board is empowered not to accept the recommendations of the Audit Committee but only under genuine circumstances and supported by legitimate reasons for non-acceptance.**
- b) **If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its report under section 134 (3) which is placed before the general meeting of the company.**



Question 13

(C5) (ICAI SM)

MNC Ltd., a company, whose paid up capital was ₹ 8.00 crore, has issued right shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee?

Answer

According to Section 177(1) of the Companies Act, 2013, 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. Therefore, MNC Ltd. being a listed company will be bound to constitute an Audit Committee under the Act. Further under section 177(2) the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. Further, majority of the members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

Question 14

(C5) (4M)(Dec 2017 Old PQ)

What is the role of the Audit Committee vis-a-vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144?

Answer

According to section 177(5) of the Companies Act, 2013, the Audit Committee is empowered to:

(i) call for the comments of the auditors about:

- internal control systems,
- the scope of audit, including the observations of the auditors,
- review of financial statement before their submission to the Board,

(ii) discuss any related issues with the internal and statutory auditors and the management of the company.

Audit committee should review the annual financial statements and submit the same to the Board with its recommendations, if any.

Question 15

(C5) (4M) (June 2019 Old PQ)

M/s Daga Limited (an unlisted company) without any public deposits as per the audited financial statements of the company as at March 31st, 2018 gives you the following information:

Paid-up share capital	₹ 20 crores
Gross Turnover	₹ 500 crores
Bank borrowings	₹ 50 crores (from a National Bank)
Other borrowings	₹ 30 crores (from a Public Financial Institution)

Mr. Lodha, a Chartered Accountant employed in the finance and audit department of the company wants to form a Vigil Mechanism for directors and employees of the company. Advise whether it is mandatory for M/s Daga Limited to formulate a Vigil Mechanism for directors and employees of the company.

Answer

According to Section 177(9) of the Companies Act, 2013, a Vigil mechanism shall be formed in:

- Every listed Company, and



b) Such other prescribed classes of companies.

Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following class or classes of companies that shall constitute Vigil mechanism:

- a) The Companies which accept deposits from the public;
- b) The Companies which have borrowed money from banks and public financial institutions in excess of ₹ 50 crores.

In the instant case, Daga Ltd. does not have any public deposits. They have borrowings from banks and public financial institutions of ₹ 80 Crores which is in excess of ₹ 50 crores. Since, the Company had borrowed from banks and Public Financial Institutions in excess of ₹ 50 crores, the Company is mandatorily required to form a Vigil Mechanism for directors and employees of the Company.

Question 16

(C6) (ICAI SM) (7M) (MQP Dec 2024 Set 1)

Out of the powers exercisable by the Board under Section 179 of the Companies Act, 2013, the Board of MN Limited wants to delegate the power to borrow monies otherwise than on debentures to the Managing Director. Advise whether such a delegation is possible? Would your answer be different, if the delegation is made to the manager or any other principal officer including a branch officer of the company?

(or)

Describe the Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting.

Answer

According to section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:

- a) To make calls on shareholders in respect of money unpaid on their shares.
- b) To authorise buy-back of securities under section 68.
- c) To issue securities, including debentures, whether in or outside India.
- d) To borrow monies.
- e) To invest the funds of the company.
- f) To grant loans or give guarantee or provide security in respect of loans.
- g) To approve financial statement and the Board's report.
- h) To diversify the business of the company.
- i) To approve amalgamation, merger, or reconstruction.
- j) To take over a company or acquire a controlling or substantial stake in another company;
- k) Any other matter which may be prescribed.

Provided that the Board may, by a resolution passed at a meeting, delegate to any Committee of Directors, the Managing Director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses d) to f) on such conditions as it may specify.



From the above provisions, it is clear that the Board of MN Limited shall be perfectly in order if it delegates the power to borrow monies under d) to the Managing Director or to the manager or any other principal officer.

Question 17

(C6 & C7) (6M) (Dec 2019 Old PQ)

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company, power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors powers to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

- (i) Whether the contention of members against the non-compliance of members' decision by the directors is tenable.
- (ii) Whether it is possible for the members to use the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting.

Answer

- (i) In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things, as the Company is authorized to exercise and do.

Provided that the Board shall be subject to the provisions contained in this Act, or in the memorandum or articles, including regulations made by the Company in general meeting.

Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a Company which can be exercised only with the consent of the Company by a special resolution. Clause (a) of Section 180 (1) defines one such power as - the power to sell, lease or 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 or any of such undertakings.

Therefore, the sale of the undertaking of a Company can be made by the Board of Directors only with the consent of members of the Company accorded with a special resolution.

Even if the power is given to the Board by the memorandum and articles of the Company, the sale of undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.



(ii) Accordingly, the **contention of the members** that they were, the principals and directors being **their agents** were bound to give effect to the decisions of the **members is not correct**.

The **members** therefore, **cannot by a resolution passed by a majority** or even **unanimously** supersede the powers of the directors or **instruct them** how they shall exercise their powers.

The shareholders have, however, the **power to alter the Articles of Association** of the Company in the manner they like **subject to the provisions of the Companies Act, 2013**.

Question 18**(C7) (ICAI SM)**

Following data relates to Prince Company Limited:

Authorised Capital (Equity Shares)	₹ 100 crores
Paid - up Share Capital	₹ 40 crores
General Reserves	₹ 20 crore
Debenture Redemption Reserve	₹ 10 crore
Provision for Taxation	₹ 5 crore
Securities premium	₹ 2 crore
Loan (Long Term)	₹ 10 crore
Short Term Creditors	₹ 3 crore

Board of Directors of the company by a resolution passed at its meeting decided to borrow an additional sum of ₹ 90 crore from the company's Bankers. Being the company's financial advisor, you are required to advise the Board of Directors regarding the procedure to be followed in this respect under the Companies Act, 2013.

Answer

As per Section 180 of the Companies Act, 2013, the Board of Directors of a company, **without obtaining the approval of shareholders in a general meeting through a special resolution, can borrow the funds including funds already borrowed up to an amount which does not exceed the aggregate of the paid-up share capital, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business. Free reserves do not include the reserves set apart for specific purpose.**

According to the above provisions, the Board of Directors of Prince Company Limited can borrow, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Particulars	Amount (₹)
Paid up Share Capital	40 Crores
General Reserve (being free reserve)	20 Crores
Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	
Securities Premium	2 Crores



Aggregate of paid-up share capital, free reserve and securities premium	62 Crores
Total borrowing power of the BOD of the company, i.e, 100% of the aggregate of paid-up share capital, free reserves and securities premium.	62 Crores
(Less: Amount already borrowed as long term loan)	(10 Crores)
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	52 Crore

The company can borrow up to ₹ 52 crores without any approval, as it is within the borrowing limit. However, to borrow the additional ₹ 90 crores, which exceeds the limit, the company must pass a special resolution as per Section 180 of the Companies Act, 2013.

Question 19

(C7) (4M) (Dec 2017 Old PQ)

The Board of Directors of Stepping Stones Publications Ltd. at a meeting held on 15.01.2014 resolved to borrow a sum of ₹ 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:

- (i) Share Capital ₹ 5 crores
- (ii) Reserves and Surplus ₹ 5 crores
- (iii) Secured Loans ₹ 15 crores
- (iv) Unsecured Loans ₹ 5 crores

Advise the management of the company.

Answer

According to the provisions of Section 180 of the Companies Act, 2013, there are restrictions on the borrowing powers to be exercised by the Board of directors. According to the said section, the borrowings should not exceed the aggregate of the paid up capital, free reserves and securities premium. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded.

However, from the figures available in the present case the proposed borrowing of ₹ 15 crores will exceed the limit mentioned. Thus, the borrowing will be beyond the powers of the Board of directors.

Thus, the management of Stepping Stone Publications Ltd., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180 of the Companies Act, 2013. Then the borrowing will be valid and binding on the company and its members.



Question 20

(C7) (7M) (Dec 2023 PQ)

Section 180 of the Companies Act, 2013 provides certain restrictions on powers of Board of Directors. List out those restrictions.

Answer

According to Section 180(1) of the Companies Act, 2013, The Board of Directors of a company shall exercise the following powers **only with the consent of the company by a special resolution**, namely:

- a) To **sell, lease or 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.
 - (i) **substantially the whole** of the undertaking shall mean **20% or more** of the value of the undertaking as per balance sheet of the preceding financial year.
 - (ii) **Here, 'Undertaking' means a unit** of business in which the investment of the company **exceeds 20% of its net worth** of the preceding financial year **or** an undertaking which **generates 20% of the total income** of the company during the previous financial year.
- b) To **invest otherwise 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, will **exceed the aggregate of its paid-up share capital and free reserves and securities premium**, apart from temporary loans obtained from the company's bankers in the ordinary course of business.
- d) To **remit, or give time for the repayment of**, any debt due from a **director**.

Every Special Resolution is required to be filed in Form No. MGT -14 as per Section 117.

Question 21

(C8) (4M) (June 2023 Old PQ)

Amar Cement Limited is a company incorporated four years ago. It has earned amounting to ₹ 5 lakh, ₹ 8 lakh and ₹ 11 lakh respectively during the last three financial years. The Board of Directors of the company propose to donate a sum of ₹ 50,000 to a political party. Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donation is within the powers of the Board of Directors of the company.

Answer

As per section 182 of the Companies Act, 2013 a company shall not make a political contribution unless the following conditions satisfied:

- a) The company is **not a government company**.
- b) The company has been in **existence for 3 or more financial years**.
- c) The Board shall make a political contribution only by **passing a resolution at a Board meeting**.
The company shall **disclose in its profit and loss account the amount of political contribution and the name of political party or person to whom such amount has been contributed**.

Applying the provisions of section 182 of Companies Act 2013 to the given case, Amar Cement Limited is not prohibited from making political contribution since it has been in existence for more than 3 financial years. Accordingly, the proposal of the Board of directors to make a donation of



Rs. 50,000 to a political party is valid. Such political contribution shall be made by passing a resolution at a Board meeting only.

Question 22

(C9 & C10) (5M) (Dec 2019 Old PQ)

Runway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Runway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Runway Infrastructure Limited before entering into contract with Royal forgings.

What would be your answer in case Royal forgings is a private limited company in which wife of Mr. Patrick is holding shares?

Answer

The contract for supply of components entered into between Runway Infrastructure - Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184 and 188 of the Companies Act 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting.

As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act consent of shareholders is not required.

The provision of Section 188 are applicable to it As the directors wife (i.e. Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of runway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.

Question 23

(C10) (7M) (Dec 2023 PQ)

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to certain conditions. Elucidate those conditions to omnibus approval for related party transactions.

Answer

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company.



The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:

- maximum value of the transactions, in aggregate
 - the maximum value per transaction.
 - extent and manner of disclosures to be made to the Audit Committee.
 - review, at such intervals as the Audit Committee may deem fit.
 - transactions which cannot be subject to the omnibus approval by the Audit Committee.
- The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

The omnibus approval shall contain or indicate the following:

- name of the related parties.
- nature and duration of the transaction.
- maximum amount of transaction that can be entered into.
- the indicative base price or current contracted price and the formula for variation in the price, if any, and
- any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding ₹ 1 crore per transaction.

Omnibus approval shall be valid for a period not exceeding 1 financial year and shall require fresh approval after the expiry of such financial year

Additional Questions →

Question 1 (OS) (7M) (Dec 2023 PQ) (MQP Dec 2024 Set 2)

How far the acts of the director will be invalid if his appointment is not valid?

Answer

Section 176 of the Companies Act, 2013, seeks to give protection to the company and third parties where certain acts are done by a director in good faith and without notice that these are done wrongly or illegally. Thus, section 176 validates the bona fide acts of de facto directors.

These provisions may be explained as follows:

1. Acts of a director - Validated

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that -

- his appointment was invalid by reason of any defect or disqualification; or
- his appointment was terminated by virtue of any provision contained in the Act or in the Articles of the company.

2. Acts of managing director - Not validated



Acts done by a director in his capacity **as managing director are not validated** under section 176. Accordingly, where a managing director ceased to hold his office, all his **subsequent acts** were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all.

3. Acts of a director - Not validated in certain cases

In the following cases, the acts of a director shall not be valid:

- where his appointment is **illegal** or there is **no appointment at all**.
- If an appointment has been shown to the company as **invalid or terminated**, where such defect comes into the knowledge of the company, **all subsequent acts** done by such a director shall be **invalid**.
- Where the acts of a **director are ultra vires** the Companies Act, 2013.

Question 2

(C2) (ICAI SM)

A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 161(2). During the period of absence of the original director, a board meeting was called. In this connection, with reference to the provisions of the Companies Act, 2013, advise who should be given the notice of Board meeting i.e. the "original director" or the "alternate director"?

Answer

According to Section 161(2) of the Companies Act, 2013, the **Board of Directors** of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding **any alternate directorship** for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of **not less than three months from India**.

According to Section 173(3), a meeting of the Board may be called by giving **at least 7 days notice** in writing to **every director** at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

There is no provision as to whether the notice of the meeting is to be sent to the original director or the alternate director. But as a matter of caution such notice may be served to both the alternate director as well as the original director who is for the time being outside India.

Question 3

(C3) (7M) (MQP June 2025)

Analyse the provisions related to quorum for meetings of Board.

Answer

According to Section 174(1) of the Companies Act, 2013,

- The quorum for a Board Meeting shall be **1/3rd of its total strength or 2 directors, whichever is higher**.
- The directors who participate by video conferencing or by other audio-visual means shall also be counted for the purpose of quorum.
- In Case of **Section 8 companies**, quorum for the Board meeting, **either 8 members or 25%** of its total strength **whichever is less**. Provided that quorum **shall not be less than 2 members**.



- d) Section 174 are not applicable to one-person company in which there is **only one director**.
- e) For the purpose of calculating quorum, any fraction of a number shall be **rounded off as one**.
- f) Total strength shall not include directors whose places are vacant. **Quorum shall be present throughout the meeting**.
- g) In case of committee meetings, **the presence of all members** is necessary to form the quorum for the meetings of such committee unless otherwise stipulated.
- h) If there is any Vacancy in the BOD, if the number is reduced below the quorum fixed by the Act, the **continuing directors may meet** for the purpose of **increasing** the number of directors to that fixed for the quorum, or **summoning a general meeting** of the company and for no other purpose.

Question 4 (7M) (MQP Dec 2024 Set 2) (7M) (MQP June 2024)

Describe the provision related to Minutes of the Meeting of the General Meeting/Board Meeting.

Answer

The **minute** in a literal sense means a note to preserve the **memory of anything**. The minutes of a meeting is a **written record of the business transacted**; decisions and resolutions arrived at the meeting.

Section 118 of the Companies Act, 2013 imposes a statutory obligation that,

- a) Every **company to prepare** minutes of all proceedings of general meetings, board meetings and other meeting and resolution passed by postal ballot.
- b) Every company shall prepare and sign in such manner as may be prescribed and keep **within 30 days of the conclusion of every such meeting** concerned in **books kept** for that purpose with their pages consecutively numbered.
- c) The minutes of each meeting shall contain a **fair and correct** summary of the proceedings.
- d) All appointments made at any of the meetings aforesaid shall be included in the minutes of the Meeting.
- e) The names of the **dissenting directors** should be recorded.
- f) The minutes are to be **signed by the chairman** of the meeting or the next meeting.
- g) The minutes kept shall act as the **evidence of the proceedings** recorded therein and all recording shall be considered valid and authentic.

As per Section 118, **every company** shall observe Secretarial Standards with respect to general and board meetings specified by the Institute of Company Secretaries of India. Accordingly, two Secretarial Standards viz. **SS-1: Meetings of the Board of Directors** and **SS-2: General Meetings have been notified**.

The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall:

- a) be **kept at the registered office** of the company in electronic form, and
- b) be **open, 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 general meeting, impose, so, however, that not less than 2 hours in each business day are allowed for inspection. Any



member shall be furnished within 7days of request, with fees, a copy of the minutes of general meeting.

Question 5
(C2 & C3) (7M) (MQP Dec 2023)

"A casual meeting of the directors, even at the office of the company, cannot be treated as a board meeting" - analyse the legal provisions relating to board meeting under the Companies Act 2013?

Answer

According to Section 173(1) of the Companies Act, 2013, after the incorporation of a company, the first meeting of the Board of Directors shall take place **within 30 days**. After the first meeting, a **minimum of 4 meetings** of the Board of Directors needs to be held in a year. The Section further states that the meeting is to be held in such a manner that there should not be a **gap** of more than **120 days between** the two consecutive meetings of the Board.

Section 173(3) of the Act states that a meeting shall be called by a **notice to every director** in writing and the notice shall give a **minimum of 7 days** to the directors at their registered addresses as provided by them to the company.

Section 174(1) of the Act states that for a **quorum** for a meeting of a board of directors of a company hall, there shall be either **one-third participation of directors or two, whichever is higher**. In case of participation of directors via video conferencing or other audio-visual means, shall also be counted.



UNIT 7 – Key Managerial Personnel

Main Questions

Question 1

(C1 & C2) (6M) (June 2018 Old PQ)

There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Evaluate whether he will be treated as Managing Director of the company. Also recommend the procedure of appointment of a Managing Director in a company in the light of the Companies Act, 2013.

Answer

According to Section 2(54) of the Companies Act, 2013, a "Managing Director" is a director who is entrusted with substantial powers of management of the affairs of the company by:

- a) virtue of articles of a company, or
 - b) an agreement with the company, or
 - c) a resolution passed in its general meeting, or by its Board of Directors,
- and includes a director occupying the position of the managing director, by whatever name called. Substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:
- (ii) the power to affix the common seal of the company to any document or
 - (iii) to draw and endorse any cheque on the account of the company in any bank or
 - (iv) to draw and endorse any negotiable instrument or
 - (v) to sign any certificate of share or
 - (vi) to direct registration of transfer of any share.

In the instant case, Mr. Madhav, a director in Shine Paper Limited has been, authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc.

Hence, according to explanation to section 2(54), Mr. Madhav will not be treated as managing director of the company as he is authorized to do administrative acts of a routine nature.

As per Section 196(4), procedure of appointment of a managing director:

- (i) a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.
- (ii) The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.
- (iii) In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.



- (iv) A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within 60 days of such appointment.

Question 2

(C2) (4M) (Dec 2021 Old PQ)

Earth Developers Private Limited, a Bengaluru based company is regular in filing its annual return as well as financial statements and has four directors but so far, no managing director has been appointed. Due to the manifold increase in the construction work undertaken by the company in the last two years, it is urgently felt that a managing director needs to be appointed. Accordingly, Mr Pranav was appointed as MD by the Board of Directors at its meeting, specifying the terms and conditions including monthly remuneration, payable to him. Enumerate on the requirement and validity of an appointment of Mr. Pranav in the given scenario, in the context of relevant law.

Answer

According to Section 196(4) of the Companies Act, 2013, it requires that the terms and conditions of appointments of a Managing Director and the remuneration payable to him shall be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Part I of the Schedule V. However, the above provisions shall not apply to private companies.

Therefore, there is no requirement regarding the approval of appointment of Mr. Pranav as MD in the Earth Developers Private Limited, at the immediate next general meeting of the shareholders. Therefore, his appointment as MD in the Earth Developers Private Limited is valid.

Question 3

(C2) (4M) (Dec 2017 Old PQ)

X was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2014. Examine in this connection.

- Can 'X' be appointed for life as Managing Director?
- Is it possible for the company in general meeting to remove 'X' from his office of directorship during his lifetime?

Answer

a) As per Section 196(2) of the Companies Act, 2013, no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding 5 years at a time. No concession or exception is allowed by the Act to private companies.

Hence, 'X' cannot be appointed as Managing Director for life in a private company.

b) As per Section 169(1) of the Companies Act, 2013, the company has the power to remove a director, by ordinary resolution before the expiry of his period of office after giving him an opportunity of being heard. This section applies to both public and private companies. It applies to all directors except a director appointed by the Tribunal under section 242 of the Act. The above provision applies to the Managing Director also as he is a director of the company and the member of its Board of Directors. Hence, it is possible for the company in general meeting to remove 'X' before the expiry of his term of office by an ordinary resolution.



Question 4

(C3) (8M) (June 2023 PQ) (ICAI SM)

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

- (i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.
 - (ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.
 - (iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.
- You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals

Answer

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

- (i) Section 197(1) of the Companies Act, 2013, provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

- (ii) Section 197(1) of the Companies Act, 2013 provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-
 - 1% of the net profits, if there is a managing or whole-time director or manager.
 - 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by passing a special resolution.

- (iii) According to section 197(4) of the Companies Act, 2013, the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with:
 - a) by the articles of the company, or
 - b) by a resolution or,
 - c) if the articles so require, by a special resolution, passed by the company in general meeting.



The remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

Any remuneration for services rendered by any such director in other capacity shall not be so included if—

(i) the services rendered are of a professional nature; and

(ii) in the opinion of the Nomination and Remuneration Committee, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration payable to Mr. Bhatt, a director, for professional services rendered by him as software engineer will not be included in the maximum managerial remuneration. Accordingly, such additional remuneration shall be allowed but opinion of Nomination and Remuneration Committee needs to be obtained.

Question 5

(C3) (4M) (Dec 2019 Old PQ)

The Articles of Association of a listed company provides for fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹ 30,000. In view of the increased responsibilities of Independent Directors of listed Companies, the Company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.

Answer

Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed sum of ₹ 1 lakh per meeting of the Board or committee. Further, the Board may decide different sitting fee payable to independent and other directors. However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

From the above, it is clear that sitting fees to independent directors can be increased from ₹ 30,000 to ₹ 45,000 per meeting by passing a resolution in the Board Meeting and altering the Articles of Association by passing Special Resolution.

Question 6

(C3 & C6) (4M) (Dec 2018 Old PQ)

- (i) Mr. Balu is a CEO in a public company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and schedule V apply to Mr. Balu.
- (ii) Mr. X is a Whole Time Director (WTD) in a Super Ltd. He is also Whole Time Director (WTD) in its subsidiary company. Discuss the validity of Mr. X as WTD in its subsidiary company.

Answer

- (i) Section 197 of the Companies Act, 2013 applies with regard to remuneration of directors including Managing Director, Whole Time Director and Manager. Schedule V provides conditions with regard to appointment and remuneration of Managing Director, Whole Time Director and Manager. Therefore, the provisions related to the managerial remuneration are not applicable on all KMPs i.e., to CEO, CFO or CS but they are applicable only to Managing Director, Whole Time Director and Manager.



So, Section 197 & Schedule V, shall not apply to Mr. Balu.

(ii) As per Section 203(2) of the Companies Act, 2013, every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

As per Section 203(3) of the Companies Act, 2013, A whole-time key managerial personnel shall not hold office in more than one company at the same time except in its subsidiary company.

So accordingly, Mr. X can validly hold the position of Whole time Director in the subsidiary of Super Ltd.

Question 7

(C5) (ICAI SM)

Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.2016 on a salary of ₹ 12 lakhs per annum with other perquisites. The Board of Directors of the company came to know about certain questionable transactions entered into by Mr. Doubtful and therefore, terminated his services as Managing Director from 1.3.2019. Mr. Doubtful termed his removal as illegal and claimed compensation from the company.

Discuss whether: The company is bound to pay compensation to Mr. Doubtful and, if so, how much.

Answer

According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing Director, Whole-time Director or Manager. The amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be ₹ 25 Lakhs calculated at the rate of ₹ 12 Lakhs per annum for unexpired term of 25 months.

Question 8

(C5) (4M) (Dec 2023 Old PQ)

Mr. R was appointed as a whole-time director and was heading the marketing department in SMP Limited. As a cost saving measure, he was removed from the office as whole-time director. Mr. R demanded compensation for loss of office. Explaining the relevant provisions of the Companies Act, 2013, state whether he is entitled to compensation. If yes, how the compensation amount will be calculated?

Answer

According to Section 202 of the Companies Act, 2013, A company may make payment to a Managing Director or Whole-time director or Manager (but not to any other director) by means of compensation for loss of office, or as consideration for retirement from office.



Here, in the given instance Mr. R the whole-time director was forced to be removed from office as cost saving measure. Yes, he is entitled for compensation.

The amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter.

Additional Questions

Question 1 (C5) (SM) (2M) (June 2019 Old PQ)

Who are KMPs and which categories of companies are supposed to have KMPs?

Answer

According to Section 203(1) of the Companies Act, 2013,

- Every listed company
- Every other public company having a paid up share capital of ₹ 10 crores shall have the following whole time key managerial personnel:
 - Managing Director or Chief Executive Officer or Manager and in their absence, a whole time Director.
 - Company Secretary and
 - Chief Financial Officer.

Every private company which has a paid up share capital of ₹ 10 crores or more shall have a whole time company secretary.

Question 2 (8M) (June 2017 Old PQ)

Can a Company pay compensation to its directors for loss of office? Briefly explain the relevant provisions of the Companies Act, 2013 in this regard.

Answer

According to Section 202(1) of the Companies Act, 2013, A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office.

No payment of compensation shall be made in the following cases:

- where the director resigns from his office as a result of the reconstruction/amalgamation of the company with any other body corporate and is appointed as the director of the reconstructed company or of amalgamated company
- where the director resigns from his office in normal course
- where the office of the director is vacated under Section 167.
- Where the company is being wound up due to the negligence or default of the director.
- where the director has been guilty of fraud or breach of trust in relation to the conduct of the affairs of the company or any subsidiary company or holding company
- where the director has intentionally taken part directly or indirectly in bringing about the termination of his office.



The amount of compensation shall not exceed the remuneration he would have earned if he would have been in office for the remainder of his term or 3 years, whichever is lower.

No payment can be made at all if winding up of the company is commenced whether before or within 12 months after, the date of loss of office, if the assets are not sufficient to repay the shareholders. Nothing in this section shall be deemed to prohibit the payment to a director of any remuneration for services rendered by him to the company in any other capacity.



UNIT 8 – Investments and Loans

 Main Questions
 

Question 1

(C1) (3M) (June 2023 Old PQ) (June 2017 Old PQ)

Mr X a director of ABC Ltd. He has approached Housing Finance Co. Ltd. for the purpose of obtaining a loan of INR 50 lakhs to be issued for construction of building of his residential house. The loan was sanctioned subject to the condition that ABC Ltd. should provide the guarantee for the repayment of loan instalments by Mr. X. Advise Mr. X.

Answer

According to section 185 of the Companies Act, 2013, No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Thus, Mr. X is not allowed for loans of ₹ 50 Lakhs against guarantee by the company ABC Ltd.

Question 2

(C2) (3M) (Dec 2022 Old PQ)

XYZ Ltd. is an investment company whose principal business is an acquisition of shares and debentures of other companies. The following figures were derived from the books of XYZ Ltd.:

Assets:	
Investment in shares and debenture	₹ 95 lakhs
Other Assets	₹ 105 lakhs
Total	₹ 200 lakhs
Income:	
Income from investment business	₹ 12 lakhs
Other Income	₹ 18 lakhs
Total	₹ 30 lakhs

- Whether the company is an investment company as per section 186 and eligible to claim exemption given there under?
- The Board of Directors of XYZ Ltd. is considering the proposal for making the investment in ABC Ltd. The company has 5 directors on Board and in the Board Meeting 4 directors were present, three of them gave the consent to the proposal and one director abstained from voting. Comment on the same.

Answer

- As per the explanation given under Section 186 of the Companies Act, 2013, an investment company means a company whose principal business is the acquisition of shares, debentures or other securities.

A company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures



or other securities constitute not less than 50% of its total assets, or if its income derived from investment business constitutes not less than 50% of its gross income.

In light of the above explanation, the assets of XYZ Ltd. in form of Investment in shares or debentures is less than 50% of the total assets of the company and also the income derived from the investment business is less than 50% of the total Income of the company. Hence, either of the two conditions need to be satisfied to make an investment company and, in this case, neither of this condition is satisfied. So, XYZ Ltd. cannot be an Investment company for the purpose of Section 186.

- (ii) As per section 186 (5) of the Companies Act, 2013, no investment shall be made or loan or guarantee or security given by the company, unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting. is obtained. So, in this case the Board of Directors of XYZ Ltd. while considering the proposal for making the investment in ABC Ltd. has not complied with the provision of section 186(5) of the Companies Act, 2013, where the consent of all the directors present at the meeting is required. The resolution of the board of directors therefore is not valid and has no legal effect.

Question 3

(C2) (SM)

Which companies are exempt from the provisions with regard to inter-company investments/loans?

Answer

Non-Applicability of Section 186,

a) to any loan made, any guarantee given or any security provided or any investment:

- i) made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business; or
- ii) made by a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities ;

b) to any investment:

- i) made by an investment company;
- ii) made in shares allotted or in shares allotted in pursuance of rights issues made by a body corporate;
- iii) made, in respect of investment or lending activities, by NBFC whose principal business is acquisition of securities.

Question 4

(C3) (7M) (June 2024 PQ)

Should investments of a limited company be held in its name only? State the requirements of the Companies Act, 2013 in this regard.

Answer

According to Section 187 of the Companies Act, 2013,

- a) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name.



- b) Provided the company **may hold any shares in its subsidiary company** in the **name of any nominee** or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is **not reduced below the statutory limit**.
- c) **Nothing in this Section shall be deemed to prevent a company:**
- (i) from depositing with a bank, any shares or securities for the **collection of any dividend or interest** payable thereon.
 - (ii) from depositing with or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, **to facilitate the transfer**.
 - (iii) from depositing with or transferring to, any person any shares or securities, by way of **security for the repayment of any loan**.
 - (iv) from holding investments in **the name of a depository** when such investments are in the form of securities held by the company as a beneficial owner.
- d) Where any shares or securities in which investments have been made by a company are not held by it in its own name, the company **shall maintain a register** which shall contain such particulars and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours.

Question 5

(C5) (7M) (Dec 2023 PQ) (MQP Dec 2024 Set 2) (SM)

Is there any provision for Prohibition on Acceptance of Deposits from Public exist in Companies Act, 2013? If so, analyse the provision.

(or)

Explain the provisions has to prohibition on Acceptance of Deposits from the Public Under Section 73 of the Companies Act, 2013.

Answer

According to Section 73 of the Companies Act, 2013,

- a) **No company can invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.**
- b) Provided that **nothing in this section shall apply** to a **banking company and non-banking financial company** and to such other companies as the Central Government may, after consultation with the Reserve Bank of India, specify.
- c) A **company may**, with the mandate of a **resolution in general meeting** and subject to such rules as may be prescribed **accept deposits from its members**, subject to the fulfilment of the following conditions, namely
 - (i) **Issuance of a circular to its members, which shall include,**
 - a statement showing the **financial position** of the company.
 - the **credit rating** obtained.
 - the total number of **depositors**
 - the **amount due** towards deposits and
 - such other particulars as may be prescribed.
 - (ii) **filing a copy of the circular** along with such statement with the **Registrar within 30 days** before the date of issue of the circular



- (iii) **depositing on or before 30th April** each year such sum which shall **not be less than 20%** of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called as **Deposit Repayment Reserve (DRR)** account.
 - (iv) The DRR account shall not be used by the company for any purpose other than repayment of deposits.
 - (v) Certifying that the company has **not committed any default** in the repayment of deposits accepted or payment of interest on such deposits, and where the default has occurred, the company has made good the default **and 5 years have elapsed** since then.
 - (vi) **Providing security**, if any, 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.
- d) **Every deposit** accepted by a company **shall be repaid with interest** in accordance with the terms and conditions of the agreement. Where a company **fails to repay** the deposit or any interest, the **depositor concerned may apply to the Tribunal**.

According to Section 76, Only "Eligible company" can accept deposits from public : means a

- a) public limited company
- b) with net worth **minimum ₹ 100 crores** or a turnover of **minimum ₹ 500 crores**
- c) have consent of shareholders through **special resolution** to accept public deposits.
- d) The special resolution has been filed with the registrar.
- e) **Later on an ordinary resolution** is enough for acceptance of deposits.

No eligible company shall accept or renew:

- a) any deposit from its **members exceeding 10%** of paid-up share capital, Free reserves and security premium of the company.
- b) any other deposit **exceeding 25% paid-up share capital**, Free reserves and security premium of the company.

Question 6

(3M) (June 2018 Old PQ)

ABC 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 ABC Ltd. for accepting deposits from public other than its members.

Answer

According to Section 76 of the Companies Act, 2013, a public company, having **net worth of not less than ₹ 100 crore** or **turnover of not less than ₹ 500 crore**, 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 credit rating** from a recognised credit rating agency for **informing 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 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.

Since, ABC 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 or both and then the other conditions as stated above.

Additional Questions →

Question 1

(SM)(C2)

Discuss the law relating to inter-corporate loans and investments.

Answer

As per the provisions of Section 186 of the Companies Act, 2013,

a) **Loan, Guarantee, and Investment Limits:** A company cannot:

- Provide loans, give guarantees, or offer security.
- Make investments in other companies or bodies corporate exceeding 60% of its paid-up share capital, free reserves, and securities premium or 100% of its free reserves and securities premium, whichever is higher.
- Exceeding this limit requires prior approval of shareholders via a special resolution.

b) A company cannot invest through more than two layers of investment companies, except in certain prescribed cases.

c) Full particulars of loans, guarantees, and investments must be disclosed in the company's financial statements.

Question 2

(C2) (SM)

What particulars are required to be entered in the Register of Loans and Investments?

Answer

According to Section 186, Every company shall maintain a register containing the particulars of loans, guarantee and security provided by the company and kept at the registered office of the company. Such register shall be open for inspection and extracts can be taken and copies may be furnished to any member on payment of prescribed fees.

Particulars Required in the Register:

- a) **Details of the Borrower or Investee:** Name of the company or person receiving the loan or in whose securities investment is made.
- b) **Nature of the Transaction:** Specify whether it is a loan, guarantee, security, or investment.
- c) **Amount and Particulars:** The quantum of loan given or guarantee/security provided. Number and description of securities acquired.
- d) **Purpose:** The purpose for which the loan or guarantee/security is provided.



- e) **Tenure and Terms:** Duration of the loan, guarantee, or investment. Terms and conditions of repayment or redemption.
- f) **Date of Resolution:** The date of the Board resolution approving the transaction.
- g) **Rate of Interest:** For loans, the interest rate charged.



UNIT 9 – Inspection, Inquiry and Investigation

Main Questions

Question 1

(C3) (4M) (June 2023 PQ) (ICAI SM)

A group of shareholders of FMG Limited made a complaint to the concerned Registrar of Companies (ROC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide:

- (i) Whether the ROC has the power to order for an inquiry into the affairs of the Company?
- (ii) If yes, state the procedure to be followed by the ROC.
- (iii) Whether the inquiry should be pursued by the ROC in case the complaint is withdrawn by the same group of shareholders subsequent to the Order for enquiry?
- (iv) Whether the Central Government has the power to direct the ROC to carry out the inquiry?

Answer

According to Section 206(4) of the Companies Act, 2013,

- (i) **Yes, the ROC has the power to order for an inquiry** as he deems fit after providing the company **a reasonable opportunity of being heard**, into the affairs of the company if he is satisfied on a representation made to him by any person that the business of a company is being carried on **for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act**.
- (ii) **Procedure followed by ROC:** The Registrar may, after **informing the company** of the allegations made against it by a written order, **call on the company** to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a **reasonable opportunity of being heard**.
- (iii) The inquiry **can be carried on by the ROC even in case the complaint is withdrawn** by same group of shareholders subsequent to the order for inquiry.
- (iv) **Yes, the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar for the purpose to carry out the inquiry under section 206(4).**

Question 2

(C6) (ICAI SM)

A group of creditors of XYZ Limited makes a complaint to the Registrar of Companies, Gujarat alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 A.M. on 06th June, 2018 and the registrar has attempted to enter the premise of company but has been denied by the company, due to not having order from special court. Is the contention of company being valid in terms of Companies Act, 2013?



Answer

According to Section 209 of the Companies Act, 2013, if the Registrar has reasonable ground to believe that the books and papers of

- A company or relating to
 - the key managerial personnel or
 - any director or
 - auditor or
 - company secretary in practice if the company has not appointed a company secretary
- are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,
- a) enter with such assistance as may be required and search the place where such books or papers are kept; and
 - b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

According to the above provisions the registrar may enter, search and seize the books only after obtaining an order from the Special Court.

In the given scenario, the registrar has failed to obtain permission from the special court so, he is not authorized to enter the premises of the company and seize the books of accounts of XYZ Limited. Hence, the contention of the XYZ Limited is valid in law.

Question 3**(C7) (6M) (Dec 2017 Old PQ)**

Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted. Elaborate.

Answer

According to Section 210(1) of the Companies Act, 2013, the Central Government may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

- a) on the receipt of a report of the Registrar or Inspector under section 208;
- b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated.
- c) in public interest.
- d) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated

For such purpose, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon.



In the given case, the shareholder's application will not be accepted. Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government, but it is not sufficient as the company has not passed the special resolution.

Question 4

(C12) (ICAI SM)

Mr. Atul is an employee of the company ABC Limited and investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate the employee on the ground of investigation is going against him. They have filed the application to tribunal for approval of termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Atul.

- (i) Is the contention of company being valid in law?
- (ii) What is remedy available to Mr. Atul?
- (iii) What is remedy available to Mr. Atul, if reply of Tribunal has been received within 30 days of application?

Answer

As per Section 218 of the Companies Act, 2013, during any investigation of the affairs of the company or any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company under Chapter XIV:

The company shall obtain the approval of the tribunal before taking such actions against the employee:

- a) discharge or suspension of an employee; or
- b) punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- c) change in the terms of employment to the disadvantage of employees.

In case, the company does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be consider as a deemed approval by the tribunal.

If the company or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

- a) Yes, the termination of Mr. Atul made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
- b) In this scenario, Mr. Atul has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Atul cannot refer an appeal to Appellate Tribunal.
- c) In this case, Mr. Atul can refer and appeal to appellate tribunal after the receiving the letter of objection raised by the tribunal.



Question 5

(C13) (4M) (Dec 2019 Old PQ) (ICAI SM)

Discuss the powers of Inspectors regarding investigation into affairs of related companies.

(or)

During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do so under the provisions of the Companies Act, 2013?

Answer

As per Section 219 of the Companies Act, 2013, If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of

- any other body corporate which is or has at any time been the company's subsidiary company or holding company, or a subsidiary company of its holding company.
- any other body corporate which is, or has at any time been managed by any person as managing director or as manager, who is, or was the managing director or the manager of the company.
- any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors or
- any person who is or has at any relevant time been the company's managing director or manager or employee.

The inspector shall, subject to the prior approval of the Central Government, investigate into the affairs of the other body corporate or of the managing director or manager, if he considers relevant to the investigation of the affairs of the company for which he is appointed.

In view of above, the Inspector is permitted to investigate the holding company.

Question 6

(C16) (5M) (June 2023 Old PQ) (6M) (June 2017 Old PQ)

What are the duties of Inspector as enumerated in Sec. 223 of the Companies Act, 2013 in relation to his report?

Answer

Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

- Submission of interim report and final report:** An inspector appointed under this Chapter may, and if directed by the Central Government shall, submit interim report to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- Obtaining copy or report:** A copy of the above report may be obtained by making an application in this regard to the Central Government.



Additional Questions

Question 1

(C3) (4M) (Dec 2018 Old PQ)

Write short notes on - Inquiry by the Registrar [(Section 206(4)]

Answer

- a) The Registrar may call on the company to furnish in writing any information or explanation and carry out such inquiry as he deems fit after providing the **company a reasonable opportunity of being heard, if the Registrar is satisfied** :
- (i) on the basis of information available with or **furnished to him**, or
 - (ii) on a representation made to him by any person that
 - the business of a company is being carried on for a **fraudulent or unlawful purpose** or not in compliance with the provisions of this Act, or
 - the **grievances of investors** are not being addressed.
- b) Before calling the company to furnish in writing any information or explanations and carrying out inquiry, the Registrar has to **inform the company of the allegations** made against it by a written order.
- c) The Central Government may, if it is satisfied that the **circumstances so warrant**, direct the Registrar or an Inspector appointed by it for the purpose to carry out the inquiry.
- d) It is further provided that where business of a company has been or is being carried on for a **fraudulent or unlawful purpose**, every officer of the company who is in default shall be **punishable for fraud in the manner as provided in section 447**.

Question 2

(C7) (5M)

Discuss the role of Central Govt. in investigation into affairs of any company, under the Act.

Answer

According to this Section 210(1), Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company, it may order an investigation.

- a) on the receipt of a **report** of the Registrar or inspector **under section 208**
- b) on **intimation of a special resolution** passed by a company that the affairs of the company ought to be investigated or
- c) Suo moto in **public interest**
- d) Where an **order is passed by a court or the Tribunal** in any proceedings before it that the affairs of a company ought to be investigated

According to Section 210(2), the Central Government may **appoint** one or more persons as **inspectors** to investigate into the affairs of the company and to report thereon.

According to Section 212(1), where the Central Government -

- a) on receipt of a report of the **Registrar or inspector under section 208**



- b) on **intimation of a special resolution** passed by a company that its affairs are required to be investigated
- c) in the **public interest**
- d) on **request** from any **Department of the Central Government or a State Government**.

is of the opinion that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office (SFIO), the Central Government may, by order, **assign the investigation** into the affairs of the company to the **Serious Fraud Investigation Office (SFIO)**.

Question 3

(C18) (7M) (MQP Dec 2023)

Explain who shall bear the cost of investigation under section 225. under the Companies Act 2013.

Answer

Section 225 of the Act lays down the following provisions in respect of expenses of investigation: the **expenses of investigation shall be initially paid by the Central Government**, but shall be reimbursed by the following persons to the extent mentioned below, namely:

- a) **Any person who:**
 - (i) Is **convicted** in a prosecution under Section 224, or
 - (ii) Is **ordered to pay damages** or return any property in proceedings under Section 224. to the extent ordered by the court for reimbursement.
- b) Any **company or body corporate** in whose name such proceedings are brought, to the extent of the amount or value of any sums or property recovered through those proceedings.
- c) **If no prosecution is initiated under Section 224 as a result of the investigation:**
 - (i) Any company, body corporate, managing director, or manager referred to in the inspector's report, and
 - (ii) The **applicants who requested the investigation** under Section 213.

In these cases, the Central Government may direct them to reimburse the expenses.

Any amount for which a company or body corporate is liable as specified above shall be treated as a **first charge on the sums or property** recovered in those proceedings.



UNIT 10 – Compromises, Arrangements and Amalgamations

 Main Questions
 

Question 1

(C3) (ICAI SM)

A meeting of members of ABC Limited was convened under the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 600 members holding in the aggregate 25,00,000 shares. The meeting was attended by 450 members holding 15,00,000 shares. 210 members holding 11,00,000 shares voted in favour of the scheme. 180 members holding 3,00,000 shares voted against the scheme. The remaining members abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme is approved by the requisite majority.

Answer

As per section 230(6) of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case out of 600 members, 450 members attended the meeting, but only 390 members voted at the meeting. As 210 members voted in favor of the scheme the requirement relating to. majority in number (i.e 196) is satisfied. 390 members who participated in the meeting held 14,00,000, three-fourth of which works out to 10,50,000 while 210 members who voted for the scheme held 11,00,000 shares.

As both the requirements are fulfilled, the scheme is approved by the requisite majority.

Question 2

(C3) (ICAI SM)

A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 10,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting.

Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?



Answer

As per section 230(6) of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favour of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied. 260 members who participated in the meeting held 9,00,000 shares, 3/4th of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of DEF Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against.

Question 3 (C4) (4M) (SM) (June 2023 PQ) (7M) (MQP Dec 2024 Set 1)

ABC Ltd. Is a public limited unlisted company with ₹50 crore equity capital of ₹10 each. It has taken over 70% equity of a company called BCG Ltd which is a listed company with equity capital of ₹20 crores divided into share of ₹10 each. ABC Ltd. And BCG Ltd. Have decided to merge.

The CEO of BCG Ltd. has following queries which you have to answer.

- (i) Is the decision to merge is in order?
- (ii) Is a scheme necessary for merger?
- (iii) Is the merger to be approved by shareholders of each of the companies?
- (iv) What happens if few shareholders do not consent?
- (v) Does require order of NCLT?

Answer

According to Section 232(1), when an application is made to the Tribunal for a Compromise or Arrangement (C/A) proposed between a company and any such persons, and it is shown to the Tribunal:

- a) that the C/A proposed involves a scheme of merger or the amalgamation of any two or more companies
- b) that the whole or any part of the undertaking, property or liabilities of any company is required to be transferred to another company or two or more companies.

the Tribunal may on such application, order a meeting of the creditors or the members, to be called, held and conducted as per Section 230.



At a meeting if, majority of persons representing 3/4th in value of the creditors or members as the case may be, voting in person or by proxy or by postal ballot, agree to any C/A and if such C/A is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or members of the company.

- (i) Yes. The decision to merge in in order. Companies are free to merge with consent of shareholders and by following the procedures prescribed above. However, it will not fall under special category mergers under section 233 of the Act.
- (ii) Yes, a scheme is necessary.
- (iii) Yes, the scheme must be approved by 3/4th majority of shareholders in value.
- (iv) The dissenting shareholders have to accept the decision of the majority.
- (v) Yes, it requires approval of NCLT. Since the transferor company is listed, SEBI regulations have to be complied with, wherever applicable.

Question 4

(C5) (3M) (Dec 2023 Old PQ) (ICAI SM)

ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Is the contention of Company Secretary being valid as per law?

Answer

As per section 233 (1), notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- a) two or more small companies or
- b) a holding company and its wholly owned subsidiary company or
- c) two or more start-up companies,
- d) one or more start-up company with one or more small company.

The provisions given for fast-track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

Question 5

(C7) (7M) (Dec 2023 PQ)

In a scheme of reconstruction by a multinational company listed in India, the company wanted the minority shareholders to get out of the company by selling their shares back to the promoters at a price determined by the promoters. The minority shareholders were not given a choice whether they wanted to tender their shares or not. In the meeting, there were six non-promoter shareholders who voted against the scheme, but Chairman declared that the motion was carried with an overwhelming majority of more than 90% shareholding. However, minority shareholders contended that they had a right to reject the offer. Will they succeed?



Answer

In the scheme of reconstruction by a Multinational Company listed in India, the company wanted to acquire the minority shareholders by selling their shares to the promoters at a price determined by the promoters.

As per Section 236(1) of the Companies Act, 2013, In the event of amalgamation, share exchange, conversion of securities, or any other case,

- If an acquirer or a group of people acting together becomes the registered holder of 90% or more of the total equity shares of a company, they must notify the company of their intention to buy the remaining shares.
- Once the company is notified, the acquirer (or the group holding 90%) must make an offer to the minority shareholders to buy their shares.
- The price for these shares should be decided by a Registered Valuer to ensure fairness.
- The minority shareholders also have the right to offer their shares to the majority shareholders at the same price determined by the Registered Valuer.

In the given case, the minority shareholders were not given a choice whether they wanted to tender their shares or not. Also, 6 minority shareholders were dissenting from the scheme. Chairman declared that such a scheme was passed by a majority of more than 90% shareholding. Further the price of the shares was determined by the Promoters and not by a Registered Valuer.

Accordingly, in the given instance, the said procedure of acquisition of shares of minority shareholders is not in compliance with the procedure given in Section 236 of the Act.

Therefore, as per the above provisions of the Act, minority shareholders will succeed in rejecting the said offer of purchasing minority shareholding in the Company.

Question 6

(C8) (7M) (Dec 2024 PQ) (MQP June 2025) (SM)

Discuss about the amalgamation by Central Government on public interest as per the provisions of the Companies Act, 2013.

Answer

According to Section 237 (1) of the Companies Act, 2013,

- when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate,
- the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, and with such liabilities, duties and obligations, as may be specified in the order.
- The order may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company.
- Every member or creditor, debenture holder, of each of the transferor companies before the amalgamation shall have the same interest in or rights against the transferee company as he had in the original company, and in case the interest of such member or creditor is less than his interest in the original company, he shall be entitled to compensation to that extent, which



shall be assessed by such authority as may be prescribed and shall be published in the Official Gazette.

- e) The compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
- f) Any person aggrieved by any assessment of compensation made by the prescribed authority, within a period of 30 days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and there upon the assessment of the compensation shall be made by the Tribunal.

Additional Questions

Question 1

(C1) (5M)

Define the term 'Compromise'. How is it different from arrangement?

Answer

Compromise - It a peaceful and willing settlement of a dispute by mutual concessions, which results in agreement between the company and the creditors or members for a change in terms and conditions effecting their rights and obligations.

Arrangement - There is no dispute but it includes a reorganization of the share capital of a company by the consolidation of shares of different classes, or by the division of share into shares of different classes or by both these methods.

Question 2

(C2) (2M) (June 2023 Old PQ) (Dec 2017 Old PQ)

Does the scheme of compromise or arrangement require approval of preference shareholders?

Answer

The term member includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence their approval is also required. If the Tribunal directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court / Tribunal.

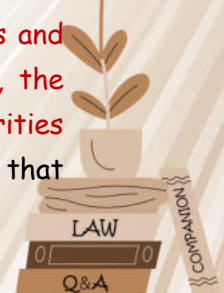
Question 3

(C2) (3M) (Dec 2019 Old PQ)

Is it mandatory to obtain Regulatory approvals for scheme of compromise/ arrangements as per Section 230(5) of the Companies Act, 2013? Explain.

Answer

According to Section 230(5) of the Companies Act, 2013, a notice circulated after the order of tribunal along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that



representations, if any, to be made by them shall be made **within a period of 30 days** from the date of receipt of such notice, failing which, it shall be **presumed that they have no representations** to make on the proposals.

Question 4

(C2) (6M) (Dec 2022 Old PQ)

Surya Ltd. wants to reorganise the company's share capital by the consolidation of shares of different classes and passed a resolution to this effect in the Board meeting and thereafter made an application to the Tribunal. The Tribunal ordered that a meeting of the members be called. The company sent notices to all the members.

In the meeting, some of the members made objections to such arrangements. However, the majority of the members were interested in the resolution proposed by the company. Tribunal after scrutinising the minutes of the meeting, sanctioned the proposed arrangement.

Examine in the light of the given facts, that in order to give effect to the arrangement which prescribes the reorganisation of company's share capital by the consolidation of shares of different classes, mention the requirements on the execution of the said arrangement under the Companies Act, 2013.

Answer

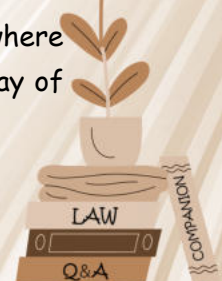
According to Section 230(1) of the Companies Act, 2013, where a compromise or arrangement (C/A) is proposed-

- a) between a company and its creditors or any class of them; or
- b) between a company and its members or any class of them,

The Tribunal may, **on receipt of the application** of the company or of any creditor or member of the company, or in the case of a company which is being wound up of the liquidator, **order a meeting** of the creditors or class of creditors, or of the members or class of members, as the case may be, to be **called, held and conducted in such manner as the Tribunal directs**.

Here the term, **arrangement includes a reorganisation** of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

- (i) Any C/A needs the order of sanction by the Tribunal and the Tribunal may on an application made by the company, **order the company to call the meeting** of the shareholders, pass such resolution.
- (ii) At a meeting if, **majority of persons representing 3/4th** in value of the creditors or members as the case may be, voting in person or by proxy or by postal ballot, agree to any C/A and
- (iii) if such C/A is sanctioned by the Tribunal by an order, the **same shall be binding** on the company, all the creditors, or members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.
- (iv) The order of the Tribunal shall be **filed with the Registrar** by the company within a period of **30 days** of the receipt of the order.
- (v) The Tribunal may **dispense with calling of a meeting** of creditor or class of creditors where such creditors or class of creditors, **having at least 90% value, agree and confirm**, by way of affidavit, to the scheme of compromise or arrangement.



Question 5

(C8) (4M) (Dec 2018 Old PQ)

ABC Ltd. and DEF Ltd. are wholly owned by Government of West Bengal. As a policy matter, the Government issued administrative orders for merging DEF Ltd. with ABC Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013.

Answer

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette provide for the amalgamation of those companies into a single company.

Thus, in the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide for the amalgamation of the two said companies into a single company.

Question 6

(C4) (7M) (MQP June 2024) (5M)

Explain the stepwise procedure for merger and amalgamation under the Companies Act, 2013.

Answer

According to Section 232(1), when an application is made to the Tribunal for a Compromise or Arrangement (C/A) proposed between a company and any such persons, and it is shown to the Tribunal:

- that the C/A proposed involves a scheme of merger or the amalgamation of any two or more companies
- that the whole or any part of the undertaking, property or liabilities of any company is required to be transferred to another company or two or more companies.

the Tribunal may on such application, order a meeting of the creditors or the members, to be called, held and conducted as per Section 230.

Such order shall also require to circulate the following for the meeting so ordered by the Tribunal, namely:

- the draft of the scheme drawn up by the directors of the merging company.
- share exchange ratio adopted under the scheme.
- the report of the expert with regard to valuation, if any.
- A supplementary accounting statement, if the last Financial Statements of any of the merging company are older than 6 months before the first meeting for such approval of the scheme.

The Tribunal may, after holding of meeting, by order, sanction the C/A and make provision for the following matters, namely:



- a) **Transfer of Assets & Liabilities:** Transfer of the undertaking, property, or liabilities of the transferor company to the transferee company from a specified date.
- b) **Allotment of Instruments:** Allotment of shares, debentures, or similar instruments by the transferee company as per the arrangement.
- c) **Legal Proceedings:** Continuation of legal proceedings by or against the transferee company.
- d) **Dissolution:** Dissolution of the transferor company without winding-up.
- e) **Dissenting Persons:** Provisions for those dissenting from the arrangement.
- f) **Non-Resident Share Allotment:** Allotment of shares to non-residents.
- g) **Employee Transfer:** Transfer of employees from the transferor to the transferee company.
- h) **Listed to Unlisted Company:** Transferee remains unlisted until it becomes a listed company.

No C/A shall be sanctioned by the Tribunal unless a **certificate from the company's auditor is filed**, confirming that the proposed scheme **complies with the accounting standards**.

Effect of Tribunal Order: The Properties, assets & liabilities **shall be transferred** to the transferee company as per the tribunal order.

Question 7

(OS)(2M) (June 2018 Old PQ)

State the provisions of the companies Act, 2013 relating to preservation of books and papers of amalgamated Companies.

Answer

Preservation of Books and Papers of Amalgamated Companies (Section 239)

- a) As per Section 239, the books and papers of a company which has been amalgamated with, or whose share have been acquired by, another company under this Chapter **shall not be disposed** of without **the prior permission of the Central Government** and
- b) before granting such permission, that Government **may appoint a person examine** the books and papers or any of them for the purpose of ascertaining whether they contain **any evidence of the commission of offence** in connection with the formation, or the management of the affairs of the transferor company or its amalgamation or the acquisition of its shares.



UNIT 11– Prevention of Oppression and Mismanagement

 Main Questions
 

Question 1

(C3 & C4) (7M) (Dec 2024 PQ)

A public limited company has 600 members. The issued and paid-up capital is ₹ 5 crore consisting of 5 lakh equity shares of ₹ 100 each. 90 members holding 10,000 equity shares filed a petition before the Tribunal for the purpose of relief against oppression and mismanagement by majority shareholders. In the light of the above, answer the following:

- (i) Examine the relevant provisions of the law and decide whether the said petition is maintainable.
- (ii) In case 40 members subsequently withdrew their consent, what will happen to the petition?
- (iii) In case the total members are less than the requirement, is it possible to file a petition? If so, under what circumstances?

Answer

- (i) **As per section 244, the following members of a company shall have the right to apply, namely:**
 - a) in the case of a company having a share capital, not less than 100 members of the company or not less than 1/10th of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
 - b) in the case of a company not having a share capital, not less than 1/5th of the total number of its members.

In the light of the above provisions the **petition is maintainable** since the number of members who file petition is 90 which is more than the minimum requirement i.e 1/10th of total number of members is $600/10 = 60$.

- (ii) The maintainability of the petition is to be judged with reference to the fulfilment of the criteria **at the time of its filing**. Once the petition is duly filed, subsequent withdrawal by some member or members will **not invalidate** the petition.
- (iii) **Yes, the power is vested with NCLT**. The NCLT may waive all or any of the conditions.

Question 2

(C3 & C4) (ICAI SM) (4M) (Dec 2017 Old PQ)

ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.

Answer

Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following members have the right to apply to the Tribunal under section 241:



- a) Not less than 100 members of the company or not less than $1/10^{\text{th}}$ of the total number of members, whichever is less or
- b) Any member or members holding not less than $1/10^{\text{th}}$ of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares

In the given case, since there are 8 shareholders. As per the condition a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than $1/10^{\text{th}}$ of the company's share capital.

Question 3

(C3 & C4) (SM)

Western India Industries is a public limited company making micro chips. During 2010 to 2015, company made huge profits and declared substantial dividend ranging from 500% to 2000%. In 2016, it made public issue of equity. The share capital was increased to 15 crores from 5 crores. The company drastically reduced the rate of dividend and paid 20 % to 50% during 2016 to 2021. Few shareholders raided the issue in last 3 annual general meetings but could get support of other shareholders. The chairman clarified that they want invest in new projects which, of course are justified by the annual reports of the Directors. Your advice is required for following issue.

- (i) Can minority shareholders object to lower dividend?
- (ii) Does it amount to oppression on minority?
- (iii) Shareholders totalling to 75 want to file petition? Is it ok? Where they will file ?
- (iv) Do minorities have any forum of grievances?

Answer

- (i) The dividend is declared in AGM every year based on the recommendation of Board of Directors. Shareholders cannot pressurize Board to recommend higher dividend but they can declare lower rate of dividend than recommended by Board.
- (ii) In normal course, it may not be oppression on minority. However, if it can be proved that minorities are being deprived of genuine benefits, petition can be filed, which will be subject to judicial review.
- (iii) As per section 244, in the case of a company having a share capital, not less than 100 members of the company or not less than $1/10^{\text{th}}$ of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares. Petition can be filed with the National Company Law Tribunal (NCLT).
- (iv) Minorities of listed companies may vent their grievances in Investor Relations committee of the Board or else file petition in NCLT.

Question 4

(C3 & C4) (5M) (Dec 2023 Old PQ) (ICAI SM)

The issued and paid-up capital of MNC Limited is ₹ 5 crores consisting of 5,00,000 equity shares of ₹ 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against



oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

Answer

As per the provisions of section 244 of the Companies Act, 2013, in the case of a company having share capital, the following members have the right to apply to the Tribunal under section 241:

- Not less than 100 members of the company or not less than $1/10^{\text{th}}$ of the total number of members, whichever is less or
- Any member or members holding not less than $1/10^{\text{th}}$ of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares

The share holding pattern of MNC Limited is given as follows:

₹ 5,00,00,000 equity share capital held by 500 members.

The petition alleging oppression and mismanagement has been made by some members as follows:

- No. of members making the petition - 80
- Amount of share capital held by members making the petition - ₹ 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

- 100 members (or) 50 members (being $1/10^{\text{th}}$ of 500) or
- Members holding ₹ 50,00,000 share capital (being $1/10^{\text{th}}$ of ₹ 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable. The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition.

Question 5 (C3 & C4) (4M) (Dec 2022 Old PQ) (3M) (June 2018 Old PQ) (ICAI SM)

A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of Fly by Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of

- getting the petition admitted and
- obtaining relief from the Tribunal.

Answer

- Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mismanagement. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:



- a) in the case of a company having a share capital, not less than 100 members of the company or not less than 1/10th of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- b) in the case of a company not having a share capital, not less than 1/5th of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have **no right to approach the Tribunal for relief.**

- (ii) However, the Tribunal may, on an application made to it **waive all or any of the requirements** specified in (i) to enable the members to apply under section 241. As regards obtaining relief from Tribunal, **continuous losses cannot, by itself, be regarded as oppression.** Similarly, **failure to declare dividends or payment of low dividends also does not amount to oppression.** Thus, the shareholders may not succeed in getting any relief from Tribunal.

Question 6 (C3 & C4) (4M) (June 2023 PQ) (Dec 2018 Old PQ) (ICAI SM)

A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013.

Answer

The argument of the majority shareholders that the petition may be dismissed on the ground of **non-maintainability is not correct.** The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court, that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were **at the time of presentation.** Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of can be affected by events happening after the presentation of the petition.

Question 7 (C3 & C4) (4M) (June 2023 Old PQ)

Can a member holding less than one-tenth of the Share Capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.

Answer



As per the provisions of section 244 of the Companies Act, 2013, in the case of a company having share capital, the following members have the right to apply to the Tribunal under section 241:

- a) Not less than 100 members of the company or not less than 1/10th of the total number of members, whichever is less or
- b) Any member or members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

In the given case, since the absence of any information regarding number of shareholders, whether condition a) stated above is satisfied or could not be ascertained. If the condition relating to the number of members as per a) stated above is satisfied, then only a single member can present a petition to the Tribunal regardless of the fact that he holds less than one tenth of the company's share capital.

Question 8 (C3 & C4) (4M) (June 2019 Old PQ)

PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. Bala, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Bala is valid and maintainable.

Answer

As per the provisions of section 244 of the Companies Act, 2013, in the case of a company having share capital, the following members have the right to apply to the Tribunal under section 241:

- a) Not less than 100 members of the company or not less than 1/10th of the total number of members, whichever is less or
- b) Any member or members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are 6 shareholders. As per the condition a) above, 10% of 6 i.e., 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than 1/10th of the Company's share capital. Thus, the petition made by Mr. Bala is valid and maintainable.

Question 9 (C7) (ICAI SM)

A group of members holding 380 lakh issued share capital in Zolo Ltd. a listed public company having total issued share capital of 15000 lakhs as per latest financial statements alleged that company board of director is conducting an act which is ultra vires the articles or memorandum of the company without altering the memorandum or articles of the company. They make application to tribunal (NCLT) to restrain the company from doing such ultra-vires act. With reference to the



provision of Companies Act, 2013 ascertain whether the application will be admitted by tribunal (NCLT).

Answer

According to section 245 of Companies Act, 2013, such number of member or members, depositor or depositors or any class of them, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, can file an application before the Tribunal on behalf of the members or depositors for seeking an orders, to restrain the company from committing an act which is ultra-vires the articles or memorandum of the company.

Accordingly, in case of a company having a share capital the requisite number of member or members to file an application under section 245(1) shall be: -

- a) at least 5% of the total number of members of the company; or
- b) 100 members of the company, whichever is less; or
- c) In case of a listed company, member or members holding not less than 2% of the issued share capital of the company.

In above case, members hold 2.53% $[(380 \text{ lakhs}/15000 \text{ lakhs}) \times (100)]$ of issued share capital of Zolo Ltd. which is a listed company to make application before tribunal (NCLT). Hence as members meet condition of 2% of issued share capital, therefore their application can be admitted by the NCLT.

Additional Questions →

Question 1

(C3) (2M) (Dec 2019 Old PQ)

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

Answer

The majority of shareholders have no right to confirm an illegal or ultravires transactions of the company. In such case an individual shareholder has right to restrain the company by an order or injunction of the court from carrying out an ultravires acts. This can be done by filing a petition with the NCLT as per section 241.

Question 2

(C3) (5M) (7M) (MQP Dec 2024 Set 2)

What are the powers of Central Government to prevent Oppression and Mismanagement?

Answer

According to Section 241(2), The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

According to Section 241(3), Where in the opinion of the Central Government there exist circumstances suggesting that -



- Any person in management is **guilty of fraud, misfeasance, persistent negligence**, or breach of duty.
- The business is **not** being conducted in line with **sound business principles** or prudent commercial practices.
- Management is being conducted in a way that has caused or is likely to cause **serious harm** to the interests of the trade or industry to which the company belongs.
- The business is being carried out with the intent to **defraud creditors, members**, or for any fraudulent or unlawful purpose.

the Central Government **may initiate a case against such person** and **refer the same to the Tribunal** with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Question 3

(C7) (7M) (June 2024 PQ)

Explain the term "Class Action" under section 245 of the Companies Act, 2013. What are the remedies which can be sought for in a petition for Class Action?

Answer

Class Action is provided under **Section 245 of the Companies Act, 2013**. A class action lawsuit provides a legal advantage where many people can collectively file a lawsuit against an individual or business for similar nature of damages caused. If they are of the opinion that the management or conduct of the **affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors**, file an application before the Tribunal on behalf of the members or depositors for seeking orders.

A petition for Class Action can be filed to seek the following reliefs:

- to restrain the company from committing an act which is **ultra vires the Articles or Memorandum** of Association of the company.
- to **declare a resolution** altering the memorandum or articles of the company **as void** if the resolution was passed by **suppression of material facts** or obtained by misstatement to the members or depositors.
- to restrain the company and its directors from acting on such resolution.
- to restrain the company from doing an act **which is contrary to the provisions of this Act** or any other law for the time being in force.
- to restrain the company from taking action contrary to any resolution passed by the members.
- to **claim damages or compensation** or demand any other suitable action from or against—
 - the **company** or its **directors**
 - the **auditor** including **audit firm** of the company.
 - any **expert or advisor or consultant** or any other person
 for any incorrect or **misleading statement** made to the company or **for any fraudulent, unlawful or wrongful act** or conduct or any likely act or conduct on his part.
- to seek any other remedy as the Tribunal may deem fit.



MODULE 2 – INSOLVENCY AND BANKRUPTCY CODE, 2016

Main Questions

Question 1

(C1) (5M)

Discuss the purpose and objective of the Insolvency and Bankruptcy code.

Answer

- a) The **Insolvency and Bankruptcy Code (IBC), 2016** is a **comprehensive legislation** aimed at revamping the framework for **handling insolvency cases** of corporate entities, individuals, partnerships, and other entities in **India**.
- b) It replaces a **multitude of existing laws** and adjudicating forums dealing with financial failure and insolvency, streamlining the process and **focusing on creditor-driven resolution**.
- c) It **consolidates and amends laws** related to insolvency resolution for corporate persons, partnership firms, and individuals.
- d) Aims to **maximize asset value**, promote entrepreneurship, and ensure credit availability. Balance the interest of all the stakeholders.
- e) **Establishes** the **Insolvency and Bankruptcy Board of India**.

Question 2

(C2) (4M) (June 2023 PQ) (June 2018 Old PQ)

Explain the Applicability of Insolvency and Bankruptcy Code, 2016.

Answer

The Code is Applicable to the following persons:

- a) Companies incorporated under **the Companies Act** or
- b) Companies incorporated under **Special Acts**
- c) **LLPs**
- d) Other notified body corporates
- e) **Partnership firms**
- f) **Individuals**
- g) Personal guarantors
- h) **Proprietorship firms** and certain individuals.

Excludes financial service providers such as banks, financial institutions, insurance companies, asset reconstruction companies, mutual funds, collective investment schemes, or pension funds but applicable to NBFC with an asset size more than or equal ₹ 500 crores.

Question 3

(C2) (2M) (Dec 2018 Old PQ)

The Insolvency and Bankruptcy Code, 2016 is not applicable to corporates in finance sector. Explain.

Answer



Code not applicable to financial service providers - The Insolvency and Bankruptcy Code is not applicable to corporates in finance sector. **Section 3(7) of Insolvency and Bankruptcy Code, 2016** states that "**Corporate person**" shall not include any financial service provider. Thus, the Code does not cover **Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.**

Question 4 (C5) (2M) (June 2019 Old PQ) (3M) (Dec 2021 Old PQ)

Who can initiate insolvency resolution process?

Answer

As per **Section 6 of the insolvency and Bankruptcy code, 2016**, Where any Corporate debtor commits a default, a **financial creditor, an operation creditor or the corporate debtor itself** may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as prescribed.

Question 5 (C5) (4M) (Dec 2018 Old PQ) (7M) (June 2024 PQ) (7M) (MQP Dec 2024 Set 2)

Who are the persons not entitled to initiate insolvency resolution process under the IBC, 2016.

Answer

The code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process (**Section 11 of Insolvency and Bankruptcy Code, 2016**) in the following cases:

- when **undergoing** a corporate insolvency resolution process; or
- having **completed** corporate insolvency resolution process **12 months preceding** the date of making of the application or
- a corporate debtor or a financial creditor who has **violated any of the terms of resolution plan** which was **approved 12 months before** the date of making of an application under this Chapter.
- a corporate debtor in respect of him a **liquidation order** has been made.

Question 6 (C5) (7M) (June 2023 Old PQ) (5M) (June 2018 Old PQ)

State the manner of initiation of Corporate Insolvency Resolution process by financial creditor under the Insolvency and Bankruptcy code, 2016.

Answer

Section 7 of Insolvency and Bankruptcy Code deals with initiation of corporate insolvency resolution process by a financial creditors. The Process can be explained as under:

Step 1 - Filing of application before the Adjudicating Authority for initiating corporate insolvency resolution process -

A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor **before the Adjudicating Authority - National Company Law Tribunal (NCLT)** when a default has occurred. For this purpose, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

Step 2 - Enclosures to application



Following documents and information shall be furnished along with the application:

- Record of the default** recorded with the information utility or such other record or evidence of default as may be specified.
- The **name of the resolution professional** proposed to act as an interim resolution professional.
- Any other information as may be specified by the Board.

Step 3 - Duty of Adjudicating Authority

The Adjudicating Authority shall, **within 14 days** of the receipt of the application, **ascertain the existence of a default** from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

Step 4 - Admission of application by the Adjudicating Authority

The Adjudicating Authority may, by order, **admit such application**, if it is satisfied that-

- A **default has occurred**
- The application for initiating corporate insolvency resolution process is **complete**; and
- No disciplinary proceeding** are pending against the proposed resolution professional.

Step 5 - Rejection of application by the Adjudicating Authority

The Adjudicating Authority may, by order, **reject such application**, if it is satisfied that-

- Default **has not occurred**; or
- The application for initiating corporate insolvency resolution process is **incomplete**; or
- Any **disciplinary proceeding is pending against** the proposed resolution professional.
- Before rejecting the application, the Adjudicating Authority shall give a notice to the applicant to **rectify, within 7 days**, the defect in his application.

Step 6 - Commencement of corporate insolvency resolution process

The corporate insolvency resolution process **shall commence from the date of admission** of the application by the Adjudicating Authority.

Question 7

(C5) (7M) (MQP Dec 2024 Set 2) (MQP Dec 2023)

Nature India Limited filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Examine whether it is permissible to withdraw the petition after it has been admitted? and also infer the legal provision relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016.

Answer

As per Section 9 of the Insolvency and Bankruptcy Code, 2016, an application for **initiation** of corporate insolvency resolution process (CIRP) may be made by an **operational creditor** against the corporate debtor. Such application is made to the adjudicating Authority (NCLT).

As per Section 13 of the Insolvency and Bankruptcy Code, 2016, where an application is made under section 9 is **admitted**, the **adjudicating authority** shall make an order with respect to following:

- Appoint **an interim resolution professional** in the manner as laid down in sec 16.
- Cause a **public announcement** of the initiation of corporate insolvency resolution process and call for the submission of claims.



(iii) Declare a **moratorium** for the purposes referred to in section 14.

However, section 9 is silent as to whether an application, once admitted, can be withdrawn or not.

- a) As per Rule 44(2), where at any **stage prior to the hearing of the application**, the applicant desires to withdraw his application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant in the application, **may permit such withdrawal** upon imposing such costs as it may deem fit and proper.
- b) In "**Parker Hannifin India private Limited v Powers International Private Limited**" an application made under section 9 was **admitted** by the Adjudicating Authority.
- c) As a consequence of admission of application, **public announcement** was made inviting claims from the creditors and **moratorium was declared**.
- d) Thereafter, operational creditor and corporate debtor duly **agreed for settlement** and were arrived at between the parties.
- e) Then an application was made to the Adjudicating Authority for **withdrawal** of application admitted earlier.

The Authority held that **after the admission** of the application under section 9, the application acquires the **character of a representative suit**. By reason of public announcement, other creditors become entitled to file their claims and participate in the corporate insolvency resolution process. **Therefore, the application cannot be dismissed on the basis of a compromise or settlement arrived at between the operational creditor and corporate debtor**. Thus, operational creditor and corporate debtor alone shall have no right to decide the withdrawal of the application.

In the given Nature India Limited's application against Tulip Limited has been admitted by the Adjudicating Authority under section 9. Afterwards, Nature India Limited and Tulip Limited entered into a settlement and wanted to withdraw the application. Accordingly, the application admitted under section 9 cannot be withdrawn.

Question 8

(C5) (3M) (MQP June 2025) (MQP June 2024)

ABC Ltd. is registered as NBFC for last 10 years. The company extended a loan of 10 crores to XYZ Ltd. as normal course of business. The loan was long term for equipment financing and equipment were actually purchased. XYZ Ltd. repaid only one crore and stopped paying further instalments. The company had to operation for various reasons. Examine the situation in context of IBC code to get the following queries.

- (i) Which type of creditor ABC Ltd. shall be classified?
- (ii) Where the application can be made?
- (iii) Is IP necessary?
- (iv) Can ABC Ltd. make a petition on its own?
- (v) What is CIRP in this context?
- (vi) What time is expected to resolve?
- (vii) Can XYZ Ltd. itself apply for taking over the company?

Answer



- (i) ABC Ltd. will be classified as a Financial Creditor because the loan given to XYZ Ltd. was a financial debt. Financial debt includes money borrowed against the payment of interest, which applies in this scenario of equipment financing.
- (ii) ABC Ltd. can file an application before the National Company Law Tribunal (NCLT) under Section 7 of the Insolvency and Bankruptcy Code, 2016. NCLT has jurisdiction over corporate insolvency cases.
- (iii) Yes, an Insolvency Professional (IP) is necessary. Once the application is admitted by NCLT, an IP is appointed as the Interim Resolution Professional (IRP) to take control of XYZ Ltd.'s management and initiate the Corporate Insolvency Resolution Process (CIRP).
- (iv) Yes, ABC Ltd. can file a petition on its own under Section 7 of the Insolvency and Bankruptcy Code, 2016, as a financial creditor. ABC needs to provide evidence of default and the details of the outstanding loan.
- (v) CIRP (Corporate Insolvency Resolution Process) is a process to resolve the insolvency of XYZ Ltd. Once initiated, the control of XYZ Ltd. is handed over to the IRP, who attempts to resolve the debt by either restructuring the company or will result in liquidation .
- (vi) The CIRP is expected to be completed within 180 days from the date of admission of the application. It can be extended by 90 days with NCLT's approval, altogether the total maximum time 330 days.
- (vii) Yes, XYZ Ltd. itself can apply for insolvency under Section 10 of the Insolvency and Bankruptcy Code, 2016. This allows the corporate debtor to voluntarily initiate insolvency proceedings if it cannot pay its debts

Question 9

(C10) (4M) (June 2023 Old PQ) (7M) (MQP June 2025)

Write short notes on - Duties on interim resolution professional

Answer

According to Section 18(1) of Insolvency and Bankruptcy Code, 2016 - The interim resolution professional shall perform the following duties -

- a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
 - (i) business operations for the previous 2 years
 - (ii) financial and operational payments for the previous 2 years
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified.
- b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15.
- c) constitute a committee of creditors (COC).
- d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors.
- e) file information collected with the information utility, if necessary; and



- f) take **control and custody of any asset** over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.
- g) perform such other duties as may be specified by the Board.

Question 10

(C14) (SM) (7M) (Dec 2024 PQ)

Under Section 28 of the IBC, 2016, the Resolution Professional will have to take prior approval for some cases, otherwise it will be invalid. What are those cases and what percentage of voting is required in favour of the decision?

Answer

Duties of Resolution Professional - Preserve and protect the assets of the corporate debtor, ensuring continued business operations. Can take actions consistent with the powers of an Insolvency Professional. May **invite applications** for the resolution process with the approval of creditors. Present **all resolution plans to the COC** for consideration.

As per Section 28 of the Insolvency and Bankruptcy Code, 2016, in following cases, resolution professional can take action only with prior approval of committee of creditors, with 66% voting in favour, failing which the action by IP will be invalid and action may be taken against IP.

- a) raise any **interim finance**.
- b) **create any security interest** over the assets of the corporate debtor.
- c) change the capital structure of the corporate debtor.
- d) give **instructions to financial institutions** maintaining accounts of the corporate debtor for a debit transaction.
- e) undertake any **related party transaction**
- f) **amend any constitutional documents** of the corporate debtor.
- g) dispose of or permit the **disposal of shares** of any shareholder of the corporate debtor or their nominees to third parties.
- h) make **any change in the management** of the corporate debtor or its subsidiary.
- i) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.
- j) make changes in the **appointment or terms of contract of statutory auditors** or internal auditors of the corporate debtor.
- k) Invite prospective resolution applicant who fulfil certain criteria as laid down by COC.

Question 11

(4M) (June 2023 Old PQ)

As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, certain assets shall not be included in the liquidation estate assets. What are those assets?

Answer

As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, the following shall not be included in the liquidation estate. These shall not be used for recovery in the liquidation.

- a) **Assets owned by a third party** which are in possession of the corporate debtor. Including.
 - (i) assets held in **trust** for any third party



- (ii) **bailment** contracts
 - (iii) all sums due to **any workman or employee** from the provident fund, the pension fund and the gratuity fund
 - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets and
 - (v) such other assets as may be notified by the Central Government.
- b) Assets in **security collateral** held by financial services providers and are subject to netting and setoff in multi-lateral trading or clearing transactions.
 - c) **Personal assets of any shareholder** or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions.
 - d) Assets of **any Indian or foreign subsidiary** of the corporate debtor, or
 - e) Any other assets as may be specified by the Board.

Additional Questions

Question 1

(C5) (1M) (Dec 2019 Old PQ)

How many times extension of the period of Corporate Insolvency Resolution process can be granted?

Answer

Under the **Insolvency and Bankruptcy Code (IBC), 2016**, the period for the Corporate Insolvency Resolution Process (CIRP) can be extended only once.

- The **initial time limit** for CIRP is **180 days** from the insolvency commencement date.
- This can be **extended** by a maximum of **90 days**, but **only once**, if approved by the Adjudicating Authority (NCLT) based on an application by the resolution professional.
- The **total CIRP period** can go up to **330 days**, including all extensions.

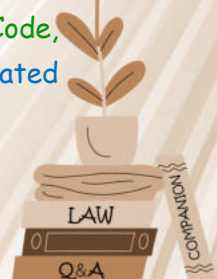
Question 2

(C5) (3M) (Dec 2019 Old PQ)

Domen India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. RM - to the extent of ₹ 1,40,000 and Mr. M - to the extent of ₹ 1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

Answer

Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ₹ 1,00,000/- or more. Assignee of financial debt is also financial creditor under the Insolvency and Bankruptcy Code, 2016. Mr. M's application can be accepted by NCLT if Company fails to pay debt within stipulated



time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

Question 3

(C5) (3M) (June 2019 Old PQ)

Mr. Ganesh, an operational creditor filed an application for corporate insolvency resolution process. He does not propose for appointment of an interim resolution professional in the application. State the provisions given by the code in the given situation. State the term of such appointed IRP.

Answer

As per Section 16 of the Insolvency and Bankruptcy Code, 2016,

- where the application for corporate insolvency resolution process is made by an operational creditor and **no proposal for an interim resolution professional** is made in the said application.
- The Adjudicating Authority shall make a **reference to the Board (IBBI)** for the recommendation of an insolvency professional who may act as an Interim resolution professional.
- The Board shall **recommend the name of an insolvency professional** to the Adjudicating Authority against whom no disciplinary proceedings are pending, **within 10 days** of the receipt of a reference from the Adjudicating Authority.
- Period of appointment of IRP:** The term of Interim Resolution Professional shall continue till the **date of appointment of the resolution professional** under section 22 of the Code.

Question 4

(C5) (4M) (Dec 2022 Old PQ)

Mr. MS, an operational creditor, filed an application with the Adjudicating Authority (NCLT, Delhi) to initiate the Corporate Insolvency Resolution Process (CIRP) against TR Limited, and the application was accepted. On 10th July, 2022, NCLT, Delhi appointed Mr. VS to act as an Interim Resolution Professional of TR Limited. After the appointment, Mr. VS issued the public announcement on 12th July, 2022, of the initiation of CIRP process and called for the submission of claims. On 20th July, 2022, the Committee of Creditors was constituted by Mr. VS. Thereafter, Mr. MS wants to withdraw his application under Section 12A of the Insolvency and Bankruptcy Code, 2016. However, Mr. VS denied filing a withdrawal application stating that the Committee of Creditors has already been constituted.

Referring to the provisions of the Insolvency and Bankruptcy Code, 2016, answer the following with reference to the above facts.

- Is Mr. VS right to deny Mr. MS to file a withdrawal application with NCLT, Delhi? Explain in detail.
- Would your answer differ in case the Committee of Creditors is not constituted?
- Who is the authority to pass the final order of withdrawal application?

Answer

- According to Section 12A of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority may allow the withdrawal of application admitted, on an application made by the applicant with the **approval of 90% voting share of the Committee of Creditors**, in such manner as may be specified. Thus, the application can be withdrawn if approval of 90% voting share of



the Committee of Creditors is obtained. Hence, Mr. VS cannot deny Mr. MS for filing of withdrawal application only on the basis that committee of creditors has been constituted.

- (ii) **Before Constitution of Committee of Creditors:** The applicant shall make an application for withdrawal to the Adjudicating Authority through the interim resolution professional. The resolution professional shall submit such withdrawal application to the Adjudicating Authority on behalf of the applicant, within three days of receipt of request. Further, the final approval of such withdrawal shall be by way of an order passes by the Adjudicating Authority. Thus, if Committee of Creditors is not constituted Mr. MS shall apply to the Adjudicating Authority (NCLT, Delhi) through the Interim Resolution Professional, for withdrawal. Hence, the answer will not differ and Mr. VS cannot deny Mr. MS to file a withdrawal application with NCLT, Delhi.
- (iii) **The final approval of such withdrawal shall be by way of an order passed by the Adjudicating Authority i.e. NCLT, Delhi.**

Question 5

(C12) (4M) (June 2023 Old PQ)

Write short notes on - Appointment of Resolution professional by COC

Answer

According to Section 22(2) of Insolvency and Bankruptcy Code, 2016, The Committee of Creditors (COC) may in the first meeting, by a majority vote of not less than 66% of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional.

If they decide to continue interim resolution professional, subject to a written consent from the interim resolution professional in the specified form they will inform its decision to the interim resolution professional, the corporate debtor and the Authority.

However, if they decide to replace the interim resolution professional the CoC shall file application before the Adjudicating Authority for the appointment of Resolution Professional, along with a written consent from the proposed resolution professional in the specified form.

The Adjudicating Authority (NCLT) shall inform name of proposed new Resolution Professional to IBBI. The resolution professional can be appointed only with approval of Board (IBBI). Till then, interim resolution professional will continue.

Question 6

(C18) (4M) (Dec 2022 Old PQ)

Write short notes on - Liquidation estate.

Answer

According to Section 36(4) of Insolvency and Bankruptcy Code, 2016, The liquidation estate shall comprise all liquidation estate assets as follow,

- Any assets over which the corporate debtor has ownership rights, including all rights and interests in the balance sheet of the corporate debtor or an information utility including shares held in any subsidiary of the corporate debtor.
- Assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets.
- Tangible assets, whether movable or immovable.



- d) **Intangible assets** including but not limited to intellectual property, securities, financial instruments, etc.
- e) Any assets or their value **recovered through proceedings** for avoidance of transactions in accordance with this Chapter.
- f) Any assets of the corporate debtor in respect of which a secured creditor has relinquished **security interest**.
- g) All **proceeds of liquidation** as and when they are realised.

Question 7

(OS) (7M) (MQP Dec 2024 Set 1)

Mr. Ajay, an advocate, is in the business of providing professional services like filing of petitions before Tribunals and Courts. Mrs. Sonali, wife of Mr. Ajay, is a registered Insolvency Professional (IP) with the Insolvency Bankruptcy Board of India. Mr. Ajay, in his capacity of an advocate, filed many applications relating to admission of corporate debtors before National Company Law Tribunal (NCLT) and his wife Mrs. Sonali being insolvency professional in her own professional capacity acts as Insolvency Professional in all the cases her husband takes up. Mrs. Sonali within 6 months of becoming Insolvency Professional accepted 15 such assignments. She does not have any prior experience as an Insolvency Professional. While considering one such application for initiation of Corporate Insolvency Resolution Professional (CIRP), NCLT observed that the fees charged by Mrs. Sonali for acting as insolvency resolution professional is exorbitant. Mrs. Sonali contracted with the applicant to not only act as Interim Resolution Professional but also as Resolution Professional in all the 15 assignments that she accepted.

With reference to the above-mentioned facts, Analyse the situation and Discuss the answers with reasons of the following questions:

- (i) Is Mrs. Sonali right in accepting the assignments when it was her husband who proposed her name?
- (ii) IBBI has issued a show cause notice to Mrs. Sonali based on the adverse remarks made by NCLT. Is IBBI is empowered by the Code to issue a show cause notice even without a complaint made against?
- (iii) Assume that out of the 15 assignments Mrs. Sonali accepted, 2 are listed companies, 3 are unlisted public companies and 10 are private companies. Is there any limit in number of assignments that an IP can accept?

Answer

- (i) The **Code of Conduct** requires the IP to **maintain complete independence** in professional relationships. **It is not correct on the part of Mrs. Sonali to accept assignments which will affect her independence.**
- (ii) **IBBI is empowered by the Code to issue a show cause notice even without a complaint made against IP if it has reasonable grounds to believe IP has contravened any provisions.**
- (iii) **There is no cap or limit on the numbers of assignments that an IP can accept. However, IP must refrain from accepting too many assignments if he is unable to devote enough time.**



Question 8

(5M)

Discuss various provisions related parties in relation to corporate debtor as provided under the code.

Answer

Related Party to the Corporate Debtor: The definition in Section 5(24) of Insolvency and Bankruptcy Code, 2016 is very wide. It covers director, partners, LLP or firm having common even one common partner or director, relative of director or partner, KMP, private company where a director holds more than 2% of share capital, holding and subsidiary, person controlling more than 20% of voting rights, company having more than 2 directors common and even person on whose advise or directions a director or partner is accustomed to act.

Provisions of related parties in relation to corporate debtor under the code:

- The Code excludes the financial creditors who are related parties of the corporate debtor from being part of the Committee of Creditors (CoC). This prevents related parties from influencing the decision-making process during insolvency resolution.
- Transactions made by the corporate debtor in favor of related parties are closely scrutinized.
- Transactions with related parties are examined for being undervalued.
- Any transactions by the corporate debtor with related parties designed to defraud creditors or made under fraudulent terms are considered voidable.
- The Code disqualifies certain related parties of the corporate debtor from submitting resolution plans. Any person who is a promoter or in control of the corporate debtor, or related parties of such persons, is barred from bidding for the corporate debtor during the resolution process.



MODULE 3 – CORPORATE GOVERNANCE, SOCIAL RESPONSIBILITY
AND SUSTAINABILITY

Main Questions



Question 1 (C1) (3M) (June 2023 Old PQ) (4M) (June 2017 Old PQ)

Corporate Governance is about stakeholder's satisfaction. Comment.

Answer

- The term "Corporate Governance" is not easy to define.
- The term governance relates to a process of **decision making and implementing the decision in the interest of all stakeholders**, it basically relates to enhancement of corporate performance and ensure **proper accountability** for management in the interest of all stakeholders.
- It is a **system through** which an organization is **guided and directed**.
- On the basis of this definition, the **core of objectives of Corporate Governance** are focus, predictability, **transparency**, participation, **accountability**, efficiency and effectiveness and **satisfaction of stakeholders**.

Question 2 (C3) (7M) (Dec 2023 PQ) (MQP Dec 2024 Set 1)

Prepare a statement of the Features of Corporate Governance.

Answer

Corporate governance refers to the process of managing a company's affairs with fairness, honesty, and good practices, ensuring the interests of all stakeholders are balanced.

- A proper tool for transparency:** disclosing the status of the affairs company at every step to every stakeholder is required. The concept goes **against the theory of suppression of material facts** to its stakeholders.
- Prudent and participative management:** The management should use its full intelligence and knowledge for the **benefit of the stakeholders**. Hence, it may be taken that management is prudent and wise in its decision making.
- Enhancing value of the enterprise:** Any company should **grow from year to year**, if it wants to **satisfy its stakeholders**. Value **may be monetary or reputation, image, goodwill** etc. Better governing companies will have better reputation, trust of the stakeholders and there will be enhancement of business, leading to more profit and better enterprise valuation.
- Accountability:** Success and accountability has to go together. Successful companies will make themselves **accountable to the stakeholders**. The company cannot say it is accountable to one stakeholder only, it has to be accountable to all stakeholders.
- Innovation:** Doing something new or doing the same thing in a novel manner is the essence of growth and sustainability of an enterprise. The governance structure should **encourage new things** in the company to **enhance the value** of the company.



- f) **Professionalism and specialisation:** The basics of professionalism is that the job shall not be compromised **at any level**. It also considers the **competence of the person doing job** having obviously adequate knowledge either by **academic qualification** or track record of experience.
- g) **Stakeholder recognition:** All stakeholders should be **recognized and respected**.

Question 3

(C8) (4M) (Dec 2023 Old PQ)

Write short notes on - Report of the Committee (Kumar Mangalam Birla) on Corporate Governance.

Answer

- a) **SEBI, appointed Kumar Mangalam Birla - as chairman to give a comprehensive view of the issues related to insider trading to protect the rights of various stakeholders.**
- b) The heart of the committee's report is the **set of recommendations** which distinguishes the responsibilities and **obligations of the board and the management** in instituting the systems for good corporate governance and emphasizes the **rights of shareholders** in demanding corporate governance.
- c) Many of the recommendations are **mandatory**.
- d) These recommendations are **expected to be enforced on the listed companies** for initial and continuing disclosures, through the listing agreement.
- e) The companies will also be required to **disclose separately in their annual reports**, a report on corporate governance laying down the steps they have taken to comply with the recommendations of the committee.
- f) These will enable shareholders to know, where the companies, in which they **have invested, stand with respect to specific initiatives** taken to ensure robust corporate governance.

Question 4

(C11) (4M) (June 2018 Old PQ)

Write short notes on - Disadvantages of the family Businesses over non-family Businesses

Answer

- a) **Staff recruitment:** External talent can be **reluctant to join the family** businesses as they would **not enjoy the same freedom** that the other businesses offer.
- b) **Raising funds for growth:** Access to capital is required to grow and evolve. However, it is **difficult to raise the required funds** for the family businesses than non-family businesses.
- c) **Family conflicts:** Conflict among the family members is the **major setback** for the family businesses.
- d) **Ownership vs. Management:** **Separating the ownership from the management** and reaching a consensus on the roles of family members in the business are two important issues for the family businesses to address.

Question 5

(C12) (8M) (Dec 2023 Old PQ) (7M) (MQP June 2025)

Discuss some of the Governance Issues that crop out in Family Owned Businesses.

Answer



- a) **Separation of ownership and management:** In few companies in India, the main promoter or owner have chosen to be investor and not to a part of management even as part time chairman. The whole **Board of directors are non-owners and are hard core professionals.**
- b) Family members **acquiring professional courses** from reputed institutes.
- c) Promoters are **encouraging professionals** in the organisation.
- d) Promoters are **more focused on compliances** to avoid loss of reputation which may result to price fall in the share market.
- e) Role and **leadership clarity** decided at board level
- f) Owners are accepting and **honouring opinion of managers.**
- g) Family's social and emotional issues are being satisfied **by forming trusts/foundations** which are separate from the business entity, without any conflict of interest.

Question 6

(C14) (4M) (June 2023 PQ)

Examine the following as per National guidelines on responsible business conduct in respect of the following principles:

- (i) Business should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable.
- (ii) Business should respect and promote the wellbeing of all employees, including those in their value chains.

Answer

- (i) **Principle 1: Business should conduct and govern themselves with integrity and in a manner is ethical, transparent and accountable.**

Businesses should operate with integrity and ethics, ensuring transparency and accountability in all functions and processes. This Principle emphasizes the **accountability** of businesses as integral parts of society, guiding their economic, social, and environmental responsibilities.

- (ii) **Principle 2: Businesses should respect and promote the well-being of all employees, including those in their value chains.**

Businesses should respect and promote the well-being of all employees, including those within their value chains. This Principle advocates for equitable policies and practices that ensure dignity and decent work for all employees, **recognizing their well-being** and that of their families.

Question 7

(C15) (4M) (June 2023 Old PQ) (June 2018 Old PQ)

Write short notes on - Activities not to be considered as CSR activities

Answer

Activities not to be considered as CSR Activities:

- a) **Publicity** activities with only intention to advertise product/services.
- b) **Compliance of regulation**, Government order.
- c) **Employee benefits**, employees' family benefit, direct or indirect.
- d) Anything done in physical environment to **facilitate production**, distribution of goods.
- e) Contribution to political parties or for **political purpose.**



Question 8 (C17) (7M) (Dec 2024 PQ) (SM) (3M) (Dec 2023 Old PQ)

Examine the important aspects relating to due diligence and various aspects to be seen in the context of evaluation of CSR projects before the project costs are incurred.

Answer

Due diligence means to **investigate and verify** an entity or project before initiating a business arrangement with the entity. Companies can **assess** their financial and governance parameters, and their **ability to execute the project**.

Evaluation of CSR projects can be in two phases:

- Evaluation before making the expenditure:
- Evaluation after making the expenditure

Evaluation **before making** the expenditure is **also called due diligence** of CSR projects after shortlisting have been made. The purpose of due diligence is to decide whether the company is **ultimately taking up the project** or making the expenditure.

Following factors needs to be considered:

- Nature** of project
- Cost** of the project
- Independent or linked to some other project
- Collaborative** project
- Beneficiaries
- Technical & Financial feasibility**
- Implementation **time**
- Whether **impact** can be measurable
- Monitoring** mechanism

Question 9 (C21) (7M) (June 2024 PQ)

Discuss about sustainability reporting in the light of the need for filing of Annual Business Responsibility Report as per SEBI guidelines and connected factors in this regard.

Answer

Sustainability reporting - Annual Business Responsibility Report (ABRR) has been made compulsory by the **Securities and Exchange Board of India (SEBI)** based on **National Voluntary Guidelines (NGVs)**. It contains a set of useful references and resources which businesses may consult as part of their implementation efforts.

- National Guidelines on Responsible Business** - There are **9 thematic pillars** of business responsibility which are **called Principles**.
- Each Principle is introduced as a **statement** and followed by a narration of the essential aspects of the Principle, referred to as the **brief description**.
- They provide a **clear idea** of the essential spirit and intent of the Principle. Each Principle is accompanied by **Core Elements**.
- The Principles are **interdependent and interrelated**.
- Annexure 1 **provides guidance** to all businesses on the adoption and **implementation**.



- f) Furthermore, businesses impact **different stakeholders in different ways**.
- g) Therefore, while applying these principles, businesses need to be **sensitive to characteristics**, such as caste, sex, race, ethnicity, age, religion, disability, etc. Though this has not been specifically mentioned in the Principles and Core Elements, businesses are expected to keep this in mind.

Question 10

(C21) (7M) (Dec 2024 PQ)

What is meant by Corporate Governance? How are the listed entities required to submit periodic reports on Corporate Governance to the stock exchanges and what are the areas to be covered in such reports?

Answer

Corporate governance is the **well-designed system** by which companies are directed and controlled. **Boards of directors are responsible** for the governance of their companies.

Securities and Exchange Board of India (SEBI) has issued Circular dated 31st May, 2021 to provide Format of compliance report on Corporate Governance by Listed Entities.

As per the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circular cited above, a listed entity is required to submit periodic compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchanges.

The format for compliance report on Corporate Governance by listed entities has been specified: Annex - I - on quarterly basis (Composition of Board of Directors/ Committees and Related party transactions)

Annex - II - at the end of a financial year

Annex - III - at the end of 6 months from the close of financial year

Annex - IV - on half yearly basis (loans/ guarantees / security provided by the listed entity, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them.

Areas to be covered:

Listed companies in India are required to report on corporate governance

- in their annual reports, and
- to submit quarterly compliance reports to stock exchanges in prescribed format.

Various areas are - Composition of BOD, Formation of Audit Committee, NRC committee, Stakeholders committee, Risk management committee, CSR committee, Whistle blower policy.

Question 11

(C21) (7M) (MQP Dec 2024 Set 2)

Examine the sustainability report and its purpose of disclosure.

Answer

Sustainability Reporting:

- a) UNO supports Principles of Responsible Investment (PRI). These principles have subscribed by **3500 signatories** who are investors. They have committed to **integrate ESG** factors into investment decision making.



- b) Studies have made by one rating agency on ESG ratings which shows variance in rating in different sectors. Though not mandatory ESG rating would give **the message** to the outsiders, **stakeholders about the ESG approach of the entity.**
- c) In view of the above, it has become important to reporting of company's performance on sustainability related factors and its importance is as relevant operational performance.
- d) SEBI had in **November 2015**, prescribed format in **reporting ESG parameters** listed entities.
- e) SEBI has raised the format in **May,2021** for reporting ESG parameters called **Business Responsibility and Sustainability Report (BRSR).**
- f) It seeks **disclosure** from listed entities on their **performance against** the principles of **National Guidelines on Responsible Business Conduct (NGBRC).**
- g) Each parameter is divided into leadership and essential indicators, **whereas the formal is voluntary and latter is mandatory.**

Purpose of Disclosure

- a) The disclosure, are in nature of quantity and standards so that it can be easily compared with other similar entities.
- b) Engaging with stakeholders in most proper way beneficial to both.
- c) The corporates need to look beyond financial figures for effective ecosystem between corporate, society and environment.

Application of mandatory reporting

With effect from financial year 2022-23, the filing shall **be mandatory** for **top 1000** companies listed in any of the exchange, based on market capitalization.

Additional Questions

Question 1 (C1 & C3) (4M)(Dec 2019 Old PQ)

What is meant by Corporate Governance? State the major 'characteristics' of good corporate governance.

Answer

Corporate Governance: Simply stated, '**Governance**' means the process of **decision making** and the **process** by which decisions are **implemented**.

It refers to the process of managing a company's affairs with fairness, honesty, and good practices, ensuring the interests of all stakeholders are balanced.

Good corporate governance has the following major characteristics:

- a) Participatory
- b) Consensus oriented
- c) Accountable
- d) Transparent
- e) Responsive
- f) Effective and efficient



g) Equitable and inclusive

Question 2

(C3) (5M) (Dec 2021 Old PQ)

Explain the principles of corporate governance.

Answer

Transparency

Transparency means the quality of something which enables **one to understand the truth easily**. In the context of corporate governance, it **implies an accurate, adequate and timely disclosure** of relevant information about the operating results etc. of the corporate enterprise to the stakeholders.

Accountability

Accountability is a **liability to explain the results of one's decisions** taken in the interest of others. In the context of corporate governance, **accountability implies the responsibility** of the Chairman, the Board of Directors and the chief executive for the use of company's resources in the best interest of company and its stakeholders.

Independence

Good corporate governance requires **independence on the part of the top management** of the corporation i.e, the Board of Directors must be strong **non-biased body**; so that it can take all corporate decisions based on **business prudence**.

Question 3

(6C) (3M) (June 2023 Old PQ)

The concept of shareholder's democracy in the present day corporate world denotes the shareholder's supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives. Explain what is meant by shareholders' democracy.

Answer

The concept of shareholders democracy in the present day corporate world **denotes the shareholders supremacy in the governance** of the business and affairs of corporate sector either directly or through their elected representatives. Democracy means the **rule of people, by people and for people**. In that context the shareholders democracy means the rule of shareholders, by the shareholders, and for the shareholders in the corporate enterprise, to which the shareholders belong. Precisely it is a **right to speak, congregates and communicates with co-shareholders** and to learn about what is going on in the company.

Question 4

(C4 & C5) (5M)

Mention at least two differences between:

- (a) Law and ethics
- (b) Ethics and Corporate Governance
- (c) Business Responsibility and CSR
- (d) environment sustainability and corporate sustainability

Answer



(a) Difference between Law and ethics

Law	Ethics
Law is a system of rules enforced by a governing authority.	Ethics refers to moral principles that govern a person's behaviour.
Violation of laws leads to legal consequences such as penalties or imprisonment.	Violating ethics may result in social disapproval but not legal penalties.

(b) Difference between Ethics and Corporate Governance

Ethics	Corporate Governance
Ethics deals with the principles of right and wrong guiding individual behaviour .	Corporate Governance is the system of rules, practices, and processes by which a company is directed and controlled .
Ethics focuses on personal integrity and decision-making.	Corporate Governance focuses on transparency, accountability, and protecting stakeholders' interests .

(c) Difference between Business Responsibility and CSR

Business Responsibility	CSR
Business responsibility refers to a company's obligations to operate ethically and consider the impact of its decisions on society and the environment.	CSR is a structured approach where businesses voluntarily contribute to social, environmental, and economic causes .
Business responsibility encompasses ethical practices , compliance, and risk management	CSR often involves specific initiatives like community development , education, and healthcare

(d) Difference between Environment sustainability and Corporate sustainability

Environment sustainability	Corporate sustainability
Environmental sustainability focuses specifically on minimizing environmental impact and conserving natural resources.	Corporate sustainability is a broader concept that includes environmental, social, and economic dimensions of sustainable business practices.
Examples include reducing carbon emissions and water conservation.	Examples include ESG (Environmental, Social, and Governance) practices and integrating sustainability into business strategy.

Question 5

(C14) (7M)(Dec 2017 Old PQ)

Business should support inclusive growth and equitable development. Explain briefly as per National Voluntary Guidelines 2011 in this regard.

Answer

Principle 8: Businesses should support Inclusive growth and equitable development:



The principle acknowledges **India's social and economic development challenges** and aligns with government policies. It values **business innovation** and urges contributions to **national growth**, particularly for disadvantaged groups. **Highlighting teamwork** among businesses, government, and civil society, it reinforces the link between business success, inclusive growth, and fair development.

Core Elements

- Businesses should understand their impact on social and economic development, and respond through appropriate **action to minimise the negative impacts**.
- Businesses should **innovate and invest in products, technologies** and processes that promote the wellbeing of society.
- Businesses operating in regions that are underdeveloped should be especially **sensitive to local concerns**.

Question 6

(C14) (4M) (June 2018 Old PQ)

Write short notes on - Guidance on implementation of principles and Core Elements. (National Voluntary Guidelines 2011)

Answer

Successful implementation of the Principles and Core elements require that all of them need to be **integrated and embedded in the core business processes** of an enterprise.

This requires, specifically that the following actions are taken:

- Leadership:** The **Chairman/CEO/Owner/Manager** should play a **proactive role** in convincing the board/Top Management and staff within the business that adopting these principles is crucial for success. The board and senior management need to ensure that the principles are **fully understood across the organization** and comprehensively executed.
- Integration:** These principles and core elements must be **embedded in the Business policies** and strategies emerging from the core business purpose of the organization.
- Engagement:** Building strong relationships and **engaging with stakeholders** on a consistent, continuous basis is crucial.
- Reporting:** Implementation process includes **disclosure by companies** of their impact on society and an environment to their stakeholders.

Question 7

(C14) (4M) (June 2019 Old PQ)

Discuss the National Voluntary Guidelines on "Business, when engaged in influencing public and regulatory policy, should do so in a responsible manner".

Answer

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.

The principle acknowledges that **businesses operate** within **government-defined legal and policy frameworks** that guide growth and set necessary limits. It recognizes the **collaborative nature** of policy-making in a democracy and the right of businesses to engage with the government for



grievances or policy influence. However, advocacy should **serve the public good**, not just a select few.

Core Elements

- Businesses, while pursuing policy advocacy; must ensure that their **advocacy positions** are consistent with the Principles and Core Elements contained in these Guidelines.
- To the extent possible, businesses should **utilize the trade and industry chambers** and associations and other such collective platforms to undertake such policy advocacy.

Question 8

(C13) (4M) (June 2019 Old PQ)

Write short notes on - Benefits of CSR Programme

Answer

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

- Communities provide the licence to operate:** Communities now play a key role in granting businesses the **"license to operate,"** making a strong CSR program essential for trust and long-term sustainability.
- Attracting and retaining employees:** CSR commitments help companies **attract, retain,** and **motivate employees** by boosting morale and fostering a sense of belonging.
- Communities as suppliers:** Some companies **integrate communities into their supply chains** through CSR initiatives, improving livelihoods while securing a reliable supply source.
- Enhancing corporate reputation:** Effective CSR programs enhance **corporate reputation** by building goodwill, **a positive image, and branding benefits,** positioning companies as responsible corporate citizens.

Question 9

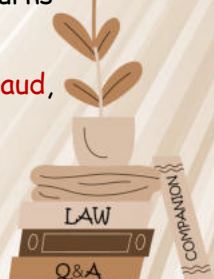
(GC) (SM)

Is it wise for the company to practice good governance which comes with additional cost?

Answer

Yes, it is wise for a company to practice good governance, even if it involves additional costs. While there may be short-term expenses, the long-term benefits far outweigh the costs. Here's why:

- Enhances Corporate Reputation:** Good governance builds **trust among stakeholders,** including shareholders, customers, employees, and regulators.
- Ensures Legal Compliance:** Poor governance can lead to **penalties, legal actions,** or even shutdowns due to regulatory violations.
- Improves Operational Efficiency** Good governance promotes **clear policies, accountability,** and ethical decision-making. This leads to better resource management, reduced wastage, and higher operational efficiency, ultimately lowering long-term costs.
- Increases Shareholder Value:** Companies with strong governance attract **loyal investors,** maintain higher stock valuations, and **experience sustained growth,** leading to better returns for shareholders.
- Mitigates Risks:** Effective governance systems help identify and **mitigate risks such as fraud,** corruption, or **financial mismanagement,** protecting the company's assets and reputation.



- f) **Facilitates Long-Term Sustainability:** Governance practices aligned with environmental, social, and governance (ESG) standards ensure long-term sustainability. This approach secures the company's future in a competitive and socially conscious market.

Question 10

(6C) (5M) (June 2019 Old PQ)

Explain how the provisions of the Companies Act, 2013 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance.

Answer

Companies, especially public-listed ones, raise significant funds from the public and financial institutions, making strong corporate governance essential to protect investor trust and ensure financial returns. To enhance transparency and accountability, the Companies Act, 2013, strengthens audit committees with key provisions:

- Independent Representation:** Under Section 177(2), audit committees must have a majority of independent directors, ensuring objectivity and transparency.
- Financial Expertise:** The proviso to Section 177(2) mandates that most members, including the chairperson, must understand financial statements, improving the committee's effectiveness.
- Defined Scope:** Section 177(4) explicitly outlines the audit committee's functions, eliminating ambiguity in its role and responsibilities.
- Investigation Authority:** The audit committee can investigate relevant matters, seek external professional advice, and access company records, enhancing its oversight capabilities.
- Binding Recommendations:** The Board must act on the committee's recommendations, and any refusal requires disclosure with reasons in the Boards' Report under Section 134(3).

It will be seen from the above provisions of the Companies Act, 2013 that efforts have been made to make such committees more, effective and accountable to improve the quality of its corporate governance thereby improving accountability and avoiding financial impropriety.

Question 11

(C21) (7M) (MQP Dec 2023)

Discuss the benefits of Sustainable report.

Answer

- Sustainability reporting** refers to the disclosure, whether voluntary, solicited, or required, of non-financial performance information to outsiders of the organization.
- Generally speaking, sustainability reporting deals with information concerning environmental, social, economic and governance issues in the broadest sense. These are the criteria gathered under the acronym ESG (Environmental, social and corporate governance).
- The introduction of these non-financial information in published reports is seen as a step forward in corporate communication and considered as an effective way to increase corporate engagement and transparency.
- Sustainability reports help companies build consumer confidence and improve corporate reputations through social responsibility programs and transparent risk management.
- This communication aims at giving stakeholders broader access to relevant information outside the financial sphere that also influences the company's performance.

