

Practice Questions of Companies Act

1. A Pvt Limited was formed as a private company. Its shareholders include 165 single holders 30 Couples holding shares jointly (totaling to 60 persons) ,100 Employees who have been allotted shares of the company during their employment (out of which 60 employees have left the job with this company but they are still members (shareholders) of the company). Has the company exceeded limit of 200 members and if yes should it register as a public company?

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,-

- i) restricts the right to transfer its shares.
- ii) except in case of One Person Company, limits the number of its members to 200

Provided that 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. Further, a person 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, and

- iii) prohibits any invitation to the public to subscribe for any securities of the company.

In the given case, A Pvt. Limited was formed as a private company. It's shareholders include 165 single shareholders, 30 couples holding shares jointly and 100 employees who have been allotted shares of the company during their employment out of which 60 employees have left the job but they are still the members of the company.

Here, as per the context of above provision, persons holding shares jointly would be considered as a single member. So, those 30 couples, totaling to 60 persons, holding shares jointly, would be considered as a 30 members only.

Further, those 100 persons were allotted shares during their employment would not be included in the total number of members. Thus, the company currently has 195 members (i.e. $165+30+0=195$). Hence, the company has not exceeded the limit of 200 members and does not require getting itself registered as a public company.

2. **Mr. Navneet has been doing 3 different businesses with each having different trade name. To have corporate identity, he wants to incorporate One person companies for each business. He has decided to form 3 companies. In all the 3 companies he will be holding 100% share and capital and each will be registered as OPC. Is there any legal barrier in forming OPC in these circumstances? Can he form one company for all the 3 businesses in the form of OPC?**

Answer:- According to section 2(62) one person company (OPC) as a company which has only one person as a member. One person company (OPC) has a separate legal entity with a limited liability of the member. No person shall be eligible to incorporate more than 1 OPC or become nominee in more than one such company.

In the given case, Navneet is doing 3 different businesses with each having different trade name. For the purpose of having corporate identity, he wants to incorporate one person companies for each of his business and thus, decided to form four different one person companies in which he would hold 100% share and capital in each of the four OPC's.

Here, as per the context of above provision, one person can become member or nominee in only single one-person company. Thus, Navneet can either form only single OPC and can carry out all 3 businesses under that single name but cannot form 3 different OPC's for all 3 businesses.

3. **Z Limited is an Indian company liable to pay tax. To avoid its tax liability, it formed another company under British law, and transferred all its assets to the British company for nominal consideration then took them back on hire from the same company thereby transferring its profits to the British company. Can we treat British company and Indian company as one single entity for the purpose of levy of tax?**

Answer:- According to the provisions of the Companies Act, 2013, corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. Further, corporate veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity. Where corporate entity is used to circumvent tax, the Court can disregard the corporate entity to protect

revenue.

In the given case, Z limited, an Indian company liable to pay tax, formed another company under British law, and transferred all its assets to the British company for nominal consideration and then took them back on hire from the same company thereby transferring its profit to the British company.

Here, the court can disregard the separate legal entity of Z Limited and British company on the ground of lifting of corporate veil as the intension of Z Limited behind establishing a company under British law was to circumvent the tax and revenue from its business in India. Thus, Z Limited and British company can be treated as one single company for the purpose of levy of tax.

- 4. Kajukatli Pvt. Ltd. is a company incorporated as a private company and its turnover in immediately previous year was Rs.5 Crores and it's paid-up capital is Rs. 2.5 Crore. it's 75% voting power is with another company which is a public limited company. Can Kajukatli Pvt. Ltd. be treated as small company?**

Answer:- According to section 2(85) states that small company means company, other than the public company;

- i) of which paid-up share capital does not exceed **2 Crore** rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- ii) turnover of which as per its last profit and loss account does not exceed **20 crore rupees** or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

Except, a holding company or a subsidiary company; a company registered under section 8; or a company or body corporate governed by any special Act.

In the given case, Kajukatli Pvt. Ltd. is a company incorporated as a private company and its turnover in immediately previous year was Rs.5 Crores and it's paid up capital is Rs.2.5 Crore. it's 75% voting power is with another company which is a public limited company.

Here, Kajukatli Pvt. Ltd. shares the holding-subsidiary relation with another public company, it falls within the exception to the definition of small company. Hence, Kajukatli Pvt. Ltd. is not a small company.

- 5. X limited is a company having paid up share capital of Rs.1 Crore (which gives right to total 50 lakh votes). Y limited holds 45% voting power of X limited, Z limited holds 20% voting rights in X limited. XYZ limited holds 75% voting**

rights in Y Limited and 60% voting rights in Z limited. Is there any relation between X Ltd and XYZ Ltd.?

Answer- According to section 2(87) of the Companies Act, 2013, subsidiary company in relation to any other company (that is to say the holding company), means a company in which the holding company-

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

In the given case, X Ltd. is a company having paid-up share capital of Rs. 1 crore. Y Ltd. Holds 45% voting power of X Ltd. M/s Z Ltd. holds 20% voting power in X Ltd. XYZ Ltd. holds 75% voting rights in Y Ltd. and 60% voting rights in Z Ltd.

Here, Y Ltd. and Z Ltd. are subsidiaries of XYZ Ltd. as it holds more than half of the total voting power in both respectively. M/s XYZ Ltd. indirectly has the control over voting rights of X Ltd. amounting a total control of 65%. (45% + 20%)

Thus, being having control on more than half of the total voting power of X Ltd., X Ltd. is a subsidiary company of M/s XYZ Ltd.

6. Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about Rs. 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so?

Answer- ~~As per the provisions of the Companies Act 2013, an OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.~~

In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March, 2019 was Rs. 2.25 Crores. ~~Even though two years have not expired from the date of its incorporation, since its average annual turnover during the period starting from 16th April, 2018 to 31st March, 2019 has exceeded Rs. 2 Crores,~~ Mr. Anil can convert the OPC into a private limited company along with Sunil.

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

answer the questions given below.

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

(B) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Answer- As per Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 following the answers :

(A) No , it is not mandatory for Navita to withdraw her nomination in the said OPC as a natural person who is an Indian citizen and resident in India or otherwise shall be a nominee in OPC. If she still has Indian citizen, she can continue her nomination.

(B) Yes as a natural person who is an Indian citizen and resident in India or otherwise shall be a nominee in OPC. So, there is no effect of maintain status of Indian resident.

8. Mr. A is an Indian citizen and his stay in India during immediately preceding financial year is for 115 days. He appoints Mr. B as his nominee who is a foreign citizen but has stayed in India for 130 days during immediately preceding financial year.

(i) Is Mr. A eligible to be incorporated as a One Person Company (OPC). If yes, can he give the name of Mr. B in the memorandum of Association as his nominee to become the member after Mr. A's incapacity to become a member.

(ii) If Mr. A has contravened any of the provisions of the Act, what are the consequences? (NOV 21)

Answer- As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) or otherwise –

- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

(i) In the given case, though Mr. A is an Indian citizen, his stay in India during the immediately preceding previous year is only 115 days which is below the requirement of 120 days. Hence Mr. A is not eligible to incorporate an OPC.

Also, even though Mr. B's name is mentioned in the memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Hence B's name cannot

be given as nominee in the memorandum.

(ii) Since Mr. A is not eligible to incorporate a One Person Company (OPC), he will be contravening the provisions, if he incorporates one. He shall be punishable with fine which may extend to 10000 rupees and with a further fine which may extend to 1000 rupees every day after the first during which such contravention occurs.

9. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of Rs 75 lakh and turnover of Rs 30 crores. 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 Rs. 15 crore?

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

(1) paid-up share capital of which does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and

(2) turnover of which as per its last profit and loss account does not exceed 20 crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

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.

(i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of Rs 75 lakh and having turnover of Rs 30 crore. Since only one criteria of share capital of Rs. 2 crore is met, but the second criteria of turnover of Rs. 20 crores 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 Rs. 15 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

10. Deepesh has formed a 'One Person Company (OPC)' with his wife Ruchi as nominee. For the last 3 years his wife Ruchi is suffering from terminal illness and due to this hard fact, he wants to change her as nominee. He has a trusted and experienced friend Rohit who could be made nominee or his (Deepesh)

daughter Alana who is of 9 years of age. Whom should he nominate as nominee in place of his wife?

Answer- As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) or otherwise –

- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

Further minor can not be a member or appoint as a nominee of OPC. So Alana cannot be appointed as nominee. So Deepesh can appoint his friend Rohit as nominee in his OPC

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

Answer- As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) or otherwise –

- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

Further OPC shall not be registered as well as converted in to section 8 company. So Vivek cannot form an OPC to be registered under section 8 of the Companies Act, 2013.

12. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs. 15 Crores and issued Non-Convertible Debentures worth Rs. 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is Rs. 100 Crores and Non-Convertible Debentures stands at Rs. 120 Crores.

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013? (RTP MAY 21)

Answer- As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term “Total Share Capital”, means the aggregate of the -

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of Rs.15 cr, which is less than requisite control of 20% of total share capital (i.e 100 cr) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

13. SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company. (Jan 21)

Answer- Government Company [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-

- (i) The Central Government, or
- (ii) By any State Government or Governments, or
- (iii) Partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of Rs. 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, SK Infrastructure Limited is a government company.

14. A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room 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—

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

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

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

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

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

15. Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of Rs. 100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013? (RTP NOV 21)

Answer- According to the provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up

share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or Governments, or
- (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

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

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

16. As per articles of association of a company, it was allowed to borrow money beyond Rs.1 crore only after passing special resolution in its general meeting. The company applied for the loan of Rs.2 Crores to SBI and was granted the loan. No officials of the bank ever examined whether or not the company has called up general meeting and whether or not a special resolution has been passed. Later on it was discovered that no such resolution was passed as required by its articles. Is the contract between bank and the company valid?

Answer: - As per provisions of the Companies Act, 2013, It is, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents. It is called as doctrine of constructive notice. The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. Because it is cannot be assumed that outsiders are deemed to have notice of the internal affairs of the company. (The Royal British Bank vs. Turquand).

In the given case, the company applied for a loan of Rs. 2 crores to SBI and was granted the loan, no officials of the bank had examined whether the company has called up general meeting and whether or not they had passed a special resolution.

Whereas, article of association of the company allowed it to borrow money beyond Rs. 1 crore only after passing a special resolution in its general meeting. Later on it was discovered that no such resolution was passed by the company as required by its articles.

Here, the officials of the bank who granted loan to the company was of the view that the company had completed all the necessary procedures (i.e. passing a resolution) and formalities for applying the loan and it would be deemed that the company has passed the resolution as the bank cannot have the knowledge of the internal affairs of the company. Thus, there is valid contract of loan between the bank and the company.

17. A company which as per its object clause could run a business of manufacturing of Shoes. Its directors entered a contract with JS Traders. for import of Machinery required to start Mineral water. As per the contract JS Traders supplied the machinery to the company and has requested payment for the same. Meanwhile one of the shareholders of the company has raised objection to the directors' act of setting up Mineral water as it is beyond the object clause of the company. State liability of the company in such circumstances.

Answer: - According to provisions of the Companies Act, 2013, the memorandum of association shall state the object clause of the company i.e. the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. In consequence, any act done or a contract made by the company which beyond the powers of the company is wholly void It is called as "doctrine of ultra vires", which mean beyond the powers of the act.

In the given case, A company which as per its object clause could run a business of manufacturing of Shoes. Its directors entered a contract with JS Traders. for import of Machinery required to start Mineral water. As per the contract JS Traders supplied the machinery to the company and has requested payment for the same. Meanwhile one of the shareholders of the company has raised objection to the directors' act of setting up Mineral water as it is beyond the object clause of the company

Hence, starting Mineral water business does not falls within the object clause of the company and thus it ultra vires to the provisions of the act as its main clause was of Shoes manufacturing. Therefore, the company is under no obligation to pay for the machinery purchased by its directors.

18. MLM Ltd. is a company incorporated in USA, has no branch in India but it's online products are bought in India through its website. The company accepts payments through online mode and then goods are dispatched through courier

to place of customers in India. Can MLM Ltd. be termed as foreign company within the meaning of Companies act 2013?

Answer:- As per section 2(42) of the Companies Act, 2013, foreign company means any company incorporated outside India which-

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner.

In the given case, MLM Ltd is a company incorporated in USA, has no branch or physical place of business in India, but its online products are bought in India through its website. The company accepts the payment through online mode and then goods are dispatched through courier to the place of customers in India.

Here, though MLM Ltd incorporated in USA, does not have any physical place of business in India. It has a business place in the form of electronic platform of its website in India. Thus, MLM Ltd is a foreign company.

19. Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature.

After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyze the situation and decide whether Mr. X is free from his liability.

Answer- According to the “doctrine of indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

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

They can presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is an exception of the doctrine of “constructive notice” and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company.

Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.