Quest-66	The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?
Solution	According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit: Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions: (a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance; (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter. Hence, in the instant case, the unsecured loan contributed by promoters of J Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves. In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.
Quest-67	NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions: (i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

	(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?
Solution	(i) As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly: • It should be a public company. • It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore. • It has obtained the prior consent by means of a special resolution passed in general meeting. • The special resolution has been filed with the Registrar of Companies. • An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public. Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013. (ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report. In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.
Quest-68	*Answer the following citing relevant provisions of the Companies Act, 2013:* *(a) Wire Electricals Limited having paid-up capital of ` 1.00 crore availed a term loan of ` 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?*

	(b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?
Solution	(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of Mr. Taar that the term loan of ` 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct. (b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account. Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.
Quest-69	*Define the term 'Deposit' under the provisions of the Companies Act,2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not.,* *(i) ₹5,00,000/- raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India* *(ii) ₹2,00,00/- received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000/- under a contract of employment with the company in the nature of non-interest-bearing security deposit.* *Amount of ₹3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.*
Solution	According to section 2(31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India. As per Rule 2(1) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers— (i) ₹5,00,000 raised by the Rishi Ltd. through issue of non- convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit. (ii) ₹2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-

	interest-bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit. (iii) ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
Quest-69A	*RS Ltd. received share application money of ₹50,000 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit. The share application money of ₹5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹50.00 Lakh shall be deemed to be 'Deposits' as on 30.07.2019 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.* *You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013*
Solution	Refer Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 Based on upon Rule, we may conclude as follow: - If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹ 50 Lac as 'Deposits' on 31.07.2019. Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Quest-70	*Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:* *Paid up share capital ₹ 70 Crores* *Securities Premium ₹ 20 Crores* *Free Reserves ₹ 20* *Crores Long-term borrowings ₹* *50 Crores* *The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.* *(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.* *(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act*
Solution	According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having ➢ a net worth of not less than one hundred crore rupees or ➢ a turnover of not less than five hundred crore rupees and Which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits. Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution. Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 is ₹ 110 crores Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹ 100 crores. Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed 36 months. Exception to the rule of tenure of six months: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment

earlier than six months subject to the condition that such deposits shall not exceed 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than 3 months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (outstanding deposit under plan A) = 16.5 crores.

In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Quest-70A

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:-

Sr.	Particulars
1.	A member individually holding shares with face value of ` 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ` 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid- up share capital of the company.

	In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means. In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?
Solution	Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold • shares of more than one thousand rupees in face value or • more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ` 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:- (i) Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital (ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company. Conclusion:- For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.
Quest-70B	*Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:*

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income

	<table><tr><td>2020-21</td><td>` 5.00 crore</td><td>` 3.75 crore</td></tr><tr><td>2021-22</td><td>` 7.00 crore</td><td>` 5.25 crore</td></tr></table> *The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.*
Solution	According to section 135(1) 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 of the Board. Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case, 1. Net Profit before tax of Red Limited for the FY 2021-22 is ` 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ` 5 crore. 2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.) Average Net Profit since incorporation: (` 5 crore + ` 7 crore)/ 2 = ` 6 crore Minimum contribution towards CSR will be: 2% of ` 6 crore = ` 0.12 crore or ` 12 Lacs.
Quest-70C	*The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the Income Tax Authorities to NCLT.*
Solution	As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a

	court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year. In the given instance, an application was filed for re-opening and re-casting of the financial statements of Sun Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year. Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2022-2023, is invalid.
Quest-71	*(i) Ravi Limited maintained its books of accounts under single Entry System of Accounting, is it permitted under the provisions of the Companies Act, 2013?* *(ii) State the person reasonable for complying with the provisions regarding maintenance of Books of Accounts of a company.* *whether a company can keep books of Accounts in electronic mode accessible only outside India.*
Solution	(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 accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of accounts must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted. (ii) Persons responsible to maintain books 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 accounts 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 have had the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule, (a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. (b) 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. (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.
Quest-71A	*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 2017 -18 were placed at its annual general meeting held on 31st August, 2018. 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, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018.* *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?*
Solution	**According to first proviso to section 137(1) of the Companies Act, 2013,** where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose. According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

	In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM. Conclusion: Thus, we may conclude that Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.
Quest-71B	*Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.*
Solution	Periodical Financial Results [Section 129A of the Companies Act, 2013] The Central Government may, require such class or classes of unlisted companies, as may be prescribed,— (a) to prepare the financial results of the company on periodical basis and in prescribed form (b) to obtain approval of the Board of Directors and complete audit or limited rev iew of such periodical financial results in the prescribed manner; and (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed. Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.
Quest-71C	*Mr. R, holder of 1000 equity shares of ` 10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of ` 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013-14. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.* *Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.*
Solution	According to section 124 of the Companies Act, 2013: (1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7)

	days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank. (2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF) - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund. (3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details. (4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents. As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application. In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (` 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ` 2,000 (declared in Annual General Meeting on 31.8.2014). In terms of the above stated provisions, Mr. R should be advised as under: (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure. (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.
Quest-72	The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid- up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for 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 also the consequences that shall follow for the above act of directors? *(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?*
Solution	According to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, is liable for the punishment under the said section. In the given case, the Board of Directors of XYZ Company Limited at its meeting decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days. Thus, based on above situation, we may conclude as follow: - (i) The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company. Consequences: The following are the consequences for the violation of above provisions: (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues. 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 as per section 127 of the Companies Act, 2013.
Quest-72A	*A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15 as per the provisions of the Companies Act, 2013.*
Solution	**As per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014,** A company may declare dividend out of surplus subject to the fulfillment of the following conditions: (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year;

	Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year. (b) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement; 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; (c) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement. In the given case therefore, the company can declare a dividend of 20% provided balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement. Thus, in this case company shall put up the Dividend recommended by Board for the approval of the members at the Annual General Meeting since the authority to declare lies with the members of the company.
Quest-72B	*The Board of Directors of ABC Limited at its board meeting declared dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration.* *Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors.*
Solution	Mention about both Sec 124 and Sec 127 1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, 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 the Unpaid Dividend Account. 2. The Board of Directors of ABC Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of investments in the name of the company. Consequences: The following are the consequences for violation of the above provisions: Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupee

	one thousand for every day during which such default continues. 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.
Quest-73C	*AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:* *1. Equity Share Capital (₹10 each) - 100 lakhs* *2. General Reserve - 150 lakhs* *3. Debenture redemption Reserve - 50 lakhs* *The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard.* *If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act, 2013.*
Solution	In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied. According to the said rule, the required conditions are: Condition I: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case. Condition II: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement. Paid-up capital + Free reserves = ₹ (100 + 150) Lakhs (General reserves are free reserves) = ₹250 Lakhs **10% thereof = ₹25 Lakhs** The amount so drawn shall first be utilized 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. The amount drawn as stated above = ₹25 Lakhs Less: loss for the financial year 2019-2020 = ₹20 Lakhs Amount available = ₹5 Lakhs Hence, the quantum of dividend is further restricted to ₹5 lakhs.

	Condition III: The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement. Accumulated Reserves ₹150 Lakhs Proposed withdrawal declaration of dividend ₹5 Lakhs Balance of Reserves ₹145 Lakhs This is more than 15% of paid-up capital (i.e. 15% of ₹100 Lakhs) i.e. ₹15 lakhs. Thus, the company can declare a dividend of ₹5 lakhs. Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹5 Lakhs.
Quest-74	*Sun Light Limited was incorporated on 22nd January, 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January, 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July, 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:* *(i) Whether the Company has complied due diligence in declaring interim dividend?* *(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?* *(iii) What are the penal consequences in case of failure to pay the interim dividend?*
Solution	1. According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or 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 out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020. 2. According to section 8 (1) of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited

	from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed. 3. According to section 127 of the Companies Act, 2013, 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 thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.
Quest-75	*You are required to examine with reference to the provisions of the Companies Act, 2013 the following issues pertaining to declaration and payment of dividend:* *(i) Brix Limited has earned a profit of ₹1,000 crore for the financial year 2016-17. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves of the company out of the profits earned. Can Brix Limited do so?* *(ii) Wilson Limited is facing loss in business during the current financial year 2016-17. In the immediately preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. Tomaintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Is the act of Board of Directors valid?* *(iii) The Director of Som Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the Annual General Meeting of the company held on 20th September, 2017. The Directors declared the approved dividends.* *Mr. Ninja was the holder of 1,000 equity shares on 31st March, 2017, but he has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend.* *Mr. Alok, holding equity shares of face value of ₹10 lakh has not paid an amount of ₹1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?*
Solution	(i) The amount to be transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. The company is free to transfer any part of its profits to reserves as it deems fit. There is no restriction to transfer any specific amount (i.e. even no amount can be transferred) to the reserves before declaration of dividend. (ii) Interim dividend 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. (8+10+12)/3 = 30/3 =10%]. Therefore, decision of Board of Directors to declare 12%

	interim dividend for the current financial year is not tenable. They can declare a maximum 10% interim dividend. (iii) cording to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Mr. Ninja, the holder of equity shares transferred the shares to Mr. Raj whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend. Yes, as per law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case the dividend can be lawfully adjusted by the company against any sum due to it from the shareholder. Thus, company can adjust sum of ₹1 lakh due towards call money on shares against the dividend amount payable to Mr. Alok.
Quest-75A	The Annual General Meeting of Angels Limited held on 30th May, 2022, 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. A, an equity shareholder, up to 25th July, 2022. Mr. A 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. A would succeed? Also, state the directors' liability in this regard under the Act.
Solution	Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section 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 of dividend to any shareholder entitled to the payment of dividend: (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and (b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues. Therefore, in the given case Mr. A will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.
Quest-75B	*ABC Limited realized on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th*

	February, 2019 instead of 12th March, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.
Solution	As per the provisions of section 77 of Companies Act, 2013 It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation on payment of such additional fees as may be prescribed Provided further that if the registration is not made within the period specified, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed Thus, in given case, company can still opt for registration by submitting an application to ROC and on payment of additional fee as prescribed If the charge was created on 12th February, 2019 instead of 12th March, 2019 Still company can still opt for registration by submitting an application to ROC and on payment of advalorem fee as prescribed
Quest-76	*Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by Company? Give your answer with respect to the provisions of the Companies Act, 2013.*
Solution	According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India. In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.
Quest-76A	*Rose (Private) Limited on 3rd April 2019 obtained Rs. 30 Lakhs working capital loan by offering its Stock and Accounts Receivable as security and Rs. 5 Lakhs Adhoc overdraft on*

	the personal guarantee of a Director of Rose (Private) Limited, from a financial institution. *(i) Is it required to create charge for working capital loan and Adhoc overdraft in accordance with the provisions of the Companies Act, 2013?* *(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation*
Solution	As per the provisions of Section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage. (i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favor of the lender. Hence, for ₹ 30 Lakhs working capital loan, it is required to create a charge on it. Rose (Private) Limited is not required to create a charge for ₹ 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company. (ii) As per the provisions of Section 77 of the Companies Act, 2013, in case the above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed. Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.
Quest-76B	*Mr. Pam purchased a commercial property in Delhi belonging to ABC Limited after entering into an agreement with the company. At the time of registration, Mr. Pam comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of ABC Limited is correct?*
Solution	Mention provisions of Sec 80

	Thus, where any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Pam, therefore, ought to have been careful while purchasing property and should have verified beforehand that ABC Limited had already created a charge on the property. In view of above, the contention of ABC Limited is correct.
Quest-77	*The Board of Directors of Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as Statutory Auditor of Prism Ltd., taking into account the consequences, if any, of accepting this proposal?*
Solution	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 Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information on 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, it is advised that the Statutory Auditor not to take up the above stated assignment.
Quest-77A	*The Board of Directors of Stamp Limited, a listed company appointed Mr. Chatterjee, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Chatterjee was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:* 1. *Appointment of Mr. Chatterjee by the Board of Directors.* 2. *Re-appointment of Mr. Chatterjee at the first AGM in the above situation.*
Solution	As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting. Whereas section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the

	company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM. As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years. As per the given provisions following are the answers: (i) Appointment of Mr. Chatterjee by the Board of Directors is valid as per the provisions of section 139(6). (ii) appointment of Mr. Chatterjee at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Chatterjee is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.
Quest-77B	*Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013? Explain?*
Solution	Mention provisions of Section 139(2) of the Companies Act, 2013 along with Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014 Since Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.
Quest-78	*Abhiyogic Ltd. having 1,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from* *F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.* *Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.* *In the context of aforesaid facts, please answer to the following question(s): -* *(a)) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?*

	(b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been sent, then in such case, what was the responsibilities of the company?
Solution	1. Mention about Section 140(4) of the Companies Act, 2013 and Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014 Now in these case, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022. As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, they were eligible to give such notice. Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit. Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd. 2. As per Section 140(4) of the Companies Act, 2013: We may conclude that Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.
Quest-78A	*Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company. Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013*
Solution	*As per the provisions of Section 141(3) of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.* *In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.*
Quest-78B	*Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.*

	CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013: *(1) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during cooling-off period?* *(2) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?*
Solution	According to Section 139(2) of the Companies Act, 2013, Listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term. As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years. Applying the above provisions, (1) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling- off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company. However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period. (2) As per Section 138(1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company. Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/s Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.
Quest-79	Kesar Limited, an unlisted company furnishes the following data: Paid-up share capital as on 31st March 2024 ` 49 Crore.  Turnover for the year ended 31st March 2024 ` 100 Crore

	Outstanding loan from bank as on 3rd March 2024 is ` 102 crore (` 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 ` 95 crore after repayment. Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.
Solution	According to the Companies (Accounts) Rules, 2014, every unlisted public company having: • paid up share capital of ` 50 crore rupees or more during the preceding financial year; or • turnover of ` 200 crore rupees or more during the preceding financial year; or • outstanding loans or borrowings from banks or public financial institutions exceeding ` 100 crore rupees or more at any point of time during the preceding financial year; or • outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate. In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ` 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.
Chapter - General Clause Act	
Quest-80	*M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.*
Solution	"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include: (i) Land, (ii) Benefits to arise out of land, and

	(iii) ngs attached to the earth, or (iv) Permanently fastened to anything attached to the earth. It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment. In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.
Quest-80A	*"The act done negligently shall be deemed to be done in good faith." Comment with the help of the provisions of the General Clauses Act, 1897.*
Solution	In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897. The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.
Quest-80B	*Examine the validity of the following statements with reference to the General Clauses Act, 1897:* *Insurance Policies covering immovable property have been held to be immovable property.*
Solution	Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

Quest-81	*Yellow and Pink had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2022, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?*
Solution	According to section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. In the given question, the court fixed the date of hearing of dispute between Yellow and Pink, on 29.04.2022, which was subsequently announced to be a holiday. Applying the above provisions, we can conclude that the hearing date of 29.04.2022, shall be extended to the next working day.
Quest-81A	*The Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897*
Solution	According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government. Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both. Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.
Quest-81B	*A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.*
Solution	As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be affected by: 1. properly addressing, 2. pre-paying, and 3. posting by registered post. A letter containing the document to have been affected at the time at which the

	letter would be delivered in the ordinary course of post. Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be affected.
Quest-82	*As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies?*
Solution	Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary company or can be appointed in only one subsidiary company. **It can be noted that Section 13 of General Clauses Act, 1897** provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law
Quest-83	Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable. In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?
Solution	By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females. On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the

	provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.
Quest-83A	*Viraj, a director of the company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He res trains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Viraj is correct?*
Solution	*Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.* *This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.* *Sometimes, occasions may arise when a choice has to be made between two interpretations –* *one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.* *When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the* *disclosure.* *In the given question, Viraj (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.* *Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have*

	disclosed the interest.
Quest-83B	*Explain the following in context of use of definitional sections in Interpretation of Statutes:* *1. Definitions subject to a contrary context* *2. Ambiguous definitions*
Solution	*Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.* *Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.*
Quest-84	*Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.*
Solution	**Proviso:** proviso means to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. Distinction between Proviso, exception and saving Clause Proviso- 'Proviso' is used to remove special cases from general enactment and provide for them specially Exception- Exception' is intended to restrain the enacting clause to particular Cases Saving Clause- 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
Quest-84A	*Which are the different elements of Documents*

Solution	(i) Matter—This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive. (ii) Record—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description. (iii) Substance—This is the third element on which a mental or intellectual element comes to find a permanent form. (iv) Means—This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.
Quest-84B	*There are several provisions under the, Companies Act, 2013 which start with the words 'not withstanding' and 'without prejudice'. Explain the nature and significance thereof, applying the principles of Statutory Interpretation.*
Solution	The provision containing the word 'notwithstanding' which is also termed as termed as 'non-obstante clause' has an overriding effect on the other provision, i.e., such provision shall prevail over the other provision. It means, if there is any inconsistence or departure between the non-obstante clause and another provision, it is the non-obstante clause which will prevail over the other clause. Thus, a non-obstante clause restricts the operation and effect of all the contrary provisions. For example, Section 163 of the Companies Act, 2013 provides option to adopt principle of proportional representation for appointment of directors. The words 'without prejudice' are used in an Act as follows: An expression containing the words 'without prejudice to the generality of …' indicates that anything contained in the provision following such words is not intended to cut down the generality of the meaning of the preceding provision. It means a provision enacted 'without prejudice' to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconstant with such other provision. This view was upheld in the case of [Central Bank of India v State of Kerala]
Quest-85	*'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.*
Solution	The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act.

	If the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction. In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment. **Example:** Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus" has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [Gulli poli Sowria Raj v Bandaru Pavani]
Quest-86	*How will you understand whether a provision in a statute is 'mandatory' or 'directory'?*
Solution	Distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look into the substance and not merely the form; an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory; whether it is or is not so would depend on such consideration as: (i) the nature of the thing empowered to be done, (ii) the object for which it is done, and (iii) person for whose benefit the power is to be exercised.
Quest-86A	*Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Sohel is correct?*
Solution	**Mention about Rule of Literal Construction** In the given question, Sohel (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Thus, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not

	interested or concerned in the proposal, he should have disclosed the interest
Quest-86B	Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)?
Solution	As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, 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 payment of any dividend to its members
Quest-87	Explain interpretation of statute aid- 'Read the Statute as a Whole'.
Solution	It is the basic principle that construction of statute is to be of all its parts taken together and not of one part only. Any deed must be read as a whole in order to ascertain the true meaning of its several clauses and all such clauses shall be so interpreted so as to bring them into harmony with other provisions. **Example** If Section on an Act require notice shall be given, then a verbal notice would be sufficient. But if another section Provides that notice should be served an person, then it would obviously indicate that a written notice was intended.
Quest-87A	In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes.
Solution	Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts. **Example** Chapter X of Companies Act deals with "Audit & Auditor" through section 139 to section 148 Thus by looking at the chapter we may understand the Purpose & object of section 139 to section 148
Quest-88	Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.
Solution	According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who

	are individuals and at least one of them shall be a resident in India. Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners. In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.
Quest-88A	*Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.*
Solution	*Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]* *A LLP may be wound up by the Tribunal:* *(1) if the LLP decides that LLP be wound up by the Tribunal;* *(2) if, for a period of more than six months, the number of partners of the LLP is reduced below two;* *(3) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;* *(4) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or* *(5) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.*
Quest-89	A Listed company Arranged an AGM on 1st Sept, compute the date of dispatch of Notice
Solution	10th August
Quest-89A	Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrant to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?
Solution	Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.

	In the given question, the dividend was declared on 31.07.2023 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd August, 2023). It is immaterial if Mr. A has received it on 5th September 2023 (i.e., after 30 days from 31.07.2023). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.
Quest-90	Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ` 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.
Solution	According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are non- resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.
Quest-90A	ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.
Solution	Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed. Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25-5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the

	general meeting.
Quest-90B	Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.
Solution	According to section 381 of the Companies Act, 2013: (i) Every foreign company shall, in every calendar year,— (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and (b) deliver a copy of those documents to the Registrar. According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including: (1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies. (2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there. (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf. If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed (iv) Every foreign company shall send to the Registrar along with the documents

	required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made. According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.
Quest-91	Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ` one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated. (i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution. (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.
Solution	1. In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under: "In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting." Accordingly, Prakash and his friends must hold minimum $1/10^{th}$ of paid-up share capital (*i.e.* ` 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting. 2. The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under: (a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends. (b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated. (c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.

	(d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting. (e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.
Quest-91A	The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th 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. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.
Solution	According to first provision to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose. According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed. In the instant case, the accounts of Orange Limited were adopted at the adjourned AGM held on 20th September, 2023 and filing of financial statements with Registrar was done on 29th September, 2023 i.e. within 30 days of the date of adjourned AGM. However, Orange Limited has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 17th August, 2023. Hence, Orange Limited has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Quest-91B	NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report. On the basis of above facts answer the following questions: 1. Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013? 2. With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?
Solution	1. As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly: • It should be a public company. • It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore. • It has obtained the prior consent by means of a special resolution passed in general meeting. • The special resolution has been filed with the Registrar of Companies. • An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public. Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in

	less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013. 2. In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report. In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.
Quest-92	Mohit is a creditor of ABC LLP. He has a claim of ` 10,00,000 against the LLP. However, the assets of the LLP are valued at only ` 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of ` 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?
Solution	A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence, the creditors of ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit can not claim his deficiency of ` 3,00,000 from the partners of ABC LLP.
Quest-92A	Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property?
Solution	According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, 'Immovable Property' shall include: (i) Land,

	(ii) Benefits to arise out of land, and (iii) Things attached to the earth, or (iv) Permanently fastened to anything attached to the earth. In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.
Quest-93	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 a share registration office at Mumbai. (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.
Solution	(i) Section 2(42) of the Companies Act, 2013 defines a "foreign company" as any company or body corporate incorporated outside India which: (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) Conducts any business activity in India in any other manner. According section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office. Thus, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India. (ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.
Quest-93A	(i) As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai? (ii) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents. (iii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.
Solution	(i) In terms of the definition of a foreign company under section 2 (42) of the Companies

	Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which: (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) Conducts any business activity in India in any other manner **According section 386 of the Companies Act, 2013**, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office. Thus, we may conclude that the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India (ii) **The Companies Act, 2013 *vide* section 380** requires every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. 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. (iii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Sections 379 to 393. The penalties for non-filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act **<u>As per the provisions of Sec 392 of Companies Act, 2013</u>** Where a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
Quest-93B	Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. Joel Ltd. has recently established a share transfer office at New Delhi. (1) The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013. (2) State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian

	business.
Solution	In terms of the definition of a **foreign company under section 2(42) of the Companies Act, 2013** a "foreign company" means any company or body corporate 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. **According section 386 of the Companies Act, 2013,** for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office. **Further, section 379 states** that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. **In the case given in the question, the following facts are given:** 1. Joel Ltd. was incorporated in London and has a place of business (share transfer office) in India, hence, it is a foreign company. 2. Its shareholding comprises of 25% held by Y who is a citizen of India and 30% by X Ltd. which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Joel Ltd. Therefore, although Joel Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, ***it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company***. *However, it may be noted that under section 379, the application of the Companies Act, 2013 on Joel Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.* The Companies Act, 2013 does not require a foreign company to file any documents in relation to its global business. ***Now, as per the provisions in relation to foreign companies, answers to given cases may be discussed as follow:—*** *1. Provide reference to provisions of Section 380 i.e. Documents to be submitted for incorporation* *2. Provide reference to provisions of Section 381 i.e. Accounts in relation to companies*
Quest-93C	X Inc is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the State VAT Officer having jurisdiction, intends to serve show cause

	notice on the Foreign Company. As Standing Counsel for the department, advise the VAT Officer on valid service of notice.
Solution	In terms of the definition of a foreign company under section 2(42) of the Companies Act, 2013 a "foreign company" means any company or body corporate 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. **Assumption:** It is assumed that X Inc is a foreign company within the meaning of section 379 of the Companies Act, 2013 Now based upon above assumption, provisions of Section 383 of the Companies Act, 2013 shall be attracted in given situation According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode. Thus, we may conclude that VAT Officer may serve the show cause notice as per the above provisions.
Quest-93D	ABC Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the said Act, which can be levied on ABC Limited for its failure.
Solution	**As per the provisions of Sec 392 of Companies Act, 2013** Where a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
Quest-94	Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.
Solution	**According to 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 whether by itself or through an agent, physically or through electronic mode; and

	(b) conducts any business activity in India in any other manner. ***According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to—*** (a) business to business and business to consumer transactions, data interchange and other digital supply transactions; (b) offering to accept deposits or inviting deposits or accepting deposits or subscrip-tions in securities in India or from citizens of India; (c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management; (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and (e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise. Looking to the above description, it can be said that being involved in business activity through telemarketing, Robertson Ltd., will be treated as foreign company.
Quest-94A	Examine and state whether the following Companies can be considered as 'Foreign Company' under the Companies Act, 2013: (i) A company which is incorporated outside India employs agents in India but has no place of business in India. (ii) A company incorporated outside India having shareholders who are all Indian citizens. (iii) A company incorporated in India but all the shares are held by foreigners. (iv) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.
Solution	As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner. (i) A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. In other words establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business in India though employs agents in India. It will not be deemed to be a foreign company. (ii) 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. (iii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India. (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to: (a) **Business to business** and **business to consumer transactions**, **data inter-change** and other digital supply transactions (b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India (c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management, (d) Online services such as telemarketing, telecommuting, telelmedicine, education and information research. (e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise. Thus, we may conclude that, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.
Quest-94B	Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The Company has no established place of business in India. The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.
Solution	**As per Sec 389 of Companies Act, 2013** ✓ No person shall issue, circulate or distribute in India ✓ any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, ✓ whether the company has or has not established, or ✓ when formed will or will not establish, a place of business in India, ✓ unless before the issue of the prospectus in India, ✓ a copy thereof ***certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body*** has been delivered for registration to the Registrar and ✓ the prospectus states on the face of it that a copy has been so delivered and ***According to the Companies (Registration of Foreign Companies) Rules, 2014,*** the

	following documents shall be annexed to the prospectus, namely: (a) any consent to the issue of the prospectus required from any person as an expert; (b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof; (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years; (d) a copy of underwriting agreement; and (e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.
Quest-95	In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company': (i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India. (ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the company. (iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by cloud computing for its client in India.
Solution	According to 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 whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner. ***According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-*** (a) business to business and business to consumer transactions, data interchange and other digital supply transactions; (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India; (c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management; (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and (e) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise. **Now, based on above definition read with rules, we may conclude as follows: -** (i) In the given situation, M/s Red Stone Limited

	• is registered in Singapore. • it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and • does not conduct any business activity in India in any other manner. Thus, mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013. (ii) In the given situation, M/s Blue Star is registered in Thailand. • It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. • Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. • Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013. (iii) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and • has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. • Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.
Quest-95A	Phil Health System Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the India business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the companies Act, 2013, advise the company on the following matters: *(i) Whether the accounts of the company pertaining to Indian business operations shall be audited? If yes, by whom?* *(ii) What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?* *(iii) What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?* *(iv) In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies?*
Solution	Since Phil Health Systems Incorporated (PHSI) is a foreign company. Following are the answer in line with said nature of the company: (i) According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered Accountants.

	(ii) The audited financial statements of Indian business operations of PHSI shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate i.e., latest by 30th September 2020. *Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months i.e. latest by 31st December 2020.* (iii) According to Section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013 (chapter XXII deals with 'Companies incorporated Outside India'), shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. *In the given case, non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI.* However, PHSI shall not be entitled to bring in any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract until the company has filed the financial statements. (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year i.e., by 30th May 2020, to the Registrar containing the particulars as they stood on the close of the financial year.
Quest-96	MNO Ltd., a foreign Joint Venture Company having its established place of business in India and following International Financial Reporting Standards (IFRS) and its financial statement being prepared in German language desires to know the following with regards to submission of its financial statements to the Registrar of Companies in India. Its area office is located at Mumbai: (i) Submission of financial statements in German Language (ii) Format of financial statements as per IFRS; (iii) How authentication of its financial statements is to be done? (iv) Whether the documents can be submitted at the Registrar's office at Mumbai?
Solution	(i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language. If the financial statements are in German language and not in the English language, a certified translation thereof in the English language shall be annexed and submitted to Registrar [Section 381]

(ii) Format of Financial statement as per IFRS:

Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:

Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

(iii) Authentication of translated financial statements [Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014]:

(1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of—

(a) the official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.

(3) Where such translation is made within India, it shall be authenticated by—

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

(iv) 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. Hence, the documents of MNO Ltd. cannot be submitted at the Registrar's office at Mumbai.

Following assumptions drawn within the provided information:

1. With respect to part (iii), an answer has been given in reference to part (i) of the question. Here, authentication is being considered to be asked of translated financial statements (from German language to English Language) as nothing is specified in the question.

2. In order to answer part (iii) of the question, it may be considered in independent situation, then only the authentication of its financial statement can be answered according to the Companies (Registration of Foreign Companies) Rules, 2014. According to which every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.]

Quest-97

Blue Star Inc. is a company incorporated in USA, four years back and has no established place of business in India. The company has entered into following contracts:-

Particulars	Contracts entered in	Material Contracts
F.Y. 2017-18	4	2
F.Y. 2018-19	6	1
F.Y. 2019-20	5	3
F.Y. 2020-21	3	4

Apart from above, one contract has been entered into with its manager. The company intended to offer its securities in India. For that purpose, the secretary of the company, Mr. Berry Christan prepared the prospectus along with annexing the required documents and got it registered. Expert's consent was issued in a separate statement, the reference of which was given in the prospectus.

Few application forms for securities of Blue Star Inc. were issued to prospective investors without the prospectus out of which one such form was issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc.

In the context of aforesaid case, please answer to the following questions:-

(i) Whether the expert's statement can be considered to be included in the prospectus?

(ii) What copy of contracts would have been annexed with the prospectus by Mr. Berry?

(iii) Whether it is valid on the part of Blue Star Inc. for issuing few application forms without prospectus?

Solution

(i) According to section 388(2) of the Companies Act, 2013, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

	In the given case, the reference of expert's consent statement was given in the prospectus. Thus, the expert's statement shall be deemed to be included in a prospectus. (ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely:- (a) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof; (b) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years. In the given case, during the preceding 2 years, i.e. F.Y. 2019 -20 and F.Y. 2020-21, respectively, the material contracts entered into by Blue Star Inc. are 3 + 4 = 7 and apart from it, one contract has been entered into with its manager. So, in total 8 copies of contracts would have been annexed with the prospectus by Mr. Berry. (iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388: Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities. Blue Star Inc. has, thus, violated provisions of section 387(3) by issuing few application forms without prospectus. However, the application form issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc. can be considered as valid as such a case is covered by the exception to the said sub-section.
Q-98	*Aman an engineer has started a new company with the name of Nuts and Bolts Private Limited. He got registered a company with the same name. However, Nuts and Bolts is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company change its name at its discretion?*
Solution	According to section 16 of the Companies Act, 2013 if a company is registered by a name which, — • in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months. • is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

	Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable. In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name. As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.
Q-99	*Examine the validity of the following different decisions/proposals regarding change of office by A Limited under the provisions of the Companies Act, 2013:* *(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.* *(ii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.*
Solution	Regarding the validity of Proposals w.r.t change of registered office by A Limited in the light of section 12 of the Companies Act, 2013: (i) In the first case, the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai. As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid. In the second case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.
Q-100	*Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well.* *Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai. Mr. Parag signed partnership deed with Firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner.*

	Can the company deny its liability as a partner?
Solution	As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal. In the present case company has not neither given any written authority not affixed common seal of the authority letter. Conclusion: We may conclude that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.