

JAHANGIR TUTORIALS

COMPANY

LAW

SCANNER

(NEW SYLLABUS)

PROF ZUBAIR JAHANGIR

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com



Learn from India's Best

Prof Zubair Jahangir

Faculty for Law & GST

- Erstwhile Professor at ICSI & BSE
- Promoter of Software Company
- Authored Book on GST



VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

PART 1
Lesson 1 - Introduction to Company Law

June 2023

- (a) Amar, Akash and Ashish were the owners of a coffee estate in Munnar. They registered a new company called Mandoli Coffee Estate Private Limited and transferred their coffee estate to the newly formed company. They claimed exemption from paying Registration charges and Stamp duty on the ground that since they were the only shareholders of the company, the transaction was nothing but transfer by them from one name to themselves in another name. Referring to the provisions of Companies Act, 2013, is their claim tenable?

(Ans)-The facts of the case is similar to the case Re. Kandoli Tea Co Ltd (1886) ILR 13 Cal 43, which is even earlier than the celebrated case law in Salomon v Salomon Co Ltd, the Calcutta High Court rejected their plea and observed that the company was a separate person, a separate body altogether different from the shareholders and the transfer was as much a conveyance, a transfer of property, as if the shareholders were totally different persons.

It was recognized as the principle of "Lifting of the corporate veil." According to this principle the company is a separate legal entity which confers its own rights and duties.

Based on the well settled principle that a company is a separate, distinct juristic person different from its shareholders, the argument of Amar and others, are not tenable.

June 2022

- (a) **Articles of Association of a company limited by guarantee provides that entire income of company shall be applied towards promotion of the objects of the company. (5 Marks)**

Ans- A company limited by guarantee is primarily used for non-profit purposes and the profits are reinvested and used for promoting its non-profit activities. Although the Companies Act, 2013, does not specifically prohibit distribution of dividend in such companies; however, the Articles of Association of such companies usually provides that all the income of the company shall be applied solely towards the promotion of the objects of the company and that no portion shall be paid or transferred directly or indirectly by way of dividend or bonus or by way of profit to its members.

Therefore, the statement is correct. Articles of Association of the company limited by guarantee may provide that all the income of company shall be applied towards promotion of the objects of company

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

(b) Ajit, a minority shareholder in PQR Ltd., filed a suit against the Directors on the ground that they sold a property of the Company for `24,50,000 whereas its real value was over `41,00,000. Is the action of Ajit justified ? (5 Marks)

Ans- The general principle of company law is that every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company. In case of difference(s) amongst the members the issue is decided by a vote of the majority.

Since the majority of the members are in an advantageous position to run the company according to their command, the minority of shareholders are often oppressed. The company law provides for adequate protection for the minority shareholders when their rights are trampled by the majority. But the protection of the minority is not generally available when the majority does anything in the exercise of the powers for internal administration of a company.

In *Pavlides v. Jensen (1956) Ch. 565*, a minority shareholder brought an action for damages against three directors and against the company itself on the ground that they have been negligent in selling a mine owned by the company for £ 82,000, whereas its real value was about £ 10,00,000. It was held that the action was not maintainable. The judge observed, it was open to the company, on the resolution of a majority of the shareholders to sell the mine at a price decided by the company in that manner, and it was open to the company by a vote of majority to decide that if the directors by their negligence or error of judgement has sold the company's mine at an undervalue, proceedings should not be taken against the directors".

Accordingly, the action of Ajit is not justified.

(c) Explain in brief : A company though a legal person is not a citizen (3 marks)

Ans- The Statement is correct.

A company though a legal person, is not a citizen under the:

- Constitution of India; or
- Citizenship Act, 1955

However, company has "nationality", domicile and "residence".

In the matter of *State Trading Corporation of India Ltd. vs. C.T.O.*, the Supreme Court has held that State Trading Corporation though a legal person, was not a citizen and can act only through natural persons. Nevertheless, it is to be noted that certain fundamental rights enshrined in the Constitution for protection of "person", e.g., right to equality (Article 14) etc. are also available to company. Section 2(f) of Citizenship Act, 1955 expressly excludes a company or association or body of individuals from citizenship

(d) What would be the status of AV Pvt. Ltd. under the Companies Act, 2013, if TV Ltd. has appointed six (6) out of ten (10) directors on the Board of AV Pvt. Ltd. by exercising some powers at its discretion? (3 marks)

Ans- As per section 2(87) of the Companies Act, 2013, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company:

- controls the composition of the Board of directors; or
- exercise or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiaries.

The composition of company's Board of directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of director.

In the given case AV Pvt. Ltd is deemed to be subsidiary company of TV Ltd. as it controls the composition of board of directors of AV Pvt. Ltd. Further, subsidiary of a public company is deemed to be considered as a public company. Therefore, AV Pvt. Ltd is considered as a public company

December 2020

QUESTION 1- Arup entered into a transaction with Brilliant Merchandise Ltd. for a contract worth ₹ 51 lakh. The Articles of Association of the company stipulate that a contract above ₹ 25 lakh should be approved by a meeting of the Board of directors. Anjaan, Deputy General Manager (Commercial) produces a forged document which shows a resolution approving the contract having been passed in a Board Meeting. Later, the forgery is discovered. Arup pleads that his contract with the company is protected by the Doctrine of Indoor Management. Will Arup succeed?

ANSWER- The doctrine of Constructive Notice protects a company from outsiders. The doctrine provides that an outsider must read the Memorandum and Articles of the Company and satisfy himself that the contract he is seeking to enter into with the company is within its powers.

As far as internal procedures are concerned, an outsider is entitled to presume that everything has been according to the procedures laid down and there is no irregularity. An outsider cannot find out what is going on inside the doors as the doors of management are closed. This is known as the doctrine of Indoor Management [also known as rule in Royal British Bank v. Turquand (1856) CI & B 327].

However, in certain exceptional situations the doctrine of indoor management is not applicable and one of them is when a person relies on a forged document. Nothing can validate forgery. A company cannot be held liable for forgery committed by its officers. This has been established in the case Ruben v. Great Fingall Consolidated case [1906] 1 AC 439.

In the instant case Arup has relied on a forged document. Therefore he will not be protected and he will not succeed in his proceeding.

December 2021

QUESTION 1- The privilege of Limited Liability for Business Debts is one of the principal advantage of doing business under the corporate form of organization with some exceptions.

ANSWER- The company, being a separate person, is the owner of its assets and bound by its liabilities. The liabilities of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him. Members, even as a whole, are neither owners of the company's undertaking, nor liable for its debts. In other words, a shareholder is liable to pay the balance, if any, due on the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceed its assets. This means that the liability of a member is limited. If a person holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum.

The exceptions to the principle of limited liability are –

a. As per section 3A of the Companies Act, 2013 (the Act), if at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on the business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

b. When the company is incorporated as an unlimited company under section 3(2)(c) of the Act.

c. As per section 7(7)(b) of the Act, where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members of such company shall be unlimited.

d. Under section 339(1) of the Act, wherein the course of winding up it appears that any business of the company has been carried on with an intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the

Tribunal may declare the persons who were knowingly parties to the carrying on of the business in the manner aforesaid as personally liable, without limitation of liability, for all or any of the debts/liabilities of the company.

e. Under section 35(3) of the Act, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person who was a director at the time of issue of the prospectus or has been named as a director in the prospectus or every person who has authorised the issue of prospectus or every promoter or a person referred to as an expert in the prospectus shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

f. As per section 75(1) of the Act, where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified or such further time as may be allowed by the Tribunal and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to other liabilities, also be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

g. As per section 224(5) of the Act, where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate order disgorgement of such asset, property, or cash, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 2 - Legal Status and Types of Registered Companies

June 2022

- (a) **ABC Producer Company Ltd. was incorporated on 11th July, 2013 as a producer company with objective of production of wheat and related products. The CAGR since inception is around 12%, better as comparative to other sector(s). However, during Covid 19 pandemic, there was tremendous upsurge in operating income, up by 110% as compared to previous year. There is huge Surplus Fund in the Company, hence, the Director (Finance) opined that fund may be invested in Stock Market related instruments including Equity, Bonds and Mutual Funds. He also suggested for doing F&O related transactions out of the Surplus Fund. However, the Company Secretary of the Company objected that the Fund can be invested in certain categories only. Examine. (4 marks)**

Ans- As per the Producer Companies Rules, 2021, a Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following, namely:

- a) In approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or Co-operative societies or schedule bank; or
- b) In a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- c) With any other scheduled bank; or
- d) In any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
- e) In the shares or securities of any other inter-State co-operative society or anyco-operative society; or
- f) In the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Companies Act, 2013.

The objection of company secretary is valid, the producer company can invest its surplus funds as mentioned above only

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

(b) Vinod formed a single person economic activity in the form of One Person Company with his brother Kishor as its nominee. On 10th May 2022, Kishor withdrew his consent as Nominee of the One Person Company. Can he do so ? Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 10th May, 2022 under the provisions of the Companies Act, 2013.

1. Shyam is son of Vinod, who is 15 years old as on 10th May, 2022.
2. Ashok, an Indian Citizen residing in India who is presently a member of a One Person Company.

Ans- As per the proviso to Section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of company. The other person (nominee) whose name is given in the memorandum shall give his written prior consent in prescribed form and shall be filed with Registrar of Companies at the time of incorporation of the One Person Company along with its memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.

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

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

As per Rule 3(4) of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

As per Rule 3(2) of the Companies (Incorporation) Rules, 2014, a natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC. Therefore, Ashok, an Indian Citizen residing in India who is a member of OPC (not a nominee in any OPC) can be nominated as nominee

DECEMBER 2020

Question 1- ABC Ltd. was incorporated on 11th December, 2018 as a Government Company with the main object to provide examination services to other Public Sector Undertakings where the employees are recruited through advertisement. The Secretary, Education informed the Managing Director that there are recent changes with respect to "Active Company Tagging Identities and Verification" in Companies (Incorporation) Rules, 2014. Comment about applicability of Active Compliance with respect to ABC Ltd., a Government Company

Answer- As per Rule 25A of the Companies (Incorporation) Rules, 2014, every Company incorporated on or before December 31, 2017 is required to file the particulars of the Company and its registered office, in E-Form ACTIVE (Active Company Tagging Identities and Verification) on or before June 15, 2019. However, following companies are exempted for filing e-Form ACTIVE:

- (a) Companies which have been struck off
- (b) Companies under process of striking off
- (c) Companies under liquidation
- (d) Companies which are amalgamated or dissolved

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Further, any company which has not filed its due financial statements under section 137 of the Companies Act, 2013 or due Annual Returns under Section 92 of the Companies Act, 2013 or both with the Registrar of Companies shall be restricted from filing e-Form- ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register.

As the Company was incorporated as Government Company after December 31, 2017, hence, there is no need to file e-form ACTIVE for such companies.

Question 2- Smt. H is head of the family consisting of her husband (who is physically challenged person) and two sons. She heard that there about numerous benefits in terms of management, decision making and taxation, if she forms a Hindu Undivided Family (HUF), form of organization which is peculiar to India. As a professional, advice key points to Smt. H in creation of HUF covering taxation aspects.

Answer- Key points in creation of HUF

- Under the Income Tax Act, 1961, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to individual assessee.
- If you have ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- You can transfer the money received on sale of ancestral property / assets into your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc and will be assessed under HUF
- Existence of property or multiple members is not a pre-requisite to create HUF. A family which does not own any property may still have the character of Hindu joint family. This is because a Hindu is born as a member of the joint family.
- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of ₹2.5 lakh.
- Apart from basic exemption of ₹2.5 lakh, section 80C deduction upto ₹1.5 lakh is also available.

QUESTION 3- PQR Ltd. was incorporated as a Government Company. The Authorised Share Capital of the Company is ₹15 Crore. The Paid-up Share Capital of the Company is ₹3 Crore. What provisions of section 203 of the Companies Act, 2013 are applicable to a Government Company with respect to appointment of Key Managerial Personnel?

Answer- Section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 mandates the appointment of whole-time Key Managerial Personnel and makes it obligatory for every listed company and every other public company having a paid-up share capital of ₹10 crores or more, to appoint the following whole-time key managerial personnel:

1. Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director;
2. Company Secretary; and
3. Chief Financial Officer.

Further rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires that every private company which has a paid-up share capital of ₹10 crore or more shall have a whole-time company secretary.

Vide notification dated June 05, 2015 issued by Ministry of Corporate Affairs, Government Companies are granted certain exemptions. As per the said notifications:

The provisions of sub-sections (1), (2), (3) and (4) of Section 203 of the Companies Act, 2013 with respect to appointment of key managerial personnel, holding of office, period within which appointment to be made in case of vacation of office of KMP, will not apply to a Managing

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Director or Chief Executive Officer or Manager and in their absence, a whole-time director of the Government company.

All the provisions of Section 203 of the Companies Act, 2013, attracting the penal provision contained in Section 203 (5) will not apply to a Managing Director or Chief Executive Officer or Manager and in their absence, a Whole-Time Director of the Government Company.

However, all the provisions of Section 203 of the Companies Act, 2013 will continue to apply to CFO and CS of Government Companies as only these persons will be mandatorily required to be appointed as whole time KMP in case of selected class of companies prescribed in the Companies Act, 2013.

As the Paid-up share capital of PQR Ltd. is ₹3 crores which is less than prescribed limit mentioned under Section 203 of the Companies Act, 2013, it is not required to appoint the whole-time Key Managerial Personnel in the Company.

JUNE 2021

Question 1- Nidhi Companies can provide loans to its members' subject to certain limits as per Nidhi Rules, 2014. Rakesh being a member of a Nidhi Company wants to know the limits mentioned under Nidhi Rules, 2014 and also seek your advice whether a second loan can be granted within limits specified, if 1st loan is overdue, outstanding and remains unpaid.

ANSWER- According to Rule 15 of Nidhis Rules, 2014 a Nidhi company can provide loans only to its members. The loans given by a Nidhi company to a member shall be subject to the following limits, namely:

- Rs. 2 lakhs, where the total amount of deposits of such Nidhi from its members is less than Rs. 2 crore;
- Rs. 7.50 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 2 crore but less than Rs. 20 crore;
- Rs. 12 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 20 crore but less than Rs. 50 crore; and
- Rs. 15 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 50 crore.

However, where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding 50% of the maximum amounts of loans specified in above mentioned clauses.

A member shall not be eligible for any further loan, if he has borrowed any earlier loan from the Nidhi and has defaulted in repayment of such loan.

Based on above provision, Rakesh cannot be granted 2nd loan as he has defaulted in repayment of 1st loan.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Question 2- State the consequences in each of the following cases giving reasons for your answers:

(i) A Private Company has 210 members in total out of which 10 are the employees of the company. Will your answer differ, if 5 of these employees leave the employment of the company?

(ii) A Public Company has 150 shareholders in total of which 47 members and 2 out of 4 directors dies due to epidemic. What is the time frame allowed under the Companies Act for compliance in case of non-compliance of provisions regarding status of the Company?

ANSWER- Section 2(68) of the Companies Act, 2013 provides that private companies can have a maximum of 200 members (except for One Person Companies).

This number does not include present employees and former employees who were members of the company while in that employment and have continued to be members after the employment has ceased.

Moreover, where two or more persons hold one or more shares in a company jointly, they shall, be treated as a single member.

Hence, the company is within the maximum limit of 200 members.

The answer would have remained same even if 5 employees leave the employment as threshold limit of 200 persons for private company does not take into account former employees who were members of the company while in employment and continued to be member even after employment ceased.

(i) Due to separate legal entity concept, a company limited by shares, whether private or public, is not affected by death of one of its shareholders, but the shares are transmitted to the next kin or legal heir of such deceased shareholder and the company continues to run its business as usual.

Section 149(1) of the Companies Act, 2013 requires that every public company shall have a minimum number of 3 directors.

Further, Section 161(4) of the Companies Act, 2013 states that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next General Meeting (Annual General Meeting or Extra-Ordinary General Meeting).

Therefore, in the given case of a director's death, subject to any provisions of the Articles of Association of the company, the Board is empowered to fill the resulting casual vacancy which may be filled by Board of Directors at Board meeting and which shall be subsequently approved by members in the immediate next General Meeting.

Question 3- Melta LLC is a Limited Liability Corporation registered in California (USA). The company has no place of business in India by itself or through agent, but it's doing online business through electronic mode in India. Explain whether Melta LLC will be treated as a Foreign Company as per the provisions of the Companies Act, 2013.

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

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

The Companies (Specification of Definitions Details) Rules, 2014 defines the term 'electronic mode' in the context of a foreign company under Rule 2(h). The same is also defined under Rule 2 (1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014.

The definition of electronic mode encompasses all electronic based transactions, whether main server is installed in India or not, including, but not limited to- business to business and business to consumer transactions, data interchange and other digital supply transactions, offering to accept/inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India, financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management.

It further includes all online services and all related data communication services, whether conducted by e-mail, mobile devices, cloud computing, social media, data transmission or otherwise.

DECEMBER 2021

Question 1- (i) Luv Ltd. has entered into a contract with Kush Ltd. by which Kush Ltd. will control 22% of the sale and disposal of the output of Luv Ltd. Enumerate the nature of relationship between both Companies.

(ii) If Surya Pvt. Ltd. having paid up share capital of ₹ 45 Lakhs and annual Turnover of ₹185 Lacs is a wholly owned subsidiary of Hima Ltd. a listed Company. Can Surya Pvt. Ltd. be called a Small Company ? Explain

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

"Significant Influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

In the given case, Kush Ltd. controls more than 20% of the sale and disposal of the output of Luv Ltd. Thus Luv Ltd. is the associate of Kush Ltd. But Luv Ltd. neither influences the business decision of Kush Ltd. in any manner nor does it control 20% of the total share capital of Kush Ltd. Hence Kush Ltd. cannot be called an associate of Luv Ltd.

(ii) As per Section 2(85) of the Companies Act 2013 read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014, "Small Company" means a company, other than a public company, having—

- (i) paid-up share capital of which does not exceed two crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

In the given case, Surya Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of Hima Ltd. It falls under the exclusions to the definition and hence is not a small Company.

A simple comparison of the new and old definitions of a small company is explained hereunder-

Amendments	Existing definition criteria	Revised definition
Paid-up share capital	Maximum paid-up share capital is increased to INR 2 Crores	Maximum paid-up share capital can be INR 4 Crores
Turnover	Maximum turnover for qualifying as a small company is increased to INR 20 Crores	Maximum turnover for qualifying as a small company was INR 40 Crores

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act; Note: It is to be noted that the amended provisions are applicable with immediate effect i.e., from 15th September, 2022 onwards.

Limits	Till 31st March, 2021	1st April 2021 till 14th September, 2022	15th September 2022 onwards
Paid-up share capital	Maximum paid-up share capital can be Rs. 50 Lakhs	Maximum paid-up share capital is increased to Rs. 2 Crores	Maximum paid-up share capital is increased to Rs. 4 Crores
Turnover (In the immediately preceding financial year)	Maximum turnover for qualifying as a Small Company was Rs. 2 Crores	Maximum turnover for qualifying as a Small Company is increased to Rs. 20 Crores	Maximum turnover for qualifying as a Small Company is increased to Rs. 40 Crores

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 3 - Memorandum and Articles of Association and its Alteration

June 2023

1. **SPM Ltd. is engaged in the business of manufacturing of coins made of gold, silver and other precious metals. The company has not raised any money from the public. The company has recently imported the plating technology from Germany and it is desiring to enter into the business of manufacturing of ornaments, jewellery and souvenirs using the plating technology. However, the proposed business is not covered in the objects clause of Memorandum of Association (MOA) of the company. Advise the company the procedure to be followed by it for alteration of objects clause of MOA in accordance with the provisions of the Companies Act, 2013. (5 marks) (b) J is a B.Tech. in Computer Science from Indian Institute of Technology, Roorkee. J has invented a new procedure for making of battery having long life as compared to lithium battery available in the market. The invention has been patented by J. J has made an online application over the portal setup by the Government of India for initial funding under start- up. In the online application, J observed that there is a column for seed funding. Advise J on the meaning and importance of Seed Capital.**

Ans - The following is the procedure to be followed by SPM Ltd. for alteration of Object Clause of Memorandum of Association (MOA) in accordance with the provisions of Companies Act, 2013:

1. Issue not less than 7 days' notice and agenda of Board Meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of objects clause of Memorandum of Association of company [Section 173(3)].
2. Hold a meeting of Board of Directors –
 - a. To pass the Board Resolution for approving the proposed amendments to the objects clause of MOA of the company subject to the approval of shareholders in General meeting.
 - b. To delegate authority to any one director of the company to sign, certify and file the requisite forms with ROC and to do all such acts and deeds as may be necessary to give effect to the proposed alteration.
 - c. To fix day, date, time and venue for holding the general meeting of the Company for passing a special resolution as required by section 13.
 - d. To approve the draft notice of general meeting along with explanatory statement annexed to the notice as per requirement of the Section 102.
 - e. To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
3. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with Section 101 of the Companies Act.
4. Hold a shareholders meeting on the date for the meeting and pass the Special Resolution for altering the object clause of Memorandum of Association by 3/4th majority in accordance with Section 114 (2) of the Companies Act, 2013. Special Resolution shall be passed by means of Postal ballot, if company has more than 200 members or the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised.
5. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

6. After passing special resolution, file a certified copy of special resolution with the Registrar in form MGT-14 under Section 117 of the Companies Act, 2013 within 30 days of passing Special Resolution in general meeting along with the following attachments:
 - (a) Copy of Special Resolution passed along with explanatory statement;
 - (b) Notice for convening the General Meeting of the Company;
 - (c) Altered Memorandum of Association;
 - (d) Shorter Notice Consent Letters from the members in case the General Meeting was convened and held at a shorter notice;
 - (e) Any other attachment as may be considered as necessary in this regard.
 7. The Registrar shall register the alteration of objects in Memorandum and certify the registration within a period of 30 days from the date of filing of the special resolution. [Section 13(9)]
 8. Every Alteration made in the memorandum of the company shall be noted in every copy of the Memorandum of Association. [Section 15(1)]
2. **Gupta Publishers Ltd. has been incorporated recently and the Articles of Association of the company contain the provisions for entrenchment under section 5(3) of the Companies Act, 2013. Elucidate the provisions of entrenchment under the Companies Act, 2013.**

Ans - The Companies Act, 2013 recognizes an interesting concept of entrenchment. According to Section 5(3), the Articles may contain provisions for entrenchment to the effect that specified provisions of the Articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or overall complied with.

Essentially, the entrenchment provisions allow for certain clauses in the Articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Companies Act, 2013 (such as obtaining 100% consent). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

Further, Section 5(4) prescribed that the provisions for entrenchment referred to in section 5(3) shall only be made either on formation of a company, or by an amendment in the Articles agreed to by all the

members of the company in the case of a private company and by a special resolution in the case of a public company.

As per Section 5(5), where the Articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

According to Rule 10 of the Companies (Incorporation) Rules, 2014, where the Articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in SPICE+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the Articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

3. Explain the Doctrine of Alter Ego.

Ans - Doctrine of Alter Ego: It involves ignoring the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly. In *Lennards Carrying Co. Ltd v Asiatic Petroleum Co. Ltd* [1915] AC 705, the House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

Alternate Answer

This doctrine was explained in the case of *International Aircraft Trading vs. Manufacturers Trust Co.*

The term Alter Ego can be described as the part of someone's personality that is usually not seen by the others. A Company is deemed to be one and same as the owner of the company and vis a vis the principle of alter ego can only be applied in one direction that is to make company liable for an act committed by a person or group of persons who control the affairs of the company as they represent the alter ego of the company.

Directors and other persons who have control over the management of the company can be held liable for the acts committed by or on behalf of the company under the Doctrine of Alter Ego. Since the corporation does not have mind of its own; so, its active and directing will must be sought in the person who is really directing the mind and will of the corporation, the very ego and centre of the personality of the corporation.

June 2022

- (a) **The Articles of Association of X Private Limited contains provisions for entrenchment under Section 5 of the Companies Act, 2013. What does entrenchment provisions mean in this context ? Also state the relevant provisions of the said Act dealing with entrenchment provisions.**

Ans- The Companies Act 2013, recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining 100% consent). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

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

The provisions for entrenchment referred to in section 5(3) shall be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) as the case may be, along with the fee as provided in the

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

DECEMBER 2020

Question 1- The Paid-up Capital of X Ltd. is ₹10 Crore and Reserve and Surplus are negative (due to huge losses since previous few years) amounting ₹300 Crore. To pay the dues to Creditors, the Board of Directors passed the resolution for borrowing of ₹50 Crore and got funded through Financial Institution in term of Medium Term Loan for 3 years. Entire amount was utilized to pay the Debts. The Financial Institution when got the information that such act was ultra vires transaction, filed a suit against the Directors of the Company. The Plea of the Directors were that Shareholders and Directors have limited liability and doctrine of indoor management is applicable. Therefore, they are not personally liable. Comment.

ANSWER- Section 180(1)(c) read with Section 179 of the Companies Act, 2013, provides that the Board of Directors can only with the consent of the company by a special resolution would borrow money, where the money to be borrowed, together with the money already borrowed by the company exceeds aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Now, whether a transaction is ultra vires the company can be decided on the basis of the following:

- if a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void;
- if a transaction is outside the capacity (objects) of the company, it is ultra vires;
- if a transaction is in excess or abuse of the company's powers, it is ultra vires and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.

Personal liability of Directors : It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to company's memorandum, the directors will be personally liable to replace it. In *Jehangir R. Modi v. Shamji Ladha*, [(1866-67) 4 Bom. HCR (1855)], the Bombay High Court held, "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit". In case of deliberate misapplication, criminal action can also be taken for fraud.

While the doctrine of 'constructive notice' seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company.

Hence, in the present case, the Board has taken loan exceeding the prescribed limit under section 180(c) of the Companies Act, 2013, therefore, Directors are personally liable to repay the loan to financial institution.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- The Article of Association of XYZ Ltd. provides that the Board of directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore it issued the bonds to X without passing any such resolution at general meeting. Can X recover the money from the company ? Decide referring the relevant case laws and provisions of the Companies Act, 2013 ?

ANSWER- The principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in *Royal British Bank v. Turquand*. (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is not a part of the duty of an outsider to see that the company carries out its own internal regulations.

As based on the above case it is inferred that outsiders are bound to know the external position of the company but are not bound to know its indoor management. So, in the given case X could sue the company and recover his money, as he was entitled to assume that the necessary resolution had been passed and the required formalities have been duly complied.

DECEMBER 2021

Question 1- The Articles of Association of BC Ltd. empowered the directors to borrow money within the limit of ₹50 lakh. The Articles further provided that the directors can also exceed the borrowing limit of ₹ 50 lakh with the consent of the Company in general meeting. The directors of BC Ltd. took the loan of ₹75 lakh from R being one of the directors of BC Ltd. without obtaining the consent of the Company in general meeting. The Company, BC Ltd. refused to repay the loan amount to R. In the light of decided case law, state whether R will be able to get his money back from the Company.

ANSWER- The present case relates to the exceptions to the Doctrine of Indoor Management. The relief on the ground of 'Indoor Management' cannot be claimed by an outsider dealing with the company where the outsider had knowledge of irregularity. The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management.

In *Howard v. Patent Ivory Co.* (38 Ch. D 156), the articles of a company empowered the directors to borrow up to one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount. Held that, the debentures were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

Considering the above, R will be able to get only Rs. 50 lakh from BC Ltd. He will not be able to get the remaining amount of Rs. 25 lakh as he being the director of BC Ltd. is deemed to have knowledge of the authority of Board of Directors of the Company to borrow money as per the provisions of Articles of Association of the Company.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 2- The memorandum and articles must be read together in the event of any ambiguity. Explain the given statement referring a suitable case law.

ANSWER- The memorandum and articles must be read together in the event of any ambiguity. In *Angostura Bitters & Co. Ltd. v. Kerr*, (1933) AC 550: (1934) 4 Com Cases 1; the Privy Council held, "Except in respect of such matters as must be statutorily provided for by the conjunction with the articles, the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum or to supplement it upon any matter as to which it is silent"-quoted with approval by the Supreme Court in *A. Lakshmanaswami Mudaliar v. LIC of India Ltd.* (1963) SC 1185.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 4 - Shares and Share Capital-Concepts

June 2023

1. **The Board of Customerlast Limited, an unlisted public company is exploring ways to increase its paid- up share capital from ₹ 125 crore to ₹ 150 crore. The CFO of the company suggested that instead of offering shares to all existing shareholders as a rights issue the company can issue further shares by private placement to four identified Qualified Institutional Buyers and the top 250 existing shareholders by receiving cash without offering shares to other shareholders.**

The company secretary of the company objects to the manner of raising further capital, i.e. the offerings to the select shareholders as well as receiving cash.

Referring to the provisions of Companies Act, 2013 decide.

Ans- 1.

1. As per Explanation I under Section 42(3) of the Act, "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application (Form PAS-4), which satisfies the conditions specified in this section. As per Rule 14(1) of Companies (Prospectus and Allotment of Securities) Rules, 2014 a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations. Hence, the proposal of CFO on further raising of share capital by private placement is prima facie valid.

2. As per Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014: an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year: Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of section 62(1) (b) shall not be considered while calculating the limit of two hundred persons. In light of above provisions, the proposal to issue offer letter to Four QIBs is valid. But the company cannot issue securities under private placement to the top 250 shareholders.

3. As per Section 42(4) of the Companies Act, 2013: Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash. Hence, the suggestion of CFO on receiving consideration by cash payment is not valid.

In the light of above provisions, the objection of CS in raising the further capital through private placement is not correct. However, his objection to an offer or invitation to subscribe securities under private placement to 250 members and receiving the same in cash is correct.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

2. **The Board of directors of ZED Ltd. (Listed Company) is actively considering a proposal to buy back its shares. Naveen has recently joined the Board as an Additional Director. You are the senior partner of a firm of Company Secretaries and Naveen has sought your views, if there is any requirement for filing Declaration of Solvency by the company with any regulatory authority and particulars thereof. Also, what would be the time gap between two buy-backs. Advise Naveen in the light of the provisions of the Companies Act, 2013**

Ans- This provision is covered under section 68(6) of the Companies Act, 2013 read with Rule 17(3) of Companies (Share Capital and Debenture) Rules, 2014. When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buy back, file with Registrar and the Securities & Exchange Board of India (in case of listed companies), a declaration of solvency signed by at least 2 directors of the company, one of whom shall be the managing director, if any, in Form SH-9 and verified by an affidavit to the effect that the Board of Directors of the Company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not rendered insolvent within a period of one year from the date of declaration adopted by the Board.

As per proviso to section 68(2)(g) no offer of buy-back under section 68(2) shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy- back, if any.

Naveen who has recently joined the Board as an additional director should be apprised accordingly.

3. **State the provisions of the Companies Act, 2013 for the issue of bonus shares by a listed company:**

- i. **Can a company declare bonus shares in lieu of dividend?**
- ii. **Is bonus shares same as stock dividend?**

Ans- According to Section 63 of Companies Act, 2013: A company can issue fully paid-up bonus shares to its members in any manner, out of its free reserves, security premium or capital redemption reserve account. However, no bonus shares can be issued by capitalising reserves created by the revaluation of assets.

A company can capitalise its profits by issuing fully paid-up bonus shares only when-

- a) It is authorized by its articles and the shares are fully paid-up;
- b) It has been, on the recommendation of the Board of Directors, authorized in the General Meeting of the company by a special resolution;
- c) In case of listed company, an ordinary resolution will suffice;
- d) It is not defaulted on repayment of the principal or payment of interest on deposits or debt securities issued by it;
- e) It has not defaulted on payment of statutory dues of its employees such as, contribution to provident fund, gratuity and bonus.

(i) According to Section 63(3) of Companies Act, 2013, a company shall not issue bonus shares in lieu of dividend.

(ii) Yes, Stock dividend is the same as issue of bonus shares.

4. Magnificent Ltd. has filed various e-forms with Registrar of Companies due to various events in the Company. With reference to e-filing of forms, State for which services/ eforms, process for refund of fee is not applicable

Ans- The refund of MCA-21 fees is available in cases of multiple, incorrect and excess payments. It has to be informed to Magnificent Ltd. that refund process is not applicable for the following services/eforms:

- Public inspection of documents;
- Request for certified copies;
- Payment for transfer deeds;
- Stamp duty fee;
- IEPF payment;
- STP Forms;
- Form DIR-3.

June 2022

(a) Strike in the postal department could be a valid reason for delay in dispatch of dividend warrants. (5 marks each)

Ans- Section 127 of the Companies Act, 2013 provides that dividend shall be paid or dividend warrant shall be posted within period of thirty days from date of declaration of dividend; otherwise the company and the defaulting directors will be liable for default.

However, proviso to section 127 of the Act further provides a list of situations where no offence under this section shall be deemed to have been committed:-

- (1) where the dividend could not be paid by reason of the operation of any law;
- (2) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (3) where there is a dispute regarding the right to receive the dividend;
- (4) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
- (5) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

In this case, delay has taken place due to strike in the postal department and it can be attributed as "for any other reason" and without any default on the part of company. Hence, the Statement is correct

(b) Which of the following companies is eligible to issue shares with Differential Voting Rights (DVRs) during the financial year 2022-23

<i>Type of company</i>	<i>Nature of default</i>	<i>Whether Articles of Association of the company authorised to issue shares with DVR ?</i>
<i>A Ltd. – Unlisted company</i>	<i>Company has made default in filing annual return for the financial years 2018-19 & 2019-20. Default was made good during the financial year 2020-2021.</i>	<i>Yes</i>
<i>B Pvt. Ltd.</i>	<i>.....</i>	<i>No</i>

Ans- Section 43 of the Companies Act, 2013 read with Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 provides that company can issue shares with Differential Voting Rights (DVRs) if company's Articles authorise it to issue differential voting right shares. Shares with DVRs can be issued by company limited by shares only.

Company cannot issue shares with DVRs if company has defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares. The provisions of section 43 of the Companies Act, 2013 are applicable to public as well as private company.

In light of the above provisions:

- A Ltd. can issue shares with DVRs. Company would be ineligible to issue shares with s if it has defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year which it is proposed to be issued. A Ltd. has made default during financial year 2018-19 & 2019- 20 only in respect of filing annual return, which was made good during the financial year 2020-2021. Articles of Association of A Ltd. also authorise the company to issue shares with DVRs.

B Pvt. Ltd. cannot issue shares with DVRs unless it alter its Articles of Association in such a manner so as to authorise it to issue shares with DVRs

(c) The Articles of Association of Regular Ltd. provides that documents may be served upon the company only through registered post. Ram dispatches a document to the company by courier service. The company does not accept it on the ground that it is in violation of the Articles of Association. Examine with reference to the provisions of the Companies Act, 2013 whether refusal of receipt of document by the company is valid ?(3 marks)

Ans- A document can be served on company or its officer thereof by sending it to the company or the officer at its registered office by registered post or by speed post or by courier service or by delivering at his office or address, or by such electronic or other mode as may be prescribed - section 20 of the Companies Act, 2013. Here, "courier" means a document sent through a courier which provides proof of delivery - Rule 35 of the Companies (Incorporation) Rules, 2014.

Further, communication to company and officer can be made by electronic transmission. Electronic transmission means communication delivered by fax, email or by other means of electronic communication.

Considering the above provisions, service of document by Ram by way of courier service to company is valid service of document within the meaning of the Companies Act, 2013. Contention of the company is not valid. Articles of association cannot supersede provisions of the Companies Act, 2013

(d) The Board of directors intend to understand the benefits of the buyback of shares. You have been requested by the Board of directors to list out a few benefits of buyback of shares. (5 marks)

Ans- A few advantages of buyback of shares are as under:

1. It is an alternate mode of reduction in capital without requiring approval of the court/NCLT.
2. To improve the earnings per share.
3. To improve return on capital, return on net worth and to enhance the long-term shareholders value.
4. To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
5. To enhance consolidation of stake in the company.
6. To prevent unwelcome takeover bids.
7. To return surplus cash to shareholders.
8. To achieve optimum capital structure.
9. To support share price during periods of sluggish market condition.

To serve the equity more efficiently

December 2020

QUESTION 1- Reduction of share capital and Diminution of share capital mean the same.

ANSWER- Section 66(1) of the Companies Act, 2013 states that subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by passing a special resolution, reduce the share capital in any manner and in, particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. While, Section 61(1)(e) of the Companies Act, 2013 provides that, a limited company having share capital, if authorised by its Articles, may cancel shares, by passing an ordinary resolution in that behalf, which have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. Diminution needs no confirmation by the Tribunal.

Further, Section 61(2) of the Companies Act, 2013 specifically states that the cancellation of shares under section 61(1) of the Companies Act, 2013 shall not be deemed to be reduction of share capital.

Thus, Reduction of Share Capital and Diminution of Share Capital is not the same.

QUESTION 2- P Realtors Ltd., A Construction Ltd. and five other individuals have incorporated XYZ Builders Ltd. to construct a commercial complex. P Realtors Ltd. and A Construction Ltd. have executed an agreement according to which none of these companies can sell their shares in the new company before completion of construction of the commercial complex. Due to financial crunch, P Realtors decides to sell its shares in XYZ Builders Ltd. to PQR Builders Ltd. Can A Construction Ltd. restrain the transfer of shares before completion of construction of the commercial complex ?

ANSWER- With reference to the definition of a private company as provided under Section 2(68) of the Companies Act, 2013, a private company is only authorised to exercise restriction by its Articles on the transfer of shares of the company held by its members.

In other words, in public companies the shares are freely transferable and no restrictions can be imposed on the members right regarding transfer of their shares.

In the instant case the agreement between P Realtors Ltd. and A Construction Ltd restricting their rights to transfer their shares till completion of the project will be held subservient to the provision contained in the Companies Act, 2013, which provide for free transferability of shares. Therefore, A Construction Ltd. will not be able to restrain P Realtors from transferring their shares in XYZ Builders Ltd. to PQR Builders Ltd.

(a) Pass such orders as it may think fit for regulation of the management of the company including changes, if any, in its Memorandum and Articles, in public interest or in the interest of the company and its members and creditors; or

(b) Direct that the liability of the members shall be unlimited; or

(c) Direct removal of the name of the company from the register of companies; or

(d) Pass an order for winding up of the company; or

(e) Pass any such orders as it deems fit.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 3- P Realtors Ltd., A Construction Ltd. and five other individuals have incorporated XYZ Builders Ltd. to construct a commercial complex. P Realtors Ltd. and A Construction Ltd. have executed an agreement according to which none of these companies can sell their shares in the new company before completion of construction of the commercial complex. Due to financial crunch, P Realtors decides to sell its shares in XYZ Builders Ltd. to PQR Builders Ltd. Can A Construction Ltd. restrain the transfer of shares before completion of construction of the commercial complex ?

ANSWER- With reference to the definition of a private company as provided under Section 2(69) of the Companies Act, 2013, a private company is only authorised to exercise restriction by its Articles on the transfer of shares of the company held by its members.

In other words, in public companies the shares are freely transferable and no restrictions can be imposed on the members right regarding transfer of their shares.

In the instant case the agreement between P Realtors Ltd. and A Construction Ltd restricting their rights to transfer their shares till completion of the project will be held subservient to the provision contained in the Companies Act, 2013, which provide for free transferability of shares. Therefore, A Construction Ltd. will not be able to restrain P Realtors from transferring their shares in XYZ Builders Ltd. to PQR Builders Ltd.

- (f) Pass such orders as it may think fit for regulation of the management of the company including changes, if any, in its Memorandum and Articles, in public interest or in the interest of the company and its members and creditors; or
- (g) Direct that the liability of the members shall be unlimited; or
- (h) Direct removal of the name of the company from the register of companies; or
- (i) Pass an order for winding up of the company; or
- (j) Pass any such orders as it deems fit.

June 2021

QUESTION 1- Amount lying in the securities premium account belongs to the shareholders and can be used freely for their benefit.

ANSWER- In accordance with the provisions of Section 52(2) of the Companies Act, 2013, the securities premium can be utilised only:

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under Section 68 of the Companies Act, 2013.

Accordingly, the amount available in the securities premium is restrictive in nature and can only be used for specified purposes.

QUESTION 2- Santosh, CEO of the company, has advised the Board of directors of an unlisted company that in order to market the public issue and generate interest and awareness amongst the public a prospectus can be issued without giving details of number of shares and the issue price. Examine the correctness of the advice in light of the provisions of the Companies Act, 2013.

ANSWER As per Explanation appended to Section 32 of the Companies Act, 2013, Red herring Prospectus means "a prospectus which does not include complete particulars of the quantum or price of the securities included therein." In simple terms, a Red herring Prospectus is a prospectus, which does not include details of either price or number of securities being offered, or the amount of issue.

According to section 32(1) of the Companies Act, 2013, a company proposing to make an offer of securities may issue a Red herring Prospectus prior to the issue of a prospectus. Such company proposing to issue a Red herring Prospectus shall file it with the Registrar of Companies at least 3 days prior to the opening of the subscription list and the offer.

Therefore, the advice given by CEO Santosh is correct

QUESTION 3- Monika Ltd. wants to purchase its own 5,00,000 equity shares @ ₹10/- each out of the following

- (a) Unsecured Loans 25 lakhs
- (b) Balance of Free Reserves 15 lakhs
- (c) Securities Premium Account 10 lakhs

Examine the legality of the above transactions for the buy-back of securities of the company under the provisions of the Companies Act, 2013.

ANSWER - According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares or other specified securities (known as "buy-back") out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus, in given case Monika Ltd. can purchase its own 5,00,000 equity shares @10 each out of free reserves and from the securities premium account in accordance with the provisions of the Companies Act, 2013.

But it cannot do buy-back from the amount of Unsecured Loan as it will be contravention of the provisions of Section 68 of the Companies Act, 2013.

QUESTION 4- Provide a specimen of board resolution for preparation of annual report in abridged form for mailing to the members. Assume facts and figures for the purposes of mentioning in the resolution.

ANSWER - The Board Resolution for preparation of Annual Report in abridged form
"RESOLVED THAT pursuant to the provisions of second proviso of Section 136(1) of the Companies Act, 2013 and Rule 10 of the Companies (Accounts) Rules 2014, the Annual Report comprising of the Balance Sheet, Profit and Loss Account and other relevant documents to be attached to the financial statements in abridged form for the financial year ended 31st March also, to be prepared, finalised and audited in the prescribed Form No. AOC – 3 for sending to the members of the company."

"RESOLVED FURTHER THAT the draft audited financial statement containing salient features of financial statements for the year ended 31st March, _____, prepared in the prescribed Form No. AOC-3 as submitted to the meeting, be and are hereby approved and the same be authenticated by the directors of the company as required under Section 136 of the Companies Act, 2013 and be sent to the statutory auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing annual general meeting of the company."

December 2021

QUESTION 1- The Board of Directors of Aakash Ltd., a listed company, in its meeting held on 1st April, 2021 announced a proposal for issue of bonus shares to all equity shareholders of the company in the ratio of 1 : 1. On 1st May, 2021, the directors at another meeting passed a resolution to reverse the proposal of bonus issue announced on 1st April, 2021. Discuss the validity of the resolutions. (3 marks)

ANSWER - A listed company is required to comply with the requirements of the Companies Act, 2013, rules made thereunder and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for issue of bonus shares.

In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless it has, on the recommendation of the Board, been authorised in the general meeting of the company.

Further, as per Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014, a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Also, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 provides that a bonus issue, once announced, shall not be withdrawn.

In view of the above provisions, the Board of Directors of Aakash Limited once announced the issue of bonus share on 1st April 2021 to all equity shareholders of the company in the ratio of 1:1 cannot subsequently reverse the proposal of such issue in another board meeting. Hence, the first board resolution proposing the bonus share is valid but second board resolution for reversal is not valid.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 5 - Members and Shareholders

June 2023

1. **Stunning Commodities Ltd. gave notice seeking information from Ujjwal (not a member of the Company) whom the company has reasonable cause to believe to be having knowledge of the identity of a significant beneficial owner (SBO) of the company. It is observed that information given by Ujjwal is not satisfactory. You are General Manager (Secretarial) of the Company. The CEO of the Company asks you for further action to be taken by the company on this, if any. Please advise**

Ans As per Section 90(5) of Companies Act, 2013, the Company shall give notice in Form BEN -4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe— to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; And according to Section 90(7) of the Companies Act, 2013, the company shall—

- (a) where that person fails to give the company the information required by the notice within the time specified therein; or
- (b) where the information given is not satisfactory, apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice (Form BEN 4), for an order directing that the shares in question be subject to restrictions including:
 - (a) Restrictions on the transfer of interest attached to the shares in question;
 - (b) Suspension of the right to receive dividend or any other distribution in relation to the shares in question;
 - (c) Suspension of voting rights in relation to the shares in question
 - (d) Any other restriction on all or any of the rights attached with the shares in question.

In the light of the above Stunning Commodities Ltd. gave notice seeking information from Ujjwal (not a member of the company) whom the company has reasonable cause to believe to be having knowledge of the identity of the Significant Beneficial Owner (SBO) of the Company. It is observed that information given by Ujjwal is not satisfactory. Accordingly, the CFO has to be informed that the company can apply to Tribunal for order direction the shares in question be subject to restrictions.

2. **Mr. Raj who is a resident of Bengaluru, sent a Transfer Deed for registration of transfer of shares, to the company at the address of its registered office in Delhi. He did not receive the share certificates even after the expiry of six months from the date of dispatch of transfer deed. He lodged a criminal complaint in the court at Bengaluru. Decide under the provisions of the Companies Act, 2013, whether the court at Bengaluru is competent to take action in the said matter**

Ans- According to Section 56(1) of the Companies Act, 2013 a company shall not register a transfer of securities of the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and transferee has been delivered to the company by the transferor or transferee within a period of 60 days from the date of execution along with the share certificates relating to the securities, or if no such certificate is in existence, then along with the related certificate or letter of allotment of the securities. According to Section 56(4) of the Companies Act, 2013 every company unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer. Hence, in the given case, if all the required formalities are duly complied with by the Transferor or Transferee, the Company was

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

required to issue share certificate(s) within the stipulated time period. Further, under section 56(6), where any default is made in complying with the provisions of sub-section (1) to (5) of Section 56 (which deals with transfer and transmission of shares), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

The jurisdiction binding on the company is that of the State in which the registered office of the company is situated. Hence, in the given case the Bengaluru Court is not competent to take action in the matter.

- As per Section 55(2) (c) of the Companies Act, 2013 (Act), where preference shares of a company are proposed to be redeemed out of profits of the company, a sum equal to the nominal amount of preference shares to be redeemed shall be transferred to Capital Redemption Reserve account.

- The provision of the Act on reduction of capital under section 66 shall apply as if the Capital Redemption Reserve account is part of the paid-up share capital of the company.

- Again, under section 69 of the Act dealing with buy-back regulations, where a company purchases its own shares out of free reserves or security premium account, a sum equal to nominal value of the shares bought back shall be transferred to Capital Redemption Reserve account and also disclosed in the balance sheet.

The amount in Capital Redemption Reserve account can be applied under section 69(2) of the Act by the company in paying up unissued shares of the company to be issued to members of the company as fully paid-up bonus shares under section 63 of the Act.

3. You are a Speaker on Corporate Laws at a Seminar. One person from the audience has sought your opinion on the following matters:

Can an Insolvent be a member in a company?

Can a Receiver be a member in a company?

How does an investor avail services of a Depository in case of pledge of shares?

Ans-

i. Insolvent as member: Yes, An insolvent may be member as long as he is on the Register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver (Morgan Vs. Gray, (1953) ALL E.R. 213)

ii. Receiver: A receiver whose name is not entered in the register of members cannot exercise any of the membership rights attached to a share unless in a proceeding to which company is a party and an order is made therein. Mere appointment of a receiver in respect of certain shares of a company without more rights cannot, deprive the holder of the shares whose name is entered in the Register of Members of the Company, the right to vote at the meeting of the company. [Balakrishna Gupta v. Swadeshi Polytex Ltd. (1985) 58 Com Cases 563 (S.C.)]

iii. In the case of pledge: Before creation of any pledge or hypothecation in respect of a security, the beneficial owner is required to obtain prior approval of the depository and on creation of pledge or hypothecation; the beneficial owner shall give intimation of such pledge or hypothecation to the depository. The depository shall make appropriate entries in its records which will be admissible as evidence.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2022

(a) *Local Ltd. is planning to issue its equity shares to persons residing outside India. In this context, Chairman of the company wants to know on the following matters :*

- *What are the provisions relating to maintaining the foreign register of members?*
- *Can company discontinue maintaining foreign register of members ? If so, when ? Give your inputs to the Chairman of Local Ltd. (3 marks)*

Ans- Section 88(4) of the Companies Act, 2013 empowers a company to keep foreign registers of members or debenture-holders, other security holders or beneficial owners residing outside India. Company may maintain such register if it is authorised by its Articles of Association. It shall contain the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India. A foreign register is deemed to be a part of the company's principal register and it should be kept in the same manner as the principal register and be likewise open to inspection.

The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No.MGT.3 along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within thirty days from the date of such change or discontinuance, as the case may be, file notice in Form No.MGT.3 with the Registrar of such change or discontinuance.

A duplicate of such register should be maintained at the registered office in India and all entries made in the foreign register should be made in the duplicate register at the registered office as soon as possible. The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

If a company does not maintain foreign register of members or fails to maintain them in accordance as per the provisions of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine. Based on the above provisions, advice may be given to chairman of Local Ltd

(b) **Examine with reference to the provisions of the Companies Act, 2013 whether any of the following persons can become member of the company engaged in the business of producing steel products ?**

1. Pawnee
2. Partnership firm
3. Unregistered trade union. (3 marks)

Ans- Subject to the provisions contained in the Memorandum of Association and Articles of Association of the company, any person who is capable to contract can become a member of company.

1. Pawnee - A Pawnee cannot be treated as holder of shares pledged in his favour, and the pawner continues to be member and exercise the rights of member. Pawnee has no right to foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

2. A partnership firm is not a legal person and as such it cannot, in its own name, become a member of a company.
3. A trade union registered under the Trade Union Act, can be registered as member and can hold shares but unregistered trade union cannot become member of company

(c) Sita Ltd. intends to issue sweat equity shares to its employees for a non-cash consideration. Managing Director believes that the sweat equity shares can only be issued for consideration received in cash. Do you agree ? (3 marks)

Ans- According to Section 2(88) of Companies Act, 2013 Sweat equity shares means such equity shares as are issued by a company to its Directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Section 54 of the Companies Act, 2013 permits issue of sweat equity shares to employees or directors of company in recognition for providing know-how etc. Company may issue sweat equity shares at a discount or for consideration other than cash for providing know-how or making available any Intellectual Property Rights or value additions. Company should get consent of its member at General Meeting.

Further, as per Rule 8(9) of the Companies (Share Capital and Debentures) Rules, 2014, company can issue sweat equity shares for non-cash consideration on the basis of valuation report in respect thereof obtained from a registered valuer. Based on above provisions, we can conclude that the view of the Managing Director is not correct

(d) Company Secretary of Pumpkin Ltd. has made following entries into Register of members, debenture holders and other security holders on happening of certain events :

1. **Event** **Date of event** **Date on which entry was made**
2. **Allotment of debentures** 11th November, 2021 20th November, 2021
3. **Forfeiture of shares** 15th November, 2021 20th November, 2021
4. **Issue of duplicate share certificates** 10th November, 2021 24th November, 2021
5. **Decide on the validity of the entries made by the Company Secretary in light of the provisions of the Companies Act, 2013. (3 marks)**

Ans- Following are the relevant provisions regarding entries in the register of members, debenture holders and other security holders as contained in Rule 5 of the Companies (Management and Administration) Rules, 2014:

- The entries in register of members shall be made within seven (7) days of approval of allotment or transfer of shares, debenture or other securities.
- Entry shall be made within seven (7) days in case of forfeiture or issue of duplicate or new share certificates after the approval of board or committee.

Applying the above rules, it can be said that entries related to allotment of debentures, issue of duplicate share certificates and forfeiture of shares shall be made within period of seven (7) days.

In the present case, the entries for allotment of debentures and issue of duplicate shares are made beyond the period of seven (7) days and hence not in order.

Whereas the entry related to forfeiture of shares is made within seven (7) days and the same is in order

December 2020

QUESTION 1- Sumeet, Puneet and Manmeet were subscribers to the Memorandum of Association of a private company for 500 shares, 300 shares and 200 shares respectively. After incorporation, Sumeet and Puneet bought the shares, they had subscribed for, from the company whereas Manmeet bought 200 shares from Sumeet. Will Manmeet be liable to the company for the shares, he has not bought from the company?

ANSWER- In the case of a subscriber, no application or allotment is necessary to become a member. Since, by virtue of his subscribing to the memorandum, he is deemed to have agreed to become a member and he becomes ipso facto member on the incorporation of the company and is liable for the shares he has subscribed.

According to Section 10(2) of the Companies Act, 2013, all monies payable by any member to the company under the Memorandum of Association or Articles of Association of the company shall be debt due from him to the company. Further, a subscriber to the Memorandum must make payment for his shares, even if the promoters have promised him the shares for services rendered in connection with the promotion of the company. When the Subscriber subscribes to the Memorandum, he gives an undertaking to the company that he will pay to the company for the shares he has subscribed.

Further, Subscribers has to take these shares directly from the company and not through transfer from other member(s).

In the instant case, Manmeet is not absolved from his liability to the company by purchasing the shares from Sumeet. He has a statutory obligation to buy the shares from the company by making payment to the company.

QUESTION 2- An application has been made by a shareholder of a company to the National Company Law Tribunal (NCLT) that the company which has been just incorporated has supplied incorrect information in the documents filed for incorporation. Examine what action can be taken by the NCLT if the contention of the shareholder is proved to be true?

ANSWER- According to Section 7(7) of the Companies Act, 2013, where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the National Company Law Tribunal may on an application made to it, on being satisfied that the situation so warrants:

- (k) Pass such orders as it may think fit for regulation of the management of the company including changes, if any, in its Memorandum and Articles, in public interest or in the interest of the company and its members and creditors; or
- (l) Direct that the liability of the members shall be unlimited; or
- (m) Direct removal of the name of the company from the register of companies; or
- (n) Pass an order for winding up of the company; or Pass any such orders as it deems fit.

QUESTION 3- Sunita sold her flat to NOP Televisions Ltd: on 1st April, 2016. The company appointed Prakash (a registered valuer and also husband of Sunita) on 1st May, 2019 to determine the value of the flat purchased from Sunita. Can Prakash validly undertake this assignment? Would your answer differ if the appointment had been made on 1st March, 2019?

ANSWER- According to Section 247(2)(d) of the Companies Act, 2013, valuer shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as a valuer or three years after the valuation of assets was conducted by him.

In the instant case, Prakash had an indirect interest in the property because it was owned by his wife (Sunita). However, he was appointed on May 01, 2019 as valuer of the property, since a period of three years has already elapsed after the sale of property, Prakash can validly take up the assignment of valuation of the property.

However, if the appointment had been made on March 01, 2019, the period of three years would not have elapsed and he could not have taken up the assignment.

QUESTION 4- Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.

ANSWER- According to Section 124 of the Companies Act, 2013 dividends must be paid within 30 days from the date of declaration and if any amount remains unpaid or unclaimed then the company is required to transfer the unpaid dividend to a special account, known as Unpaid Dividend Account opened by the company in any scheduled bank within seven days from the date of expiry of thirty days. If any money transferred to this account remains unpaid or unclaimed for a period of seven years from the date of transfer to such account it shall be transferred by the company to the Investor Education and Protection Fund established under Section 125 (1) of the Companies Act, 2013 maintained and administered by the Central Government.

In the present case, the amount of dividend for the first 3 years must have been transferred to the Investor Education and Protection Fund. The amount for remaining period must be in the Unpaid Dividend Account of the Company.

According, to Section 125 of the Companies Act, 2013 read with Rule 7 of the IEPF(Accounting, Audit, Transfer and Refund) Rules, 2016, the person whose amounts has been transferred to Investor Education and Protection Fund, shall be entitled to get refund out of the fund in respect of such claims by submitting an online application in Form IEPF-5.

Manish should approach the company for amount of dividend for last 7 years

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- Santosh Kumar, an employee of a listed company purchased certain shares of his company through a member of a stock exchange and lodged with the company for transfer of shares in his (employee's) name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the company, will create nuisance in general meetings and seek access to the records of the company. Decide giving reasons :

- (a) Whether the company's contention shall be tenable; and
- (b) What is the remedy available to the employee in the given case ? (3 marks)

ANSWER- The securities or other interest of any member in a public company are freely transferable. Refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason. (Appeal to the CLB No. 27, of 1975 dated 17th August, 1976, Shri Nirmal Kumar v. Jaipur Metal and Electrical Limited.)

Accordingly, as per Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, can appeal to the Tribunal.

Hence taking into account the above-

- (a) The refusal by the company to register the transfer shares in the name of the employee is not tenable.
- (b) Employee in this case can go for appeal to the Tribunal against the company's refusal.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 6 - Debt Instruments-Concepts

June 2023

1. Comment on the following: 4

- (i) **Credit rating at the time of accepting Deposit by a company is mandatory.**
- (ii) **No company can invite Deposit without entering into a contract for deposit insurance**
- (iii) **Creation of security for repayment of Deposit is not mandatory for all companies while accepting Deposit.**
- (iv) **Trustees for Depositors can be removed by a simple majority.**
- (v) **Only remedy for Depositors in case of default in repayment of Deposit by the company is to file a suit.**

Ans-

(i) According to Rule 3 of the Companies (Acceptance of Deposit) Rules, 2014, every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.

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, having a net worth of not less than one hundred crore rupees of 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 resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Credit rating is not mandatory for private companies and other non-eligible public companies which accept deposit only from its members.

(ii) The provision related to extent and manner of deposit insurance has been omitted according to Companies (Acceptance of Deposits) Amendment Rules, 2018 dated 05.07.2018. Therefore, the company can invite the deposits without entering into contract for deposit insurance.

(iii) As per rule 6 of the Companies (Acceptance of Deposits) Rules, 2014: Every company referred in Section 73(2) and eligible company as defined under Rule 2 of the Companies (Acceptance of Deposits) Rules, 2014, accepting deposits from its members shall provide security by creating charge on the assets of the company as referred to in Schedule III of the Act excluding its intangible assets.

(iv) As per rule 7 of the Companies (Acceptance of Deposits) Rules, 2014: Trustees for depositors can only be removed from office before the expiry of their term with the unanimous consent of all directors present at the meeting of Board of Directors. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

(v) Section 73(4) of the Companies Act, 2013 states that, where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

In addition to filing a suit before NCLT for repayment of deposit with accumulated interest, hundred or more depositors or depositors holding at least five percent of the total outstanding deposit can initiate a class action suit under section 245 of the Act before the NCLT.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

2. Harsh is a promoter director of Himmat Pvt. Ltd. He borrowed some funds from his friend for a certain purpose but the same is lying idle at present. Thus, he plans to give loan to the company for working capital needs. Harsh has approached you, a Practising Company Secretary, for suggestion, if there is any situation where such loan will not constitute Deposit. Advise Harsh with reference to the provisions of the Companies Act, 2013

Ans-

According to the section 2(31) of the Act read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes inter alia any receipt of money by way of deposit or loan or in any other form by a company, but does not include-

Rule 2(1)(c) (viii)- any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company. Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

In the given case, Harsh has borrowed money from his friend. If he gives the same borrowed money to the company, he cannot give declaration in writing under the above sub rule and hence, if he does so, it will be in violation of the Act.

Rule 2(1)(c)(xiii)- 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 fulfilment of the following conditions:- (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance ; and (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) the exemption under this sub-clause shall be available only till the loans of financial institution or banks are repaid and not thereafter.

Thus, loan given by Harsh to Himmat Pvt. Ltd. will not be considered as Deposit if the loan satisfies the conditions as per rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, 2014.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2022

(a) **Write any five differences between debenture and loan.**

Ans- Debenture

Loan

Debenture means a document which creates or acknowledges a debt.

A loan, creates a right in the creditor to demand repayment.

Company can issue debenture as per the provisions of the Companies Act, 2013.

Loan can be given to anyone. provisions of

Debenture can be classified as secured or unsecured; convertible or non-convertible; redeemable or perpetual.

Loan can be classified as secured or unsecured.

Debenture trust deed is executed at the time of issue of debenture. executed between borrower and creditor.

No trust deed is executed at the time of granting loan. Loan agreement is

Debenture trustee is appointed. in case

No requirement to appoint trustee in

of loan

(b) **Hi-Fi Ltd. has defaulted in repaying security deposits received from its dealers. Such security deposits were accepted from the dealers for proper and timely performance of the contracts by them. Hi-Fi Ltd. wants to invest ` 5 crore in equity shares of Wi-Fi Ltd. Is there any restriction under Section 186 of the Companies Act, 2013 when a company is in default with respect to the repayment of security deposits ? (5 marks)**

Ans- As per section 186(8) of the Companies Act, 2013, a company which is in default in repayment of public deposits and/or interest thereon is not permitted to make or give any loan or investment or to provide any guarantee or security till the default is subsisting.

But it is to be noted that in the given question, company has defaulted in repaying security deposit received from its dealers which were received for performance of contract of supply of goods or provisions of services. Such security deposits accepted for performance of contracts for supply of goods or provision of services are not considered as deposits within meaning of Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Therefore, the provisions of section 186(8) are not attracted.

Hi-Fi Ltd. can make investment into equity shares of Wi-Fi Ltd. subject to fulfillment of other provisions of the Companies Act, 2013

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2020

QUESTION 1- In the course of business of the company, RST Logistics Ltd. received ₹2 lakh on 31st March, 2015 as advance towards consideration for providing future services in the form of warranty as per their agreement with Apurva. The period for providing such services in terms of common business practice is 3 years. The amount is still lying as advance and while auditing the books of accounts for the year ended 31st March, 2019, the statutory auditor had commented about contravention of the provisions of the Companies Act, 2013 in its preliminary findings to the Vice-President (Finance). Advise the Vice-President (Finance) if the comments of the auditor are justified in terms of provisions of the Companies Act, 2013.

ANSWER- According to Rule 2(1) (xii) (e) of the Companies (Acceptance of Deposits) Rules, 2014. The term 'deposit' does not include any advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.

In the instant case, the amount of ₹2 lakh received on March 31, 2015 as advance towards consideration for providing future services in the form of a warranty, is still lying with the company until March 31, 2019 and the period prevalent as per common business practice, for providing such service is 3 years, which has expired.

Accordingly, this amount has come within the ambit of the term 'deposit'. Hence, the comments of the auditor are justified and the Vice-President (Finance) is advised to immediately refund the advance amount along with the due interest thereon to Apurva

June 2021

QUESTION 1- Debapriya was appointed as alternate director of Julien in Amal Housing Finance Ltd. The company was served a demand notice by Goods & Service Tax department for ₹25 lakh for violation of certain provisions of GST law. Due to cash crunch the CEO approached Debapriya for a help of ₹12 lakh. Debapriya borrowed ₹7.50 lakh from his sister's husband and gave to the company. The company recorded the same in its books of account.

ANSWER- Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules 2014, provides that any amount received from a person who, at the time of receipt of the amount, was a director of the company shall not be regarded as deposit, if the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

However, proviso to Section 73(1) read with Rule 1(3)(iii) of the Companies (Acceptance of Deposits) Rules 2014 excludes a housing finance company registered with National Housing Bank established under the National Housing Bank Act, 1987 from the provisions of Section 73 to 76A of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014.

So, the transaction of accepting money from the director recorded by Amal Housing Finance Ltd. in its book of account is not regarded as non-compliance of the provisions of the Companies Act 2013.

VERIFIED BY OTP

Zubair Jahangir
27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- A private limited company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposits from the public.

ANSWER - According to the definition of private company under Section 2(68) of the Companies Act, 2013, a private limited company is prohibited to make an invitation to the public to subscribe for any securities of the company.

'Securities' has been defined under section 2(81) of the Companies Act, 2013 to mean the securities as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956. As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956, "Securities" include debentures, debenture stock or other marketable securities of a like nature.

However, under Section 42 of the Companies Act, 2013, a Private Company may issue such securities on private placement basis only to a selected group of persons who have been identified by the Board, and whose number shall not exceed 200 in the aggregate in a financial year excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option subject to prescribed conditions.

Further, as per Section 73 and 76 of the Companies Act, 2013, only the following may invite, accept or renew public deposits from the public:

- a banking company,
- non-banking financial company as defined in the Reserve Bank of India Act, 1934,
- to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf,
- Public company (Eligible Company) having Net worth not less than Rs. 100 Crores or Turnover not less than Rs. 500 Crores and which has obtained the prior consent of the company in general meeting by means of a resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Thus, a Private Company cannot accept deposits from Public.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 7 – Charges

June 2022

- (a) While sanctioning working capital limits, the rate of interest has been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India (RBI). But later on, there was a change in the interest rate due to RBI notification. The lending bank insisted on filing necessary documents and forms for modification of charge under section 79 of the Companies Act, 2013. Decide if the claim of the lending bank is tenable. (3 marks)

Ans- The term "modification of charge" includes variation of any of the terms of the agreement entered into between lender and borrower. It includes change (i.e., increase or decrease) in amount of borrowing, change in security, extension of time for repayment. It also includes variation in rate of interest taken place due to mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as modification. The provisions applicable to the registration of a charge under section 77 shall apply to the modification of a charge.

However, change in interest rate fixed by Reserve Bank India does not amount to modification of charge in terms of the conditions of the charge under section 79 of the Companies Act, 2013. Hence, claim of the lending bank to file documents for modification of charge is not tenable

December 2020

QUESTION 1- An encumbrance may be created by a charge, pledge or a mortgage.

ANSWER- An encumbrance means a restriction imposed on the owner's right over his property. All the three words used above impose a restriction on the right of the owner over his own property.

As per Clause 16 of Section 2 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 a mortgage.

A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge whereas a floating charge is not attached to any definite property but covers property of a fluctuating type such as stock in trade.

On the contrary, in case of a fixed or a floating charge the possession of the assets remains with the borrower. The ownership of the property also remains with the borrower. In case of fixed charge he has no right to sell or transfer the asset except with the consent of the charge holder. In case of a floating charge the borrower can treat his floating assets as if they have not been charged. He loses this right only when he commits a default and the charge holder decides to take action for recovery of the money due. In this case we say the floating charge crystallizes.

A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or performance of an agreement which may give rise to pecuniary liability.

In a pledge the borrower loses possession of the goods pledged as a security for repayment of a debt or performance of an obligation. The pawnor (pledgor) remains the owner of the property. He is entitled to get back the possession on repayment of the debt. However, in all these cases if the borrower commits a default in payment of the principal and interest thereof the lender gets a right to sell the property and recover the amount due to him.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Thus, an encumbrance may be created by a charge, pledge or a mortgage.

June 2021

QUESTION 1- As a Company Secretary, explain the procedure of satisfaction of charge.

ANSWER - According to Section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Charges) Rules, 2014, the company shall give intimation to the Registrar of Companies of the payment or satisfaction in full of any charge within a period of 30 days from the date of such payment or satisfaction in Form No.CHG-4 along with the specified fees.

The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of such additional fees as prescribed.

On receipt of intimation of satisfaction of charge, the Registrar of Companies shall issue a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar of Companies. If no cause is shown, by such holder of the charge, the Registrar of Companies shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the Registrar of Companies under Section 81 of the Companies Act, 2013 and shall inform the company. However, if the cause is shown to the Registrar, he shall record a note to that effect in the register of charges and shall inform the company accordingly.

Further, Proviso to Section 82(2) of the Companies Act, 2013 provides that the aforesaid notice shall not be required to be sent, in case intimation to the Registrar of Companies in this regard is in the specified form along with the Letter of the charge holder stating that the amount has been satisfied, which is a mandatory attachment in all cases of CHG-4 and is signed by the holder of charge.

Where the Registrar of Companies enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No.CHG- 5.

QUESTION 2- ABC Products Ltd. has taken term loan of ₹5 crore from bank and has given the properties situated at Maldives as a prime security of loan. Can the company give the properties situated outside India for security of loan ? Referring to the provisions of the Companies Act, 2013, discuss.

ANSWER- The Companies Act, 2013 does not limit a company to give any property situated in India or outside India. An inference can be drawn from Section 77(1) of the Companies Act, 2013, which permit registration of charges created on a property situated in or outside India.

Section 77(1) of the Companies Act, 2013, provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating/modifying such charge in Form CHG-1/CHG-9 , as the case may be, and is required to be filed with the Registrar of Companies within a period of 30 days of the date of creation or modification of charge along with the specified fees.

Therefore, ABC Products Ltd. can give the properties situated at Maldives for security of term loan.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- XYZ Limited has an office building in London. The Company has been granted a term loan of ₹15 crore from a Bank. The Company wants to mortgage office building of London. Examining the provisions of the Companies Act, 2013, answer the following :

- (i) Whether the company can mortgage the above office building ?
- (ii) Whether a charge can be created for property situated outside India ?

ANSWER- In accordance with the provisions of the Companies Act, 2013 as contained in Section 77(1) read with Rule 3 of the Companies (Registration of Charges) Rules, 2014, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating or modifying such charge in Form No. CHG-1 (for other than Debenture) or Form No. CHG-9 (For Debentures) as the case may be, and is required to be filed with the Registrar of Companies within a period of 30 days of the date of creation or modification of charge along with the specified fees.

(i) In light of the above mentioned provisions, XYZ Limited can mortgage the office building situated in London (UK).

(ii) In light of the above mentioned provisions, a charge can be created for property situated outside India. The e-form prescribed for the purpose of Registration of the charge is Form No. CHG-1 and it will be filled within the prescribed period.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 8 - Distribution of Profits

December 2020

QUESTION 1- The following summarized information is available in respect of a company for the year ended 31st March, 2019:

₹ Lakh

Equity Share Capital 10,000 shares of the face value of ₹100 each	10
Free Reserve	2
Revaluation Reserve	1
Profit and Loss Account (Dr.)	0.35
Net loss for the year 2018-2019	0.25

The company has paid dividends to the equity shareholders @ 8%, 10% and 12% during the immediately preceding three financial years. Advise the Board of directors the maximum amount they can pay this year by way of dividends.

ANSWER- As per Section 123 (1) of the Companies Act, 2013, a company can distribute dividends out of profits of the current year or from profits of previous financial years.

In the event of inadequacy or absence of profits in any financial year, if the company wants to propose declaration of dividend, it can pay it out of accumulated profits earned by it in previous years and transferred by the company to the free reserves, according to the conditions prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

In the instant case, the net loss for the year 2018-19 is ₹25000.

According to Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 the following conditions must be fulfilled:

- (i) The rate of dividend cannot exceed the average of the rates at which dividend was declared in the three years immediately preceding that year i.e. $(8\%+10\%+12\%)/3 = 10\%$, so in this case, the amount of dividend should not exceed ₹1 Lakh.
- (ii) 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. Thus the company can draw only upto ₹1.2 lakh.
- (iii) The balance of reserves after such withdrawal shall not fall below 15% of its paid up capital as appearing in the latest audited balance sheet. Accordingly the maximum that may be withdrawn cannot exceed ₹ 50000.
- (iv) However, the amount so withdrawn must be used to set-off losses of the current year i.e. ₹25000.

Therefore, the maximum amount in this instant case that can be paid by way of dividend is ₹25000.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2021

QUESTION 1- Dealing with dividend is the prerogative of Board of directors. However there are certain parameters included in dividend distribution policy of a company.

ANSWER- Regulation 43A of the SEBI (LODR) Regulations, 2015 provides for formulation of policy for dividend distribution which broadly specifies the external and internal factors including parameters that may be considered while declaring dividend and the circumstances under which the shareholders of the company may or may not expect dividend.

The dividend distribution policy shall include the following parameters:

- (a) the circumstances under which the shareholders of the listed entities may or may not expect dividend;
- (b) the financial parameters that shall be considered while declaring dividend;
- (c) internal and external factors that shall be considered for declaration of dividend;
- (d) policy as to how the retained earnings shall be utilized; and
- (e) parameters that shall be adopted with regard to various classes of shares.

Therefore, the top 500 listed entities based on market capitalization (calculated as on March 31 of every financial year) is required to formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites.

The listed entities other than top 500 listed entities based on market capitalisation may also disclose their dividend distribution policies on a voluntary basis in their annual reports and on their website.

December 2021

QUESTION 1- Examine the validity of the following :

- (a) XYZ Ltd wants to declare the dividend out of the current year profit without adjusting the previous year's carry forwarded losses and depreciation.
- (b) Board of Directors of XYZ Ltd wants to declare interim dividend after the end of financial year. (3 marks)

ANSWER- Section 123(1) of the Companies Act, 2013 provides that the dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed, or out of both.

Proviso to this section provides that a company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profits of the company for the current year.

Therefore, XYZ Ltd has to set off the previous year's carry forward loss and depreciation from current year profit before declaration of dividend.

As per section 123(3), 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 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 quarter preceding the date of declaration of the interim dividend.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 9 - Accounts and Auditors

June 2023

1. **A newly appointed auditor of a listed company came across the evidence of under invoicing of exports, round tripping of funds through tax heavens and fraudulent siphoning of funds amounting to ten million USD. Explain the further course of action by the auditor. Also explain what is fraud?**

Ans- Meaning of Fraud:

According to Section 447 of Companies Act, 2013, fraud, in relation to the affairs of a company, inter alia, includes any act, omission, concealment of any fact or abuse of position committed by any person with intent to deceive, to gain undue advantage from or injure the interests of the company or its stakeholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

Following is the course of action to be taken by auditor:

- According to Section 143(12) read with Rule 13 of Companies (Audit and Auditors) Rules, 2014, if the statutory auditor has reason to believe that an offence of fraud which involves or is expected to involve an amount of rupees One crore or more, is being or has been committed against the company by its officers or its employees, the auditor shall report the matter to the Central Government.
- The auditor shall report the matter to the audit committee immediately but not later than two days of his knowledge of the fraud seeking the reply from the Board of Directors or the audit committee seeking their reply within 45 days.
- On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations.
- In case the auditor fails to get any reply or observations from the Board or the Audit Committee within 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations.
- The report of auditor shall be in Form ADT-4 of the Companies (Audit and Auditors) Rules, 2014.

In the instant case, as the company is a listed company, which is mandated under section 177 of the Companies Act to constitute an audit committee and the amount of fraud is about rupees 80 crore, the auditor should report the matter to the Central Government in time, whether or not a reply is received from the company.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2022

- (a) Shyam was appointed as the statutory auditor of Ram Ltd. a non-government company at the Annual General Meeting held on 30th September, 2021. He has resigned after 2 months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a Multinational Company. Explain how the new auditor will be appointed by Ram Ltd. and the conditions to be complied with in this regard.(3 marks)

Ans- Any vacancy arising in the office of auditor due to any reason except on account of expiry of his term is known as casual vacancy. As per section 139(8) of the Companies Act, 2013, Board of directors has power to fill casual vacancy in office of auditor within thirty (30) days.

In case casual vacancy is occurred due to resignation of auditor, such appointment shall be approved by the General Meeting convened within 3 months of the recommendation of the Board. Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of audit committee, if any. The new auditor shall hold the office till the conclusion of the next annual general meeting. Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in section 141. Company shall inform the auditor concerned of his or its appointment.

Resigning auditor shall file Form ADT-3 with the company and the Registrar of Companies along with valid reasons within the 30 days of the date of resignation. The company shall file a notice of appointment (Form ADT-1) with the Registrar within fifteen days of the meeting in which the auditor is appointed

June 2021

QUESTION 1- Advise whether the internal auditor is required to be appointed in the following scenarios :

Amount (₹ crore)

Name of the Company	Status of the Company	Paid-up Capital	Turnover	Outstanding loans and borrowings
Lala Ltd.	Listed	49	195	99
Dilo Ltd.	Unlisted public	23	200	56
Craft Ltd.	Unlisted public	50	123	65
Wood Pvt. Ltd.	Private	55	186	89

Can the following persons be appointed as internal auditor ?

President (HR)

DGM (Finance).

ANSWER- Section 138 of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014, prescribes the following class of companies which is required to appoint an internal auditor namely:-

- Every listed company;
- Every unlisted public company having:
 - paid up share capital of Rs.50 crore or more during the preceding financial year; or
 - turnover of Rs.200 crore or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crore or more at any point of time during the preceding financial year; or

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

- (iv) Outstanding deposits of Rs. 25 crore or more at any point of time during the preceding financial year; and
- (c) Every private company having –
- (i) Turnover of Rs.200 crore or more during the preceding financial year; or
- (ii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year.

Accordingly, in the given case, answer is as under:

Name of the company	Requirement to appoint internal auditor
Lala Ltd.	Yes, since it is a listed company
Dilo Ltd.	Yes, since the turnover is Rs. 200 crore
Craft Ltd.	Yes, since the paid-up capital is Rs. 50 crore
Wood Pvt. Ltd.	No, since the turnover or loans / borrowings does not exceed the threshold limits

An internal auditor, shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The internal auditor may or may not be an employee of the company. So, if President (HR) and DGM (Finance) satisfying the above criteria, can be appointed as internal Auditor.

QUESTION 2- Chief Financial Officer (CFO) of a conglomerate is of the view that secretarial audit is mandatory for all the companies. He has approached you to determine whether secretarial audit is applicable in case of the following companies :

Amount (₹ crore)

Name of the Company	Status of the Company	Paid-up Capital	Share-Turnover
Helo Ltd.	Listed	49	120
Jam Ltd.	Unlisted	38	500
Butter Pvt. Ltd.	Subsidiary of Jam Ltd.	7	26

Advise the CFO.

ANSWER- Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a Company Secretary in practice in Form MR-3 with its Board's report.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

- (a) every public company having a paid-up share capital of Rs.50 Crore or more; or
- (b) every public company having a turnover of Rs.250 crore or more; or
- (c) every company having outstanding loans or borrowings from banks or public financial institutions of Rs.100 crore or more.

Secretarial Audit is also applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies as indicated above.

In light of the above provisions, applicability is given in the table below:

Name of the Company	Applicability of Secretarial Audit	Reason
Helo Ltd.	Yes	Secretarial audit is applicable to every listed company.
Jam Ltd.	Yes	Turnover exceeds the prescribed limit.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Butter Pvt. Ltd.	No	Though it is a subsidiary of a public company, yet it does not fall under the prescribed threshold limit.
------------------	----	---

December 2021

QUESTION 1- National Financial Reporting Authority (NFRA) has wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

ANSWER- The Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards. The Companies Act, 1956 empowered the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority has power to investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority.

The National Financial Reporting Authority is a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non-financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting, financial as well as non – financial, by the companies in future.

National Financial Reporting Authority gives its recommendations on accounting standards and auditing standards. It can only recommend and it is the Central Government who prescribes such standards. The objectives of National Financial Reporting Authority are as follows:

- (2) Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
- (3) Monitor and enforce the compliance with accounting standards and auditing standards;
- (4) Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service; and
- (5) Perform such other functions as may be prescribed in relation to aforementioned objectives.

QUESTION 2- Signing of the Board's Report can be done by any one of the directors and be filed within 60 days of AGM.

ANSWER- As per Section 134(6) of the Companies Act, 2013, the Board's report and any annexures thereto, shall be signed by the Chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

Section 137(1) of the Companies Act, 2013 provides that a copy of financial statements, including consolidated financial statement, if any, along with all documents required to be attached to such financial statements under the Companies Act, 2013 duly adopted at the annual general meeting or adjourned annual general meeting of the company shall be filed with the Registrar of Companies within 30 days of annual general meeting or adjourned annual general meeting along with the prescribed fees. The Board's Report has to be attached to the financial statements.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

However, 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.

In case of a One Person Company a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, shall be filed within one hundred eighty days from the closure of the financial year.

QUESTION 3- Answer the following with regard to appointment of auditor :

(i) X, a practising chartered accountant holds shares in ABC Ltd. The nominal value of shares is ₹50,000. Whether ABC Ltd can appoint him as auditor ?

(ii) A, a practising chartered accountant has business relationship with XYZ Hotels Ltd. The hotel used to provide services to A frequently on the same price as charged from other customers. Whether XYZ Hotels Ltd appoint A as its auditor ?

(iii) X, a chartered accountant is working as a General Manager Accounts with ABC Ltd. Could X be appointed as auditor in ABC Ltd ? (5 marks each)

ANSWER- Section 141(3) of the Companies Act, 2013 provides that a person shall not be eligible for appointment as an auditor of a company when he himself or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In this case Mr. X, a practicing Chartered Accountant holding shares in ABC Ltd cannot be appointed as Auditor of that company.

(i) Section 141(3) of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person shall not be eligible for appointment as an auditor of a company when he has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

The term business relationship shall be construed as any transaction entered into for a commercial purpose except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;

- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

Since the transaction is at the arm length price so Mr. A can be appointed as an auditor of XYZ Hotels Ltd.

(ii) As per section 141(3) of the Companies Act, 2013 provides that an officer or employee of the company is not eligible for appointment as an auditor of a company.

In this case Mr. X, is working as a General Manager Accounts with ABC Ltd. so he cannot be appointed as Auditor of that company.

VERIFIED BY OTP

Zubair Jahangir
27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 10 - Compromise, Arrangement and Amalgamations-Concepts

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 11 - Dormant Company

1. What is the procedure to be followed by a Dormant Company for obtaining the status of an Active Company?

Ans - In accordance with the provisions of Section 455 read with Rule 8 of the Companies (Miscellaneous) Rules, 2014, the dormant company shall follow the below procedure for obtaining status of an active company on its own:

- a) An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 which should be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.
- b) The ROC after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.
The ROC shall in the following cases change the status of the dormant company to active company:
 - i. Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.
 - ii. Where the ROC has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, the ROC can initiate the proceedings for enquiry under section 206 of the Companies Act, 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been active, the ROC may remove the name of such company from Register of dormant companies and treat it as an active company.

2. What do you mean by an 'Inactive Company'?

Ans - The definition of an Inactive Company can be found in the explanation to sub-section (1) of Section 455 of the Companies Act, 2013. It reads as under:

'Inactive Company' means a company which:

- (a) has not been carrying on any business or operation; or
- (b) has not made any significant accounting transaction during last two financial years; or
- (c) has not filed financial statements and annual returns during the last two financial years.

Section 455(1) provides that where a company is formed and registered under the Companies Act, 2013 for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant Company.

June 2022

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

(a) Cute Garments Ltd., not carrying out any business activity, wants to apply to ROC to change its status from Active Company to Dormant Company. Board of directors seeks your advice about the procedure to obtain the status of Dormant Company.

Ans- The following procedure to be followed by a company for obtaining status as a dormant company-

- (a) The company shall call a board meeting to fix day, date, time and venue for the General Meeting of the members of the company to pass special resolution for making application to the ROC to obtain status of a dormant company.
- (b) The Company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position at the time of passing said resolution in the shareholders meeting.
- (c) The company shall hold the General Meeting at the appointed time, place and date as per the notice calling the said meeting. The notice shall propose the resolution as a special resolution.
- (d) The company shall pass a special resolution for obtaining the status of a dormant company authorize the director(s) to make application to ROC after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value). After casting the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution with 30 days from passing of the said special resolution.
- (e) After filing of Form MGT-14, the company shall file Form MSC-1 with the ROC along with the copy of the special resolution, copy of statement of affairs, declarations by the directors and other necessary documents.
On being satisfied with the merits of the application, the ROC shall issue a certificate in Form MSC-2 for confirming the application and allowing the status of a dormant company to the applicant

DECEMBER 2020

Question 1- Dormant company status is an excellent tool for keeping the assets in the company for its future usage. Explain.

ANSWER- A dormant company means a company which is inactive i.e., not carrying out any business activity and has applied to the Registrar of Companies ("ROC") to change its status in the Register of Companies maintained by the said Registrar of Companies from "Active Company" to "Dormant Company". A company may become dormant immediately after its registration or after a few years of its incorporation.

A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage. For instance: if a promoter wants to buy land now for its future project at a comparatively lesser price, he may do the same through dormant company so that he can use the land for its future project. Thus, 'dormant company' is an excellent tool for keeping assets in the company for its future usage. A dormant company may either be a public company or a private company or a One Person Company (OPC).

JUNE 2021

Question 1- A Company is not carrying on any business for last two years, the Management of the Company decided to make an application for obtaining the status of Dormant Company. One of the Director stated that since, the Company is having unsecured loans from Shareholders and relatives of Directors, the Company cannot obtain the Dormant status.

Citing relevant provisions of the Companies Act, 2013 and Rules made thereunder, explain whether the statement of the Director of the Company is correct ? Will your answer differ, if the Company have also obtained Loans from Shareholders and relatives of Directors in the form of secured Debentures?

ANSWER- According to section 455 of the Companies Act, 2013 and rules made thereunder, the Registrar shall not grant the status of a dormant company, if there is any outstanding loan, whether secured or unsecured. In case the company has any outstanding unsecured loan, the company must apply for the status of a dormant company after obtaining the concurrence or approval of the lender which is required to be enclosed with Form MSC- 1.

Therefore, considering the provisions of the Companies Act, 2013 and rules made thereunder, the statement of the director of the company w.r.t. unsecured loans is not correct.

If the Company has obtained Secured Loans the Registrar shall not grant the status of a dormant Company.

DECEMBER 2021

Question 1- Krishna Private Ltd., having 3 directors has obtained status of Dormant Company in year 2019. The Board of Directors seeks your advice about the compliances needs to be done in respect of each of the following:

(i) One of the Director who is also shareholder holding 15 percent shares in Company wants to retire from post of directorship of the Company and also wants to transfer his entire shares.

(ii) Minimum number of Directors
Rotation of Auditors.

ANSWER- As per provisions of Section 455 of Companies Act, 2013 read with Rule 3 to 8 of Companies (Miscellaneous) Rules 2014 the Directors of Krishna Private Ltd. are required to carry out following compliances in respect of:

(i) Company shall continue to file the return or returns of allotment and change in directors in the manner and within time specified in the Act, whenever the Company allots any security to any person or there is any change in the directors of the Company. Further, in case a director wishes to transfer his shares, he may do so subject to compliance with the provisions in the Articles and the Companies Act, 2013.

(ii) A Dormant Company shall have such minimum number of Directors as required depending on the type of Company. Since Krishna Private Ltd. is a Private Ltd. Company, it needs to have at least 2 Directors.

(iii) The provision of rotation of auditors is not applicable in case of the dormant company.

QUESTION 2- CD Ltd. has not filed financial statements and annual returns during the last two financial years. The Company wants to get the status of a Dormant Company. The Company has approached you seeking your advice on the benefits/ exemptions provided to a Dormant Company. Advise CD Ltd.

ANSWER- Benefits/Exemptions provided to a Dormant Company are as follows:

Dormant Company may hold only two board meetings in a year with a gap of 90 days in between the two meetings.

— Dormant Company is not required to include the statement of cash flow in its financial statement.

— The provision of rotation of auditors is not applicable in case of the dormant company.

Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company.

— Dormant status is an advantage to promoters who want to hold an intellectual property or an asset under the corporate shield for its usage at a later stage.

— Companies can enjoy the status of dormant company for a period of 5 consecutive years.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 12 - Inspection, Inquiry and Investigation

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

PART 2

Lesson 13 - General Meetings

June 2023

1. With respect to E-Voting, explain the following:

- (a) E-Voting
- (b) Agency
- (c) Cut-off date
- (d) Cyber security

Ans-

- a. E-Voting means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security.
- b. Agency - The National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications and Information Technology, Government of India including with regard to compliance with parameters under Explanation.
- c. Cut-off date — with respect to e-voting it means a date not earlier than seven days before the date of the general meeting for determining the eligibility to vote by electronic means either remotely or at the general meeting.
- d. Cyber Security- means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

2 As a Company Secretary, advise your client whether the following matters can be transacted by getting a resolution passed through postal ballots :

- (a) Issue of shares with differential voting rights
- (b) Sale of the whole of the undertaking of the Company
- Buy-back of own shares by the Company

Ans- As per rule 22 of the Companies (Management and Administration) Rules, 2014 below mentioned matters can be transacted through postal ballot subject to certain conditions:

- i. Issue of shares with differential voting rights;
- ii. Sale of the Whole of the Undertaking of a company;
- iii. Buy back of own shares by the company.

The rule 22 also states that

- Any aforesaid items of business, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.
- One Person Companies and other companies having members' upto two hundred are not required to transact any business through postal ballot.

In the light of above provisions, the company secretary can advise in following ways:

In case the company is having members less than 200: They are exempted to transact the business through postal ballot.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

In case the company is listed company and is having members more than 1000: They may transact these business in general meeting.

For the companies apart from above two categories are required to transact the business through postal ballot.

June 2022

(a) Decide whether the length of the notice is proper in the following cases with reference to the provisions of the Companies Act, 2013 ?

<i>Particulars</i>	<i>Case I – Sky Ltd.</i>	<i>Case II – Moon Ltd.</i>
<i>Date of Annual General Meeting</i>	<i>30th September, 2021</i>	<i>30th September, 2021</i>
<i>Date of sending notice by post</i>	<i>5th September, 2021</i>	<i>7th September, 2021</i>

What would be your stand in case if Sky Ltd. and Moon Ltd. are section 8 companies ? (5 marks)

Ans- As per section 101 of the Companies Act, 2013, a General Meeting of company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Clear days' means exclusive of the day of the notice of service and of the day on which the meeting is held. When a notice of General Meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted - Rule 35 of the Companies (Incorporation) Rules, 2014.

Each of 21 days must be full or complete days. The day on which the notice is deemed to be served on the member and the day of the general meeting have to be in addition to the 21 days.

	<i>Case-I - Sky Ltd.</i>	<i>Case -II - Moon Ltd.</i>
No. of days from the date of sending notice by post to the date of meeting	26 days	24 days
Less: Day of meeting	1 day	1 day
Less: Day of sending notice by post	1 day	1 day
Less: 2 days (equivalent to 48 hours) after date of posting	2 days	2 days
Number of clear days	22 days	20 days
Length of notice	Proper	Shorter

In case of section 8 company, a General Meeting of company may be called by giving 14 clear days' notice instead of 21 clear days. Hence, if Sky Ltd., and Moon Ltd. are section 8 companies, notice issued for General Meeting is proper

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

(b) *Indra Kumar, head of the legal and secretarial department of a conglomerate wants to understand from you that which of the following resolutions shall only be passed by the postal ballot. Assist him with your answers as per the provisions of the Companies Act, 2013 based on the information available from the following table :*

<i>Nature of Company</i>	<i>Number of Members</i>	<i>Subject matter for which resolution is proposed</i>
<i>One Person company</i>	<i>1</i>	<i>Alteration of Articles of Association</i>
<i>Unlisted Company</i>	<i>190</i>	<i>Buy-back of shares</i>
<i>Listed Company</i>	<i>12,340</i>	<i>Election of small shareholders' Director</i>

(4 marks)

Ans- Company shall transact such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot. Provided that any item of business required to be transacted by means of postal ballot under section 110(1)(a) of the Companies Act, 2013, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

As per Rule 22 of the Companies (Management and Administration) Rules, 2014 in relation to alteration of Articles of Association of the company, resolution relating to buy-back of shares and resolution relating to election of small shareholders' director shall be transacted through postal ballot. However, One Person Company and Companies having members up to 200 are not required to transact any business through postal ballot.

Accordingly, Indra Kumar can be informed that:

- One Person Company and Unlisted Company are not required to pass resolution through postal ballot.

Listed Company is required to transact the business of election of small shareholders' director through postal ballot since the number of members are in excess of 200

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2020

QUESTION 1- Dhanvantri is the Chairman of the Risk Management Committee of Advanced Solutions Ltd. A meeting of this Committee of Directors has been scheduled to be held on 5th December, 2019 at 3.00 p.m. At 3.10 p.m. though the requisite quorum is present, Dhanvantri is not present. Can the meeting be still held or requires to be adjourned?

Answer - With reference to the relevant provisions.

Regulation 72 of Table F of Schedule I to the Companies Act, 2013 provides that if at the meeting of Committee, the Chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairman of the Meeting.

In the instant case, the Chairman of the Risk Management Committee is not present within the 5 minutes of the scheduled time of the meeting and the requisite quorum is present. Hence, the members present may elect any one among them to act as the Chairman of the meeting and hold the meeting.

QUESTION 2- 25 members of a company holding 11% of total paid up equity share capital made a requisition on 5th December, 2019 to the Board of Directors to convene an Extra Ordinary General Meeting (EGM). State the date by which the Board of Directors is required to proceed and the date by which the EGM should be held. What could the requisitionists do if the Board of Directors fail to act on the requisition ?

ANSWER- Section 100(2)(a) of the Companies Act, 2013 provide that the Board shall, at the requisition made in the case of a company having a share capital, by such number of members holding, on the date of the receipt of the requisition, not less than one-tenth of the paid-up share capital of the company carrying right to vote, call an Extra-ordinary General Meeting of the company within twenty-one days from the date of receipt of a valid requisition. Such meeting shall be held on a day not later than forty-five days from the date of receipt of such requisition.

Accordingly, in the given case, the requisition has been made by 25 members of a company, holding 11% of total paid-up equity share capital on December 05, 2019 to the Board of Directors, thus, it is a valid request. Thus, the Board of directors are required to call the Extra-ordinary General Meeting (EGM) within 21 days from the date of receipt of such valid requisition i.e., by December 26, 2019 and the EGM shall be held on a day not later than 45 days from the date of receipt of such requisition i.e., by January 19, 2020.

In case the Board fails to call and convene the Extra-ordinary General Meeting requisitioned by the Members within the specified time period, it may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. Therefore, in the present case, if the Board of Directors does not act upon the request, the requisitionists may call and convene an Extra-ordinary General Meeting on their own within 3 months from the date of the requisition i.e. by March 04, 2020.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2021

QUESTION 1- Himmat Ltd. has a paid-up capital of ₹50,00,000 dividend into ₹5,00,000 shares of ₹10/- each. Special notice of intimation to move a resolution to remove Rajesh & Co., statutory auditor, before the expiry of their term and appointing Ritaban & Co. in their place has been given to the company by a shareholder holding 5,023 shares. In the above context, give your suggestion to Himmat Ltd. (4 marks)

ANSWER- Section 115 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice.

Where a special notice is so required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which the aggregate sum of not less than Rs.5 Lakhs has been paid-up on the date of notice.

The instances which require a special notice under the provisions of the Companies Act, 2013 are as follows:

(a) Under Section 140(4) of the Companies Act, 2013, resolution for appointing a person as auditor at the annual general meeting other than a retiring auditor or providing expressly that the retiring auditor shall not be re-appointed.

(b) Under sub-section (2) and (5) of section 169 to remove a director before the expiry of the period of his office and to appoint somebody in place of director so removed in the same meeting.

Accordingly, there is no such provision of special notice under the Companies Act, 2013, for removal of statutory auditor. However, the Articles of Association of company may provide for additional matters which may require special notice, in terms of Section 115 of the Companies Act, 2013.

Section 140(1) read with Rule 7 of the Companies (Audit and Auditors) Rules, 2014, clearly stipulates that the auditor appointed under section 139 of the Companies Act, 2013 may be removed from his office before the expiry of his term only by passing a special resolution of the company, after obtaining the previous approval of the Central Government by filling an application in form ADT-2 within 30 days of the resolution passed by the Board. Hence, Rajesh & Co. can be removed by following the prescribed procedures.

Further, as per Section 139(8) of the Companies Act, 2013, Ritaban & Co. can be appointed by the Board of Directors within 30 days to fill such casual vacancy

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 2- Draft a postal ballot form of ZYX Ltd, a company in existence for last 10 years. Assume facts and figures.

**ANSWER- Postal Ballot Form
(On the letterhead of the Company)**

1. Name and Registered Address of the Sole / First named Member
2. Name(s) of Joint-Holder(s), if any :
3. Registered Folio No. /DP ID No.* : / Client ID No.* (*Applicable to Members holding shares in dematerialized form)
4. Number of equity shares held :
5. I/We hereby exercise my / our vote in respect of the under mentioned resolutions to be passed through Postal Ballot as stated in the Notice dated (date and year) of the Company by sending my / our assent or dissent to the said Resolution by placing the tick () mark in the appropriate box below:

Item No.	Brief Particulars Resolution	No. of Shares I/ We assent (AGAINST)	I/We dissent to of the to the the Resolution
----------	---------------------------------	---	---

Place:

Date: Signature of Shareholder/Beneficial owner

QUESTION 3- Can an annual general meeting be called at a shorter notice ? Would your answer be different if it were an extra-ordinary general meeting ?

ANSWER- Shorter notice

As per Section 101 (1) of the Companies Act, 2013, Annual General Meeting may be called after giving a shorter notice, if consent is accorded in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

In the case of extra-ordinary general meeting, a shorter notice can be given if consent is accorded by the members of the company:

- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than 95%, of the total voting power exercisable at that meeting.

However, where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account in respect of the former resolution or resolutions and not in respect of the latter.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- The following figures were extracted from the books of X Ltd (audited).

Paid up share capital	₹100 Lakh
Reserve & Surplus	
General Reserve	₹50 Lakh
Security Premium Account	₹25 Lakh
Re-valuation Reserve	₹25 Lakh
Total	₹200 Lakh

Long Term Borrowings	₹125 Lakh
Short Term Borrowings (Cash Credit Loan)	₹50 Lakh
Temporary Loan for construction of Building	₹25 Lakh
Total	₹200 Lakh

The Board of Directors further want to borrow a sum of ₹ 50 Lakh as Long Term Loan without obtaining the consent of the members in general meeting by special resolution. Advise the Board about the validity of this proposal. What will be your answer if it is a Private Limited company ?

ANSWER- As per section 180(1)(c), the board of directors of a company with the consent of the company by a special resolution shall borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Temporary loans means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

In view of the above provision the eligible amount which can be borrowed by the Board is given below:

Paid up share capital	Rs. 100 Lakh
Reserve & Surplus	
General Reserve	Rs. 50 Lakh
Security Premium Account	Rs. 25 Lakh
Total	Rs. 175 Lakh

Re-valuation Reserve is not treated as free reserve as per Section 2(43).

The total borrowing of the company for the purpose of this sub section is –

Long Term Borrowings	Rs. 125 Lakh
Temporary Loan for construction of Building	Rs. 25 Lakh
Total	Rs. 150 Lakh

Short Term Borrowings (Cash Credit Loan) of Rs. 50 Lakhs is considered as temporary loan and loan for construction of building in not consider as temporary loan as per the explanation for temporary loan mentioned above.

Therefore, the company can borrow a further sum upto Rs. 25 Lakh without seeking the approval from the members. So, the board cannot borrow a sum of Rs. 50 Lakhs as Long Term Loan without obtaining the consent of the members in general meeting by special resolution.

In case of private company the provision of section 180 does not apply vide exemption notification dated 05th June, 2015, hence the board can borrow without approval.

QUESTION 2- R is a newly qualified CS and seeks your advice on passing of Resolution by Circulation. Advise him suitably as to the procedure to be followed in this regard.

ANSWER- A company may pass the resolutions through circulation. As per Section 175 of the Companies Act, 2013, no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft form together with the necessary papers to all the directors or members of committee at their addresses registered with the company in India by hand delivery or by post or by courier or through electronic means which may include E-mail or fax.

The said resolution must be approved by majority of directors or members who are entitled to vote. However, where not less than one-third of the total number of Directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board. The resolution passed through circulation be noted at a subsequent meeting of the Board or the committee and made part of the minutes of such meeting.

As per Secretarial Standard – 1, the decision of the Directors shall be sought for each Resolution separately. Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly. An additional two days shall be added for the service of the draft Resolution, in case the same has been sent by the company by speed post or by registered post or by courier. Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened meeting of the Board. This shall not dispense with the requirement for the Board to meet at the specified frequency.

The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

The Resolution, if passed, shall be deemed to have been passed on the earlier of:

- (a) the last date specified for signifying assent or dissent by the Directors, or
- (b) the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and

shall be effective from that date, if no other effective date is specified in such Resolution.

QUESTION 3- Indicate steps to file an application for seeking extension for calling Annual General Meeting and mention the form in which such application needs to be filed with the Registrar of Companies.

ANSWER- Section 96 of the Companies Act, 2013 provides that every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting within a period of six months, from the date of closing of the financial year.

However, the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

The steps to file an application for seeking extension for convening Annual General Meeting (AGM) are given below:

- The company shall call for a meeting of Board of Director for which a notice must be sent at least 7 days before holding of Meeting of Board.
- Call a meeting of Board of Directors for considering the proposal of extension of date of AGM.
- Pass a resolution for extension of time limit for holding annual general meeting specifying the due reason for extension of AGM.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

- File application in prescribed Form GNL- 1 with ROC concerned. Detailed application should contain the following details:
 - o Reasons of extension
 - Period for which extension is required (Note: It should not exceed three months)
 - o The certified copy of the Board resolution passed be attached to such application. Other document, if any, justifying the application be attached also.
 - o The ROC shall scrutinize the form and documents and then consider granting the extension not exceeding 3 months.
 - o The Company shall conduct the AGM before completion of the extended time.

QUESTION 4- X Ltd. is a listed company having 565 shareholders as on 31st December, 2019. The Board of Directors ask you about the formation of Stakeholders Relationship Committee. Is it necessary to constitute Stakeholders Relationship Committee ? Will your answer be same if X Ltd is an unlisted company ? What should be the composition of this committee ?

ANSWER- As per section 178(5) of the Companies Act, 2013, the Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholder Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

Further, as per Regulation 20 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 every listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders. The chairperson of this committee shall be a non-executive director.

In view of the above provisions, a listed company even if having less than 1000 shareholders is required to constitute a Stakeholder Relationship Committee. In case X Ltd. is an unlisted company, it is not required to constitute a Stakeholder Relationship Committee under Companies Act, 2013.

As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, at least three directors, with at least one being an independent director, shall be members of the Committee and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors.

QUESTION 5- XYZ Ltd. issued a notice on 1st August, 2019 to hold its Annual General Meeting on 24th August, 2019. The company had given the notice through email to all the members as per the record of the company with read receipt. The same is received by all the members of the company. Check the validity of the notice.

ANSWER- As per section 101 of the Companies Act, 2013, a general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice in electronic mode shall be given in such manner as may be prescribed.

'Clear days' means days exclusive of the day of the notice of service and of the day on which the meeting is held.

In this case the date of holding the Annual General Meeting is 24th August, 2019 and the date of issue of notice is 01st August, 2019. Days to be excluded is day of holding the Annual General Meeting i.e. 24th August, 2019 and day of issue of notice

i.e. 01st August, 2019. Therefore, notice of 22 days is given in this case.

Number of days' notice required under section 101 of the Act is 21 days. Therefore, it is a valid notice.

QUESTION 6- The directors of your company is of the opinion that every public company having more than ₹100 crore share capital have to provide for remote e-voting. Does the Companies Act 2013, make it compulsory or optional for such situations? Offer your comments

ANSWER- Section 108 of the Companies Act, 2013 provides for Voting through electronic means. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

"Voting by electronic means" includes "remote e-voting" and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting. "Remote e-voting" means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting.

Section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, provides that, every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members, facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

However, a Nidhi, or an enterprise or institutional investor referred to in chapter XB or chapter XC of the SFBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Thus, companies fulfilling abovementioned criteria have to mandatory opt for e-Voting. Assuming that the company with Rs. 100 crore share capital may be having more than 1000 members, the company should provide for e-voting. If there are less than 1000 members, e-voting is not compulsory.

QUESTION 7- X is being appointed as a proxy for an annual general meeting of XYZ Ltd. The said meeting is being adjourned due to some reason. Now, Y is being appointed as a proxy to attend the adjourned meeting. Who will be a valid proxy for adjourned meeting ? And in case the general meeting of XYZ Ltd is scheduled on 22nd September, 2019 and the company has received 4 proxies for the same holdings of a member dated with 5th, 10th, 12th, and 19th September, 2019. Which proxy is valid ?

ANSWER- As per the Secretarial Standard on General Meeting (SS-2) an instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof. However, if a proxy has been appointed for the original meeting and such meeting is adjourned, any proxy given for the adjourned meeting revokes the proxy given for the original meeting. A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy. Hence Mr. Y will be a valid proxy for adjourned meeting.

As per the Secretarial Standard on General Meeting (SS-2) if a company receives multiple proxies for the same holdings of a member, the proxy which is dated last shall be considered valid. So, the proxy dated last i.e. 19th September, 2019 shall be considered as valid.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 14 – Directors

June 2023

1. **Rakesh Agarwal is a Non-Executive & Non-Independent director of Happy Travels Limited, an unlisted company. The paid-up share capital of the company is ₹ 120 crore. The company has availed a term loan of ₹ 65 crore. The Board of directors, in their meeting passed a resolution to grant a housing loan of rupees one crore to Rakesh for purchase of an apartment in Navi Mumbai at concessional interest rate. The company has implemented a housing loan for its permanent employees at concessional interest rates. The Secretarial Auditor has objected to the loan granted to Rakesh in his Secretarial Audit report.**

Is the claim of Secretarial Auditor correct?

Will your answer differ if the company is a private limited company?

Ans-

- As per Section 185 of Companies Act, 2013, no company shall advance any loan to a director of the company or his relative.
- However, a company may advance any loan to a director of a company by passing a special resolution by the company in general meeting. The explanatory statements to notice for the general meeting shall disclose full particulars of the proposed loan.
- As per Section 185(3) of the Act, the provisions of subsection shall not apply to giving of any loan to the Managing Director or Whole Time Director by the company as part of service conditions extended by the company to all its employees or as per any scheme approved by members by a special resolution.

As Rakesh is neither the Managing Director nor a whole time director of the company, the provisions of Section 185(1) & 185(2) are applicable to it. Hence, without passing a special resolution in the general meeting, no loan can be given to Rakesh.

If Happy Travels Ltd would have been a private company, the private company can give loan to a director as per Notification dated 5th June 2015 subject to the following conditions:

- a) No other body corporate has invested in the share capital of the private company
- b) The borrowings from banks is less than twice the paid up capital or rupees 50 crore whichever is lower.
- c) The private company has not defaulted on its borrowings from banks.

As Happy Travels Limited has availed a term loan of rupees 65 crore from a bank which is more than the ceiling of rupees 50 crore as per Notification dated 5th June 2015, it cannot grant the housing loan to Rakesh even if it is a private company.

2. **The Board of directors of ABC Limited met thrice in the year 2021 and 4th meeting though called but could not be held for want of quorum. Examine with reference to the relevant provisions of the Companies Act 2013, whether any provision of the Act has been contravened?**

Ans- In terms of section 173(1) of the Companies Act, 2013, a company must hold a minimum number of four meetings of its Board of directors every year in such a manner that not more than 120 days shall elapse between two consecutive meetings of the Board.

The proviso to this sub-section provides that the Central Government may by notification, direct that these provisions will not apply in relation to any class or description of companies or may apply subject to such exceptions, modifications or conditions as may be specified in the notification.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

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

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled. An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting. Thus, in case of an adjourned Meeting, the gap of one hundred and twenty days for the purpose of fixing up the date of the next Meeting or for any other purpose should be counted from the date of the original Meeting. In this case, the Board meeting of ABC limited was held 3 times and for the 4th time meeting was called but could not be held for want of quorum.

Hence, as per the provisions of the Companies Act, 2013 the Company has violated the provisions with respect to the convening the Board Meetings.

But if the 4th Board meeting was adjourned due to want of quorum and the adjourned meeting was duly held within the stipulated time, then the company has not contravened the provisions of the Act.

3. (a) Prapti Hotels Ltd. want to appoint Susmita as an independent director from 1st January, 2022. It came to the knowledge of Vice President (Commercial) of the company that Susmita stayed at their

hotel at Ooty for three days from 1st June to 3rd June, 2021 at room rent of ` 2,500 per day and thus had entered into a transaction with the company. The Hotel charged same room rent from other members of the general public during that time. Advise the Vice President (Commercial), if Susmita can be appointed as an independent director of the company from 1st January, 2022

Ans- Section 149(6) of the Companies Act, 2013 provides that Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director who has or had no pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its

holding, subsidiary or associate company or their promoters or directors during the two immediately preceding financial years or during the current financial year.

This provision inter alia requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/subsidiary/associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of Public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter was examined and it was clarified by MCA vide its circular no. 14/2014 dated 9th June, 2014 that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship, under section 149(6)(c) in such cases.

Therefore, staying of Susmita at the hotel in Ooty of Prapti Hotels Ltd. and making transactions with the company 6 months prior to her proposed appointment in the board as Independent Director cannot be termed as pecuniary relationship as those were at par with members of general public.

- 4 **Jyoti Prasad obtained two (2) Director Identification Number (DINs) by mistake in 2016 and 2019. He used his second DIN to become director in two private limited and three public limited companies. Later, on realisation, he applied to Registrar of Companies for deactivation of his first DIN. The Registrar rejected the application. Examining relevant legal provisions, discuss So, the Vice President (Commercial) should be advised that Susmita can be appointed as Independent Director in the Company from 1st January, 2022.**

Ans- As per section 155 of the Companies Act, 2013, no individual who has already been allotted a DIN under section 154 shall apply for, obtain or possess another DIN.

As per Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received alongwith fee as specified in the Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number.

On an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN: Provided that before deactivation of any DIN in such case, the Central Government shall verify e- records with the validly retained number.

In this case, Jyoti may make an application in form DIR-5 to surrender his first DIN with declaration as stated in above provisions.

- 5 **Lazybones, director of Global Travels Limited, an unlisted public company was removed from the Office of Director u/s 169 of Companies Act, 2013 after following due process of Notice and the principles of Natural Justice. The board of directors sought your opinion on filling up the vacancy caused by removal of director. Advise**

Ans- The vacancy resulting from removal of director under section 169 of the Act may be filled up by appointing another director at the same general meeting where Lazybones was removed from directorship by appointing any other person as a director. However, a special Notice for the proposed appointment of another person in the vacancy caused by removal of Lazybones needs to be given under section 169(2) of the Act.

ii)As per Section 169(5) of the Act, the vacancy caused by removal of Lazybones may be filled as a casual vacancy in accordance with provisions of Section 161(4) of the Act. As per Section 161(4) of the Act, in case of public company if the office of director appointed by the company is vacated before the expiry of his term of office in normal course, the resulting casual vacancy may be filled up by the Board of Directors at a meeting of the Board, which shall subsequently be approved by the members in the immediate next general meeting.

iii)In the given case, another person can be appointed in the place of the director removed from office by the Board. However, subject to the provisions of the Articles of Association of the company, the director appointed in the casual vacancy will hold office only up to the date which the director in whose place he was appointed would have held office if it had not been vacated.

iv)The company is required to file Form DIR-12 within 30 days of appointment of another person in the casual vacancy along with the fees provided under Companies (Registration Offices and Fees) Rules, 2014.

June 2022

- (a) **Happy Mobile Ltd. is engaged in the manufacturing of mobiles and accessories related to mobile. The Board of the company consists of nine directors i.e. Rakesh (Director), Shyam (Director), Mehul (Director), Jigisha (Director), Komal (Director), Kavita (Director), Ashish (Independent Director), Gagandeep (Independent Director) and Anil (Small Shareholder's Director). Articles of Association of the company does not provide for retirement of all directors at every Annual General Meeting. Calculate the number of directors liable to retire at the Annual General Meeting to be held on 15th September, 2022. (4 marks)**

Ans- Section 152(6) of the Companies Act, 2013-states that unless it is provided by the articles of the company, 2/3rd directors are liable to retire by rotation and 1/3rd are liable to retire at every general meeting after the meeting at which first directors are appointed.

Directors who are liable to retire by rotation are known as rotational directors. Any fraction while calculating 2/3rd shall be rounded off to the one. Alternatively, it can be said that only 1/3rd of the total number of directors can be non-rotational directors. Here, total directors mean directors appointed by the company. 1/3rd of rotational directors shall retire at every General Meeting. The directors who have been longest in office since their last appointment are liable to retire by rotation at every Annual General Meeting. Small Shareholders' Director and Independent Directors are non-rotational directors.

Applying above provisions, Ashish (Independent Director), Gagandeep (Independent Director) and Anil (Small Shareholders' Director) are non-rotational directors.

Remaining six directors are liable to retire by rotation. 1/3rd of rotational directors are liable to retire at the forthcoming Annual General Meeting (i.e. 1/3rd of 6 = 2). Therefore, any two directors from Rakesh, Shyam, Mehul, Jigisha, Komal and Kavita will retire by rotation

- (b) **Naman is Managing Director, Manan is Whole-time Director and Ojas is Director of the Apollo Ltd. Naman has resigned from his position with effect from 31st March, 2022 due to his ill health. Doctor has advised him to take complete bed rest. Manan and Ojas also tendered resignation with effect from 1st April, 2022 pursuant to a slump sale of one of the undertakings of Apollo Ltd. to Nimbo Ltd. (a group company of Apollo Ltd.). Consequently, Manan and Ojas were appointed as Whole-time Director and Director respectively in Nimbo Ltd. w.e.f. 1 June, 2022. Manan and Ojas individually made an application to the Board of Apollo Ltd. for compensation for loss of office. When, Naman came to know about the said applications by Manan and Ojas demanding compensation, he also asked for the compensation. Who will be eligible for such compensation as per the provisions of the Companies Act, 2013 ? (4 marks)**

Ans- Section 202 of the Companies Act, 2013 provides that company may make payment of compensation for any loss of office. Such compensation is payable to Managing Director (MD) or Whole-time Director (WTD) or Manager of company. However, no compensation shall be payable to any other director for loss of office.

As per section 202(2), compensation is not payable in following circumstances:

- Where Managing Director or Whole time Director or Manager resigns his office in view of reconstruction of the company or amalgamation with other company and he is appointed as Managing Director or Whole time Director or Manager of the reconstituted company or body corporate resulting from such amalgamation. In the present case,

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

since Manan has taken up directorship in Nimbo Ltd. Pursuant to a reconstruction within the group companies (in the form of slump sale of one of the undertakings to another group company), he cannot ask for the compensation for loss of office.

- Ojas is not eligible for compensation at all as per the provisions of section 202 of the Companies Act, 2013.
When a director (MD/WTD) resigns from his office at his / her will (i.e., other than because of the reconstruction or amalgamation) he cannot claim compensation for the loss of office. Accordingly, Naman also cannot claim any compensation for the loss of his office as he has resigned voluntarily

(c) Extra Power Ltd. desires to appoint an additional director on its Board of directors. The Articles of Association of the company confer upon the Board to exercise the power to appoint such a director. As such Mohan is appointed as an additional director on 12th December, 2020. The 5th Annual General Meeting of the company was scheduled to be held on 17th September, 2021; however, the meeting was adjourned to and held on 30th September, 2021. Decide the date up to which Mohan can continue as an additional director in Extra Power Ltd. ? (4 marks)

Ans- Section 161(1) of the Companies Act, 2013, provides that the Articles of Association of a company may confer on its Board of directors the power to appoint any person, other than a person who fails to get appointed as a director in a General Meeting, as an additional director at any time.

Person who is appointed as an additional director shall hold office up to the date of the next Annual General Meeting or the last date on which the Annual General Meeting should have been held, whichever is earlier. In case of default in holding Annual General Meeting, the additional director shall vacate his office on the last day on which the Annual General Meeting ought to be held.

Further, as per section 96, the company is required to hold an Annual General Meeting (other than First AGM) within a period of 6 months of closure of the relevant financial year. As per section 2(41), "financial year" in relation to any company means period ending on 31st March every year.

In the given case, since the Annual General Meeting was adjourned to and held on 30th September, 2021, Mohan can continue up to 30th September, 2021

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2020

QUESTION 1- Examine the validity of the following statements :

- (i) 'Every listed public company must have an independent woman director.'
- (ii) "Every listed public company must have a small shareholders' director.'

ANSWER- According to Regulation 17 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Board of Directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of Directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.

The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

Thus, every listed public company is not required to appoint independent woman director, but the listed entities falling under the above bracket must have an independent women director. According to Section 151 of the Companies Act, 2013 r/w Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, a listed company may have one director elected by small shareholders upon notice by not less than one thousand small shareholders or one-tenth of the total number of such small shareholders, whichever is lower. However, a listed company may opt to have a director representing small shareholders suo-motu.

Thus, appointment of small shareholders by listed company is optional.

QUESTION 2- RST Communications Ltd. has a total paid-up share capital of ₹ 6 crore consisting of 6 lakh shares of ₹ 100 each. Its annual general meeting had been scheduled for 15th September, 2019. On 25th August, 2019, two of its members jointly holding 5500 fully paid shares sent a notice to the company intimating their intention to move a resolution in the forthcoming Annual General Meeting for removing a director before the expiry of his term and appointing another person as a director in place of the director so removed. Is the company required to act on this notice? Explain with reference to the relevant legal provisions.

ANSWER- According to section 115 r/w Rule 23 of the Companies (Management and Administration) Rules, 2014 and with Section 169(2) of the Companies Act, 2013, the special notice with the intention of removal of director of the company or to appoint somebody in place of a director so removed, is required to be sent by the members to the company not earlier than 3 months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than ₹5 lakh has been paid up on the date of the notice.

In the instant case, since the two shareholders are jointly holding shares amounting to ₹5,50,000 and have sent a special notice 20 days before the date of Annual General Meeting intimating their intention to remove a director and appointing another person as director in place of director so removed is in compliance with the provisions under Rule 23 of the Companies (Management and Administration) Rules, 2014.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings. Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company. The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting. Hence, the company is required to act on such notice and follow the other procedures w.r.t. removal of Director as prescribed under Section 169 of the Companies Act, 2013.

QUESTION 3- Rajeev and his wife Surekha are the only two directors of Rajsur Pvt. Ltd. Rajeev went abroad for two months. Before going abroad, he registered a general power of attorney in favour of his son Ranbeer, aged 21 years, to execute all documents on his behalf as an individual as well as director of Rajsur Pvt. Ltd. Ranbeer signed a contract on behalf of Rajsur Pvt. Ltd. by exercising his power of attorney. Is this contract binding upon the company?

ANSWER- Section 166 (6) of the Companies Act 2013 prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void. Authorizing any person to sign a document as a director amounts to assignment of office of director.

Hence, in the instant case Rajeev cannot assign his office of directorship in Rajsur Pvt. Ltd. to his son Ranbeer by a general power of attorney to sign documents on his behalf as director of the company. Contracts signed by Ranbeer on behalf of the company are void and not binding upon the company

QUESTION 4- Ratan is a member of Adarsh Club Ltd., a company formed for promoting sports and not for profit. For the ensuing extraordinary general meeting to be held on 5th November, 2019, he appointed his daughter Prema (not a member of the company) as proxy to attend the meeting as he would be out of station on that date. Accordingly, Prema deposited the proxy with the club on 2nd November, 2019. The club rejected the proxy instrument. Is the action of the club valid ?

ANSWER- According to Section 105(1) of the Companies Act, 2013, any member a company who is entitled to attend and vote at the meeting of the company is entitled to appoint another person as a proxy (who may not be a member) to attend and vote at the meeting, though a proxy does not have the right to speak at such meeting and shall not be entitled to vote except on a poll in the meeting.

However, according to the third proviso to Section 105(1) of the Companies Act, 2013, members of certain class or classes of companies as may be specified by the Central Government shall not be entitled to appoint any other person as a proxy. Accordingly, in case of companies incorporated under Section 8 of the Companies Act, 2013 a member of a company is not entitled to appoint any other person as a proxy unless such other person is also a member of such company as prescribed under Rule 19 of the Companies (Management and Administration) Rules, 2014.

In the instant case, though the proxy has been deposited before the specified time period (i.e., at least 48 hours before the meeting) Prema cannot act as a proxy as she herself is not a member of the company. Therefore, Adarsh Club Ltd. is right in rejecting her proxy instrument.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 5- Kailash, a director of a company has sent in his resignation notice stating that he is resigning from the office of director with effect from 10th December, 2019. The notice was received by the company on 15th December, 2019. State the effective date of resignation of Kailash and the date up to which the company is required to intimate the Registrar of Companies (ROC). Is Kailash required to intimate his resignation to the ROC mandatorily?

ANSWER- According to Section 168(2) of the Companies Act, 2013, the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Thus, in the given case, the resignation of Kailash shall take effect from December 15, 2019.

Section 168(1) read with Rule 15 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 stipulates that the company shall within thirty days from the date of receipt of notice of resignation from a director, intimate to the Registrar of Companies in Form DIR-12 along with specified fees and post the information on its website, if any. Thus, in this case the company will have to file form DIR-12 by January 14, 2020.

According to Rule 16 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 the resigning director may also forward to the Registrar of Companies, a copy of his resignation along with reasons for the resignation in form DIR-11 along with specified fees within a period of thirty days from the date of resignation.

QUESTION 6- Amit is having directorship of the following companies:

Nature of Companies	Number of Companies
Public companies (including 2 dormant companies)	8
Private companies (including 2 subsidiaries of public companies)	10
Alternate director (in a private company)	1
Section 8 company	1

Indicate how many more directorships Amit can undertake in public or private companies.

ANSWER- According to Section 165(1) of the Companies Act, 2013, no person, can hold office as a director, including any alternate directorship, in more than twenty companies at the same time. For reckoning the limit of directorships in twenty companies, the directorship in a dormant company is excluded.

Further, out of the above twenty companies, the maximum number of Public Companies in which a person can be appointed as a director cannot be more than ten. For reckoning the limit of ten Public Companies, directorship in Private Companies that are either holding or subsidiary company of a Public Company shall also need to be included.

In the given case, Amit is holding a directorship in:

- 8 Public Companies (including 2 Dormant Companies);
- 10 Private Companies (including 2 subsidiaries of Public Companies);
- Alternate Director (in a Private Company);
- Section 8 Company

Accordingly, in Public Company presently he is holding 8 directorship and in Private Company 9 directorship. Hence, total number of directorships he is already holding is 17 (since, directorship in Section 8 Company is excluded, from reckoning the limit of directorship of 20 companies).

Thus, Amit can take up directorship in 2 more Public Companies and 1 more Private Company.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2021

QUESTION 1- Rohan is a well-known banker and holds directorship in 22 companies as on 30th September, 2020. The companies include 10 public companies, 11 private companies (including MNP Pvt. Ltd., a dormant company) and 1 company registered under section 8 of the Companies Act, 2013. Recently, on 20th December, 2020, ABC Ltd. in which Rohan is not a director acquired 100% shares in MNP Pvt. Ltd. In this context, answer the following :

- (i) Whether the directorships held by Rohan as on 30th September, 2020 are valid ?
- (ii) Can Rohan continue to hold directorship in all 22 companies after acquisition made by ABC Ltd. ?
- (iii) Company Secretary of ABC Ltd. has proposed to restrict number of directorship of the directors in ABC Ltd. Whether the proposal given by the Company Secretary is tenable in light of the provisions of the Companies Act, 2013 ? (5 marks)

ANSWER- According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time. Whereas the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

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

Further, for reckoning the limit of directorships of 20 companies, the directorship in a dormant company and section 8 companies shall not be included.

The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

(i) In the present case, holding of directorship of Rohan as on 30th September, 2020 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company and one company is registered under section 8 of the Companies Act, 2013. So, maximum directorship he is holding is in 20 companies.

(ii) Upon MNP Pvt. Ltd. becoming subsidiary of ABC Ltd. (a public company) directorship in MNP Pvt. Ltd. shall also be included within the limit of 10 public companies.

Accordingly, if Rohan acts as director in more than 10 public companies, then same will be in contravention of Section 165 of the Companies Act, 2013.

(i) According to section 165(2) of the Companies Act, 2013 subject to the provisions of Section 165 (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. So, the proposal of Company Secretary is tenable.

QUESTION 2- Dim Dim Ltd. was incorporated on 31st December, 2019. An advisor to the company has suggested that since the Articles of Association (AOA) does not contain provisions relating to appointment of first directors, company can function without the directors until AOA is amended. Do you agree with the suggestion given by the advisor? Can Dim Dim Ltd. appoint a director who has just stayed for a period of 120 days in India during financial year 2019-20? (4 marks)

ANSWER- The first directors of most of the companies are named in their Articles of Association. Regulation 60 of Table F provides that the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

Further, Section 152(1) of the Companies Act, 2013 provides that, where no provision is made in the Articles of Association of a company for the appointment of the first director, the

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

Accordingly, in the given case, advice given by the advisor regarding first director is not correct.

Section 149(3) of the Companies Act, 2013 provides that every company shall have at least one director who has stayed in India for a total period of not less than 182 days during the financial year. However, in case of a newly incorporated company the requirement under this sub section shall apply proportionately at the end of the financial year in which it is incorporated.

Hence, Dim Dim Ltd. which has been incorporated on December 31, 2019 can appoint a director who has just stayed for 120 days in India during the financial year, 2019-20.

QUESTION 3- Shankar was appointed as a small shareholders' director on 2nd March, 2017. Shankar has submitted a letter to the Board of directors expressing his desire to get re-appointed. In this context, the Board wants your opinion on the following points :

- (i) **Whether Shankar can be re-appointed as on 31st March, 2021 ?**
- (ii) **Whether he is liable to retire by rotation as on 31st March, 2019 ?**
- (iii) **Since Shankar is serving as director in many companies, whether his directorship in the capacity of small shareholders' director be included in the total number of directors as per the provisions of the Companies Act, 2013 ? Answer to the Board. (4 marks)**

ANSWER- As per Section 151 read with Rule 7 of the Companies(Appointment and Qualifications of Directors) Rules, 2014, the tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment. Further, such director shall not be liable to retire by rotation.

A small shareholders' director is included in the total limit of directorship of 20 companies as prescribed under section 165 (1) of the Companies Act, 2013.

Based on the above provisions, answers to the questions are as under:

- (i) No, Shankar as small shareholder director cannot be re-appointed as on March 31, 2021.
- (ii) No, Shankar is not liable to retire by rotation as on March 31, 2019.
- (iii) Yes, Shankar's directorship will be counted in the over all limit provided under Section 165 (1) of the Companies Act, 2013.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- X, proposes his candidature as a director of X Ltd. along with the deposit of ₹1 Lakh. Later X failed to be appointed as director but received 39% of the total votes. X, claimed X Ltd. to refund the deposit but the company denied to pay as he failed to be elected having obtained only 39% of votes cast. Is the decision of the company valid ? Explain when the requirement of deposit of amount is not applicable ?

ANSWER- As per section 160 of the Companies Act, 2013, a person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or as the case may be, the intention of such member to propose him as a candidate for that office. Such notice must come along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty five percent of total valid votes cast either on show of hands or on poll on such resolution.

In the given case, Mr. X. has deposited a sum of Rs. 1 lakh with the company, but he failed to get appointed as a director. However, Mr. X secured 39% of total valid votes i.e. condition of securing more than 25% of total valid votes cast, has been satisfied. Hence the decision of the company not to refund Rs. 1 Lakh to Mr. X is not valid.

As per the proviso to section 160(1) of the Companies Act, 2013, the requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the company, in the case of a company not required to constitute Nomination and Remuneration Committee.

QUESTION 2- XYZ Ltd wants to pay sitting fees to its women directors, less than the sitting fees payable to other directors of the Company. And want to appoint X as its Managing Director of the company for a term exceeding five years at a time. Advise the company on the above proposals.

ANSWER- As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 a company may pay a sitting fees to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

However, for Independent Directors and Women Directors, the sitting fees shall not be less than the sitting fee payable to other directors.

So, XYZ Ltd. cannot pay sitting fees to its women directors less than the sitting fees payable to other directors of the company.

As per Section 196 of the Companies Act, 2013 a company shall not appoint or re- appoint any person as its managing director for a term exceeding five years at a time. So, Mr. X cannot be appointed as Managing Director of the company for a term exceeding five years at a time.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 3- X is a company secretary of XYZ Ltd. He is of the opinion that the notice, agenda and notes on agenda of the board meeting should be send only to the alternate director and not to the original director of the company. Advice in this matter.

ANSWER- As per Section 173, the notice of Board meeting is to be sent in writing to every director at his address registered with the company.

SS-1 provides that the Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Hence it is advisable to send the Notice, Agenda and Notes on Agenda both to original and alternate director of the company.

QUESTION 4- X has applied to the Indian Institute of Corporate Affairs (IICA) for inclusion of his name in the data bank of independent directors. He is working as a director of X Ltd and Y Ltd, both are unlisted public companies having the paid-up share capital of ₹10 crores since last 7 years. X says that he is not required to pass the online proficiency self-assessment test as he is director of two unlisted companies with paid-up share capital of ₹10 crores since last 7 years. Explain whether the contention of X is correct.

ANSWER- As per Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, every individual whose name is included in the data bank of independent directors of IICA shall pass an online proficiency self-assessment test conducted by the IICA within a period of two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the data bank of the institute.

Proviso to this sub rule provides that the individual who has served for a period of not less than three years as on the date of inclusion of his name in the data bank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of Rs. 10 crores or more shall not be required to pass the online proficiency self-assessment test.

It is further provided that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

In view of this proviso, the contention of director is valid as the experience of director is 7 years.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 15 - Board Composition and Powers of the Board

June 2023

1. The CFO of a well-known public company (one among top 20 listed companies) suggested to the Board of directors to constitute a Risk Management Committee with only the CFO and General Manager (HR) as its members. The Company Secretary of the company, however insisted that he should not only be included in the Risk Management Committee but should also be made the chairman of the committee as he is well versed in corporate laws.
Referring to the provisions of Companies Act, 2013 and the Relevant Rules, examine the proposal

Ans-

- As per Regulation 21 of SFBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), the Board of top 1000 listed companies shall constitute a Risk Management Committee (RMC). The top 1000 listed entities shall be determined on the basis of market capitalization as at the end of immediate preceding financial year and high value debt listed entities.
- The Risk Management Committee shall have minimum three members with majority being members of Board of Directors (BOD) including at least one independent director. In case of a listed entity having SR equity shares, at least two thirds of the members of RMC shall be independent directors.
- The chairman of RMC shall be a member of the BOD. Senior executives may be members of RMC.
- The RMC shall meet at least twice in a year. The quorum for the meeting of RMC shall be either two members or one third of the members of the RMC whichever is higher including at least one member of the BOD in attendance. Not more than 180 days shall lapse between two consecutive RMC meetings.
- The BOD shall define the role and responsibility of RMC and may delegate monitoring the risk management plans of the company to the RMC including cyber security.

In the instant case, as the company is among the top 20 public listed companies based on market capitalization, it is required to constitute RMC with independent directors, members of Board of Directors and senior executives. However, the Chairman of RMC has to be a Director of the company. Hence, the Company Secretary may be included as a member of the RMC, his contention that he should be made Chairman is wrong.

Also, the contention of the CFO to constitute RMC only with senior officers of the company is not correct.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

2. Zero Motors Limited, a listed company has three manufacturing divisions:

(i) Cycle Division

(ii) Motorcycle Division

(iii) Electric Scooter Division.

The following information is given: (Rupees in crore)

Equity share capital: 300

Preference share capital: 120

General Reserve: 500

Revaluation Reserve: 200

Profit and Loss A/c (CR): 300

Long term loan: 480

Short term loan: 620

Gross revenue in last FY: 2010

Investment in Cycle division: 40

Turnover of Cycle division 450

The Board of directors of the company have decided by unanimous resolution the following in their meeting held on 31st May, 2023:

(i) To obtain a further long term loan of Rupees 300 crore from financial institution.

To invest in trust securities the compensation received as a result of divestment of Cycle Division. Referring to the provisions of Companies Act, 2013, decide if the board resolution is sufficient for the above proposals

Ans- i) According to Section 180 of the Companies Act, 2013, the Board of Directors shall exercise their powers only with the consent of the members of the company by a special resolution in the following cases:

- To sell, lease or otherwise dispose of the whole or substantially whole of the company;
- To invest otherwise than in trust securities the amount of compensation received as a result of merger or amalgamation;
- To borrow money, where the money borrowed, together with the money already borrowed by the company will exceed aggregate of paid-up capital and free reserves.

However, a board resolution is sufficient if the company wants to borrow money, where the money to be borrowed is less than the aggregate of the paid-up share capital, free reserves and securities premium.

In the instant case, the money to be borrowed together with the money already borrowed as long term loans from financial institutions is rupees 780 Crore (480+300) and aggregate of the paid-up capital and free reserve rupees 1220 crore (300+120+500+300 – rupees 1220 crore.

Hence, a special resolution is not required. Board Resolution is sufficient.

ii) According to section 180 of the Act, a Special Resolution is required only in case the compensation on account of merger or amalgamation is invested otherwise than in trust securities.

In the instant case, as the compensation money on account of divestment of Cycle Division was invested only in trust securities, board resolution is sufficient.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

3 The Board Meeting followed by the Annual General Meeting of a large listed company has just concluded and the Chairman is reluctant to call an Extra Ordinary General meeting or a Board Meeting any time soon. The Chairman of the company sought your advice on appointing Paritosh who has just retired as CMD from a large commercial bank as an independent director on the Board of the company for the period of seven years. Advice.

Ans-

- With effect from 1st January 2022 an independent director can be appointed on the board of a listed company only by a special resolution passed by the members at a general meeting as per Regulation 25(2A) read with Regulation 17 of SEBI (Listing Obligations and Disclosure Requirements), 2015 (LODR). Hence, approval of special resolution by the members in the general meeting is mandatory.
- However, as the Board Meeting and the Annual General Meeting (AGM) of the company has just concluded and as the chairman is unwilling to call an Extra Ordinary General meeting or the Board meeting in the near future, an alternative approach to solving the problem is appointing Paritosh as an additional director under section 161(1) of the Act by passing a board resolution by circulation under section 175 of the Act.
- According to Para 6.5 of Secretarial Standards 1 issued by ICSI, passing a resolution by circulation shall be considered valid as if it had been passed at a duly convened meeting of the Board of Directors.
- The maximum tenure of an independent director shall be for a period of five years as per Section 149(10) of the Companies Act, 2013. Hence, the suggestion of the chairman to appoint Paritosh for a period of seven years is not valid.
- The additional director shall hold office up to the date of next annual general meeting. In the next AGM, Paritosh can be appointed as an independent director for a further period of four years by passing a special resolution by the members.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

The following information is given:

(Rupees in Crores)

Name	Status	Paid-up Share Capital	Annual Turnover	Borrowings
Sky Limited	Listed	9	96	48
Earth Limited	Unlisted	19	420	45
Water (Private) Ltd.	Subsidiary of Earth Limited	4	112	27

(i) Which companies are required to constitute Nomination and Remuneration Committee (NRC)?

(ii) Can the Chairman of the company also chair the NRC?

(iii) What is the minimum number of executive directors and independent directors on NRC?

(iv) What is the quorum and number of meetings of NRC in a financial year?

Ans-

i. As per Regulation 19 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (I ODR), a listed company shall constitute the Nomination and Remuneration Committee (NRC) with at least three directors all of whom shall be non-executive directors with at least fifty percent of the directors of NRC being independent directors.

According to Section 178 of Companies Act, 2013 (Act), read with Rule 6 of the Companies (Meetings of Board and its Power) Rules, 2014 and Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014,-

(i) Every listed Public Company;

(ii) All Public companies with a paid up capital of 10 crore rupees or more; or

(iii) All Public companies having turnover of 100 crore rupees or more; or

(iv) All Public companies, having in aggregate, outstanding loans, debentures and deposits exceeding 50 crore rupees are required to constitute NRC consisting of three or more non-executive directors out of which not less than one half shall be independent directors.

According to proviso to Section 2(71) of the Companies Act, 2013) a company which is a subsidiary of a public company, not being a private company, shall be deemed to be a public company as per this Act even when it continues to be a private company in its Articles.

Hence all the three companies viz., Sky Ltd, Earth Ltd and Water (Private) limited are required to constitute NRC of their Board as they are either listed or their paid-up share capital or turnover or borrowings exceed the prescribed limits.

ii. Proviso to Section 178 states that the Chairman of the company may be appointed as a member of the committee but shall not chair the NRC. Hence the chairman of the company cannot be appointed as chairman of NRC. The Chairman of the NRC shall be an Independent Director.

iii. Since NRC is constituted with non executive directors and independent directors in majority, the minimum number of executive directors on NRC is NIL and the minimum number of independent directors of NRC is half i.e two (rounded off to the nearest number) where the total strength of NRC is three directors.

iv. The quorum for NRC is as specified by the Board. Where no quorum is specified in the Articles, all the members of NRC shall be quorum as per para 3.5 of SS-1. According to SEBI LODR Regulations, quorum for NRC meeting shall be either two members or one third of the members of the Committee, whichever is greater, including at least one Independent Director in attendance.

SEBI LODR Regulations stipulates at least 1 NRC meeting in a year.

June 2022

(a) In compliance to the Companies Act, 2013, at least one-woman director shall be on the Board of such class or classes of companies as may be prescribed. Riya is keen to hold the office of woman director in a company. She has selected some companies in which there is a vacancy for a woman director.

2. Name of the company Listing status Paid up share capital (in `) as per the latest audited financial statements Turnover (in `) as per the latest audited financial statements

Maya Ltd.	Unlisted	50 Crore	100 crore
Manna Ltd.	Listed	100 crore	150 crore
Mopin Ltd.	Unlisted	150 crore	350 crore

3. Guide Riya in selecting the companies which are mandatorily required to appoint a woman director as per the Companies Act, 2013. Also explain as to when a company is required to appoint independent woman director ? (5 marks)

Ans- As per section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one woman director:

- All listed companies
- Public company-
 - with paid up capital of Rs. 100 crore or more; or
 - with turnover of Rs. 300 crore or more.

Applying the above provision, it can be suggested that:

- Maya Ltd. is not compulsorily required to appoint woman director as its paid-up capital is less than Rs. 100 crore and turnover is less than Rs. 300 crore.
- Manna Ltd. is compulsorily required to appoint at least one woman director as it is a listed company.

Mopin Ltd. is compulsorily required to appoint at least one woman director as its paid-up capital is more than Rs. 100 crore and turnover is more than Rs. 300 crore.

Based on above discussion, it can be advised to Riya that Manna Ltd. and Mopin Ltd. are mandatorily required to appoint at least one woman director.

According to Regulation 17 of SEBI (LODR) Regulations, 2015-Board of directors of top 500 listed companies shall have at least one independent woman director by 1st April, 2019 and Board of directors of the top 1000 listed companies shall have at least one independent woman director by 1st April, 2020. The top 500 and 1000 listed companies shall

be counted on the basis of market capitalization, as at the end of the immediate previous financial year

- (b) A director while leaving India for medical treatment abroad informed the Board of directors that he would not be available for the next six months. During his absence, three Board meetings were held and notices were not sent to him. Is there any default under the Companies Act, 2013 ? What would be the consequences ? (4 marks)**

Ans- Section 173(3) of the Companies Act, 2013 requires that not less than seven days' notice in writing shall be given to every director at the registered address (whether in India or outside India) as available with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Further, notice of Board meeting shall be given even when meetings are held on pre-determined dates or at pre-determined intervals. In *Re Portuguese Consolidated Copper Mines (1889)*, it was held that notice to director is necessary even if he has informed that he will not be able to attend the Board meeting. If the notice of meeting is not given to one of its directors, meeting of Board of directors is invalid and resolution passed at such meeting are inoperative (*Parmeshwari Prasad Gupta v. Union of India [1974] 44Comp Cas 1 [SC]*)

Therefore, notice of Board Meeting was required to be given despite the fact that while going abroad, the director had already informed his non-availability during next six months.

Consequences of not giving notice

- If the notice is not given there is violation of section 173. Every officer of company whose duty is to give notice under this section and who fails to do so shall be liable to penalty of Rs. 25,000/-

Failure to send notice would render the resolutions passed at the meeting null and void

(c) The Board of directors of Well Ltd., wants to contribute `60,000 to a charitable trust during the financial year 2022-2023. During the financial year 2021-2022, the company suffered losses; however, during the financial years 2019-20 and 2020-21 the net profits were `12,00,000 and `5,00,000 respectively. The directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so ? Whether contribution towards Gratuity Fund for employees of the company can be considered as contribution to charitable trust under the Companies Act, 2013 ?

Suitable assumptions can be made. (4 marks)

Ans- As per section 181 of the Companies Act, 2013, company can contribute to bona-fide charitable funds or other funds which are not directly connected to business of company upto 5% of its average net profits during the preceding three financial years.

If the contribution is proposed for more than this limit, prior approval in General Meeting is required.

In present case, we assume Well Ltd. has incurred Loss of Rs. 2,00,000 during the financial year 2021-22

Year	Average Profits/Loss
2019-20	12,00,000
2020-21	5,00,000
2021-22	-2,00,000

Average net profits = $12,00,000 + 5,00,000 - 2,00,000 / 3 = \text{Rs. } 5,00,000$ 5% of

Average Net Profits = 5% of 5,00,000 = Rs. 25,000

Pursuant to Section 181, if contribution to charitable trust is more than 5% of average net profits for three financial years , it requires prior approval in General Meeting.

Hence, in the above case, where Well Ltd. wants to contribute more than Rs. 25000 i.e. Rs. 60,000 (in the present case) to charitable fund, the directors have to ensure that:

- b) Prior approval by ordinary resolution in the general meeting is obtained to make contribution to charitable fund.
- c) The trust is bonafide.

Contribution towards Gratuity Fund for employees of company cannot be considered as contribution towards charitable fund or trust. Gratuity Fund is directly related to business of company or welfare of employees

(d) With the scenarios described below, examine whether any of the following companies is required to constitute Audit Committee as per provisions of the Companies Act, 2013 ?

<i>Name of Company</i>	<i>Paid up capital (Rs. in crore)</i>	<i>Turnover (Rs. in crore)</i>	<i>Aggregate outstanding loan, debenture and deposits (Rs. in crore)</i>
A Ltd. (Unlisted)	8	75	55
B Ltd. (Listed)	10	75	11
C Pvt. Ltd.	8	110	11
D Ltd. (Unlisted)	10	51	5

Ans- Section 177 of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 provides that the Board of directors of following companies are required to constitute an Audit Committee of the Board:

- Every listed company;
- All public companies with paid up capital of Rs. 10 crore or more; or
- All public companies having turnover of Rs. 100 crore or more; or
- All public companies, having in aggregate outstanding loans, debentures and deposits exceeding Rs. 50 crore or more

In view of the above provisions, it can be suggested that:

- A Ltd. is required to constitute Audit Committee as it has aggregate outstanding loans, deposit and debenture of Rs. 55 crore (in excess of Rs. 50 crore).
- B Ltd. is required to constitute Audit Committee as it is a listed company.
- C Pvt. Ltd. is not required to constitute Audit Committee as it is a private company.
- D Ltd. is required to constitute Audit Committee as it has a paid up capital of Rs. 10 crore

December 2020

QUESTION 1- A meeting of the Board of Directors was convened to approve the annual financial statements of the company. The company has a total of 9 directors out of which 4 directors were attending the meeting through video-conferencing while the Chairman and 4 other directors were personally present. Five directors (including the Chairman and those attending the meeting through video conferencing) gave their assent to approve the financial statements while three directors personally present dissented. Can the Chairman consider the financial statements as approved? Explain with reasons.

ANSWER- Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes that approval of annual financial statements must not be dealt with in any Meeting through video-conferencing or other audio-visual means. However, second proviso of Section 173(2) of the Companies Act, 2013 read with first proviso of Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that where there is quorum present in a meeting through physical presence of directors, any other director may participate in the meeting through video or other audio-visual means.

In the instant case, Chairman and 4 other directors were personally present, thus, fulfilling the requisite quorum through physical presence of Directors, the remaining 4 directors attending the meeting through Video Conferencing can participate in the meeting.

Accordingly, assent given by the Chairman and 4 directors participating through video-conferencing to approve the financial statements shall be valid and the resolution shall be deemed to be passed by requisite majority.

QUESTION 2- The Annual General Meeting (AGM) of a company is scheduled to be held on 22nd August, 2019 at 2 p.m. Taking into account the relevant provisions contained in the Companies Act, 2013 indicate the latest time for posting notices of the meeting to the members to ensure legal compliance.

ANSWER- According to Section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode. For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted.

Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice in line with Rule 35(6) of the Companies (Incorporation) Rules, 2014 which provides that in case of delivery by post, such service shall be deemed to have been effected, at the expiration of forty eight hours after the letter containing the same is posted.

In the instant case, the Annual General Meeting is called on August 22, 2019 at 2:00 P.M. Therefore, the notice must be sent latest by July 31, 2019. Further, if notice is sent by post or courier it must be posted latest by July 29, 2019.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

June 2021

QUESTION 1- Board of directors of Charity Ltd. wants to understand from you applicability of the provisions relating to CSR to companies including requirements to constitute CSR committee. Inform the Board. (5 marks)

ANSWER- Section 135 of the Companies Act, 2013 pertaining to Corporate Social Responsibility stipulates that:

- (i) every company having net worth of Rs.500 crore or more; or
- (ii) every company having turnover of Rs.1000 crore or more; or
- (iii) every company having net profit of Rs.5 crore or more.

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of 3 or more directors, out of which at least 1 director shall be an independent director.

However, where a company is not required to appoint an independent director under Section 149(4) of the Companies Act, 2013, it shall have in its Corporate Social Responsibility Committee 2 or more directors.

Further, as per Rule 5 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, a private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors.

With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least 2 persons of which 1 person shall be as specified under clause

(d) of section 380(1) of the Companies Act, 2013 and another person shall be nominated by the foreign company.

The role of the Corporate Social Responsibility Committee is—

(a) to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII of the Companies Act, 2013;

(b) to recommend the amount of expenditure to be incurred on the activities referred to in clause (a) above; and

(c) to monitor the Corporate Social Responsibility Policy of the company from time to time. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

QUESTION 2- Vasu is independent director in various companies and he seeks your opinion regarding presence of independent director in different types of Committees. Advise.

ANSWER- Presence of Independent Director in various Committees of the Board

Independent Director in various Committees	Composition as per the Companies Act, 2013	Companies as per the SEBI(LODR) Regulations, 2015
Audit committee	As per Section 177 of Companies Act, 2013 The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.	According to Regulation 18 of the SEBI (LODR) Regulations, 2015 a) The Audit Committee shall have minimum three Directors as members. b) Two-thirds of the members of audit Committee shall be Independent Directors

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

		<p>c) In case of a Listed Entity having outstanding SR equity shares, the Audit Committee shall only comprise of Independent Directors.</p> <p>d) The chairperson of the audit committee shall be an independent director.</p>
Nomination and Remuneration Committee	<p>Section 178 of Companies Act, 2013 provides that: The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one - half shall be independent directors.</p>	<p>According to Regulation 19 of the SEBI (LODR) Regulations, 2015</p> <p>The Board of Directors shall constitute the Nomination and Remuneration Committee as follows:</p> <p>(a) the Committee shall comprise of at least three Directors and all Directors shall be non-executive Directors;</p> <p>(b) at least fifty percent of the Directors shall be Independent Directors; and</p> <p>(c) In case of a listed entity having outstanding SR equity shares, two-thirds of the Nomination and Remuneration Committee shall comprise of Independent Directors;</p> <p>(d) The Chairperson of the nomination and remuneration committee shall be an Independent Director.</p>
Stakeholders Relationship Committee		<p>Under Regulation 20 of the SEBI (LODR) Regulations, 2015, Stakeholders Relationship Committee shall consist of at least three directors, with at least one being an independent director, who shall be the members of the Committee.</p> <p>In case of a listed entity having outstanding SR equity shares, at least two-thirds of the Stakeholders Relationship Committee shall comprise of independent directors.</p>

Risk Management Committee		The majority of members of Risk Management Committee shall consist of members of the board of directors and in case of a listed entity having outstanding SR equity shares, at least two-thirds of the Risk Management Committee shall comprise of Independent Directors.
Corporate Social Responsibility Committee	As per Section 135 of the Companies Act, 2013, Corporate Social Responsibility Committee shall consist of three or more directors out of which at least one should be an independent director. – However, where a company is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more directors.	

QUESTION 3- The Board of Directors of Passion Ltd. has passed board resolutions for the following items. Examine the validity of resolution as a secretarial auditor of the company :

- (a) To invest the funds of the company for ₹15 Lakh in ABC Mutual funds;
 - (b) To remit, or give time for the repayment of, any debt due from a director;
 - (c) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- To take over a company or acquire a controlling or substantial stake in another company.**

ANSWER- As per Section 179(3)(e) of the Companies Act, 2013, the Board of Directors of a company shall exercise the powers to invest the funds of the company of Rs. 15 Lakhs in ABC Mutual funds by means of resolutions passed at meetings of the Board;

- (a) As per Section 180(1)(d) of the Companies Act, 2013, the Board of Directors of a company shall exercise the power to remit, or give time for the repayment of, any debt due from a director only with the consent of the company by a special resolution;
- (b) As per Section 180(1)(b) of the Companies Act, 2013, the Board of Directors of a company shall exercise the power to invest otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation with the consent of the company by a special resolution;
- (c) As per Section 179(3)(j) of the Companies Act, 2013, the Board of Directors of a company shall exercise the powers to take over a company or acquire a controlling or substantial stake in another company by means of resolutions passed at meetings of the Board.

Lesson 16 - Meetings of Board and its Committees

June 2023

1. Draft minutes of 19th meeting of the Board of directors of Zwiggly Foods Ltd held on 28th January, 2022 were circulated on 5th February, 2022. In this backdrop, answer the following:

Sonali, an independent director, who attended the meeting communicated her comments on 15th February, 2022. Do you think her comments can be considered?

Sujata, a small shareholder director, communicated her comments on 10th February, 2022 but she was absent in the meeting without obtaining leave of absence. Can her comments be taken on record?

Ans- Finalization of Minutes

- As per Para 7.4 of SS 1: Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee the draft minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by email or by any other recognised electronic means to all members of the Board or the Committee as on the date of the Meeting, for their comments.

- The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalized and entered in the Minutes Book within the specified time limit of thirty days.

- If any director communicates his comments after the expiry of the said period of seven days, the Chairman, if so authorised by the Board, shall have the discretion to consider such comments.

- The draft Minutes should also be sent to those Directors who were not present at the Meeting for information and comments thereon, if any. This is because all the Directors are responsible for the decisions taken at any Board Meeting, whether or not they attended the Meeting.

- In the event director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such director. A director who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

- Minutes shall be entered in the Minutes Book within 30 days from the conclusion of the Meeting.

- The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

- Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent meeting and the fact of such alteration shall be recorded in the Minutes of such subsequent meeting.

Hence, (i) the comments given by Sonali are beyond the specified time limit and may be considered only subject to the discretion of the Chairman.

(ii). Comments of Sujata can be considered even if she did not attend the meeting.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2020

QUESTION 1- In a Board of Directors meeting of a private company held on 15th November, 2019 all the directors present, unanimously decided that the next meeting of the Board of Directors would be held on 29th November, 2019 at the registered office of the company. As a Company Secretary do you think a notice of the meeting of the Board of Directors need be sent to ensure legal compliance?

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

As per Secretarial Standard-1, the Notice of the meeting of the Board shall be given even if meetings are held on pre-determined dates or at pre-determined intervals. Therefore, in the instant case even if the directors have agreed unanimously to hold the meeting on November 29, 2019, then also the Company Secretary need to send the Notice, Agenda and the Notes thereon separately for each Meeting in the aforesaid manner to ensure legal compliance.

QUESTION 2- The Chairman of the Board of Directors of Jagruti Printers Ltd. has sent a draft of Resolution along with necessary papers to all the ten directors of the company to get it passed through a resolution by circulation. The last date for signifying the assent or dissent is 20th November, 2019. On 15th November, 2019, six directors communicated their assent while on 17th November, 2019 the remaining 4 directors requested that the resolution must be decided at a meeting. Referring to the relevant provisions of the Companies Act, 2013, decide whether the resolution can be deemed to have been passed or requires to be decided at a Board of Directors meeting?

ANSWER- Section 175 of the Companies Act 2013 provides that, no resolution shall be deemed to have been duly passed by the Board of Directors by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors at their addresses registered with the company in India, by hand delivery or by post or by courier, or through electronic means which may include e-mail or fax and has been approved by a majority of the directors, who are entitled to vote on the resolution.

However, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the Chairman shall put the resolution to be decided at a meeting of the Board.

In the given case, majority directors had communicated their assent but subsequently before the due date more than one-third directors have requested that the resolution must be decided at a board meeting. Hence, the resolution sought to be passed by circulation will be required to be passed only at a Board meeting.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2021

QUESTION 1- A has been appointed as a Company Secretary in the Company by a circular resolution. In addition, he has also been advised to act as a Group Company Secretary and head of the parent Company and its subsidiary. Examine with reference to the provisions of the Act.

ANSWER- Section 179(3) read with Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that the Board of Directors of a company shall appoint or remove key managerial personnel (KMP) by means of resolutions passed at meetings of the Board. Therefore, appointment of A as a Company Secretary in the company cannot be done by circular resolution.

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

In the given situation A has is also advised to act as a Group Company Secretary consisting of a group of a parent company in which he has been appointed and its subsidiary. Therefore, he can act as a Group Company Secretary to look after the parent company and its subsidiary.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 17 - Corporate Social Responsibility-Concepts

June 2022

(a) Mind-Game Ltd., is a subsidiary company of Mind-Guru Ltd. Mind-Game attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of

1. 15 crore during each of the preceding 5 years. In this connection, Board of directors need your expert views on the following matters :

2. What is the meaning of “impact assessment” ?

Whether impact assessment is required to be undertaken by all the companies ?

3. Who can conduct impact assessment ? (5 marks)

Ans-

(1) The impact assessment is exercise to assess the social impact of a particular project. Impact assessment intends to evaluate "social return on investment". Impact assessment is the exercise of taking a retroactive view on the Corporate Social Responsibility (CSR) activities completed by the entity.

Impact assessment is seemingly another step to encourage companies to take considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

(2) Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amounts of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires following class of companies to conduct impact assessment:

- a. companies with minimum average CSR obligation of Rs. 10 crore or more in the immediately preceding three (3) financial years; and
- b. having CSR projects of outlays of minimum Rs. 1 crore and which have been completed not less than 1 year before undertaking impact assessment.

(3) The impact assessment shall be conducted by an independent agency

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

December 2020

QUESTION 1- DEF Traders Ltd. is incorporated as a small company. State with reference to the relevant legal provisions whether it is required to set up a Corporate Social Responsibility Committee ?

ANSWER- According to Section 135 of the Companies Act, 2013, only the following companies are required to constitute a Corporate Social Responsibility Committee which in the immediately preceding financial year have:

- (a) Net worth of ₹500 crore or more; or
- (b) Turnover of ₹1000 crore or more; or
- (c) Net profit of ₹5 crore or more

A small company is defined in section 2(85) of the Companies Act, 2013 to mean a company, other than a public company whose:

- (a) Paid up share capital does not exceed ₹50 Lakh or such higher amount as may be prescribed which shall not be more than ₹10 crore and
- (b) Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ₹2 crore or such higher amount as may be prescribed which shall not be more than ₹100 crore

As DEF Traders Ltd. is incorporated as small company, it does not meet the criteria specified in section 135 of the Companies Act, 2013 and would, therefore not be required to constitute a Corporate Social Responsibility Committee.

December 2021

QUESTION 1- XYZ Ltd. is carrying out a project under its CSR initiatives. Some of its employees are working in this project. The company want to monetize and account it under the head of 'CSR expenditure'? Advice the company. (3 marks)

ANSWER- As per the Ministry of Corporate Affairs General Circular No. 01/2016 dated 12th January, 2016, the contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation, to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of such services of employees would not be counted towards CSR expenditure.

Lesson 18 - Annual Report-Concepts

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Lesson 19 - Key Managerial Personnel (KMP's) and their Remuneration

June 2023

1. The Chief Financial Officer of a listed company be appointed as its Compliance Officer. Comment

Ans- i) According to Section 203 of the Companies Act, 2013, the functions of the company secretary, inter alia, shall include -

- a. Reporting to the Board of Directors (BOD) of the company compliance with the Rules made under the Act and other applicable laws.
- b. To ensure that the company complies with applicable Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government.

ii) On the other hand, according to Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company shall appoint a qualified company secretary as the compliance officer of the listed company. He shall be responsible for-

a. Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit

b. Co-ordination with and reporting to the SEBI, Stock Exchanges and depositors on compliance with applicable rules, regulations and directions of the Authorities.

Ensuring that the listed entity has followed correct procedures resulting in correctness, authenticity and comprehensiveness of publicly available information, statements and reports filed by the listed entity under these regulations.

c. monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

iii) Thus, the compliance officer should be a duly qualified company secretary in employment of the listed company. According to Rule 8 of Companies (Appointment and Remuneration of managerial personnel) Rules, 2014, a company with a paid-up capital of rupees ten crore or more is required to appoint a company secretary.

iv) On the other hand, only a listed company is mandated to appoint a qualified company secretary in its employment as its compliance officer.

Hence, unless the CFO is also a qualified company secretary, he cannot be appointed as the compliance officer of the listed entity.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Following particulars are extracted from the financial statements of Surat Gold and Diamonds limited

for the year ended 31st March, 2023 :

(Unit in Rupees) Salaries and perquisites paid to managing director ₹ 1,50,000 and whole time director ₹ 1,20,000. Provision for bonus ₹ 1,00,000 and gratuity ₹ 1,00,000 (included the bonus ₹ 10,000 and gratuity ₹ 12,000 for the above directors)

Provision for doubtful debts ₹ 60,000 Profit on sale of forfeited shares ₹ 10,000 Short term capital gains ₹ 2,60,000

Contribution to approved charitable trust ₹ 1,00,000.

Provision for income tax ₹ 4,80,000 and surcharges ₹ 1,20,000 Net Profit for the FY 2022-23 ₹ 32,00,000

Aggregate amount of accumulated losses of previous years ₹ 2,50,000

The board of directors consisted of a managing director, a whole time director and three other non- executive directors. You are required to calculate the net profit for computing managerial remuneration and the maximum managerial remuneration payable to the above said five directors. State your assumptions

Ans- The adjusted net profit as per Section 198 read with Schedule V of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 is computed as given below:

Unit in Rupees

Profit as per P&L A/c: 32, 00,000

Add items not deductible: i) Managerial remuneration to MD

1,50,000

ii) Managerial remuneration to WTD 1,20,000

iii) Provision for bonus to directors 10,000

iv) Provision for gratuity to directors 12,000

v) Provision for doubtful debts: 60,000

vi) Provision for income tax: 4,80,000

Sub Total: 8,32,000

Less items deductible

a) Profit on sale of forfeited shares

(-10,000)

b) Short term capital gains (-2,60,000)

c) Past accumulated losses (-2,50,000)

Subtotal: (-5, 20,000)

Therefore, adjusted net profit for managerial remuneration: Rs. 35, 12,000

Since the company has two whole time directors and three non-executives part time directors, the managerial remuneration payable to-

i) MD & WTD: @10% of Adjusted Net Profit : Rs. 3,51,200

ii) Three non-executive directors@1% of Adjusted Net profit: Rs. 35,120

Assumptions:

In accordance with Section 198 of the Act read with companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014-

a. It is assumed that the accumulated past losses have not been deducted yet in computation of adjusted net profit for the purpose of managerial remuneration

b. It is assumed that the surcharge of Rs. 1,20,000 on income tax is a tax in the nature of tax on excess on abnormal profit under section 198(4)(d)

c. Contribution to charitable trust is bonafide and within approved limits under section 181 of the Act.

December 2020

QUESTION 1- Owing to the resignation of Prashant, Managing Director of Beauty Herbals Ltd. on 15th October, 2019, the company appointed one of its Senior Deputy General Manager Kristina Kelly, aged 26 years and a Canadian citizen as its Managing Director with effect from 1st November, 2019 at a meeting of the Board of Directors held on 31st October, 2019. Kristina Kelly came to India for the first time for the purpose of taking up employment in India on 1st January, 2018. She got appointed in the Company on 1st April, 2018. From 1st December, 2018 she was sent for a training program for 6 months and she returned to India on 1st June, 2019. Advise the management of the company whether her appointment by the Board of Directors is valid and if any further compliances are required to validate her appointment.

ANSWER- The Foreign national can also be appointed as a Managing Director of a company subject to the compliance of conditions prescribed under Section 196 along with Part I of Schedule V of the Companies Act, 2013.

As per Part I (e) of Schedule V of the Companies Act, 2013, the person is required to be a resident of India to be appointed as a Managing Director of the company.

As per Explanation I to the above schedule, resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, —

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

In the instant case, Kristina Kelly who is a Canadian citizen, appointed as Managing Director of the company w.e.f. November 01, 2019 has not stayed in India for a continuous period of 12 months immediately preceding the date of her appointment. Thus, her appointment as Managing Director by the Board of Directors of the Company is not valid as it is not in compliance with Part I of Schedule V of the Companies Act, 2013.

Hence, to validate her appointment, the company is required to file an application in e-Form MR-2 within a period of 90 days from the date of such appointment to the Central Government seeking the approval for such appointment as provided in Section 196 read with Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

June 2021

QUESTION 1- In the following scenario, examine whether the amount of sitting fees decided by the Board of directors is in accordance with the provisions of the Companies Act, 2013 and rules made thereunder :

Name	Nature of directorship	Amount of sitting fees per meeting (₹)
Raja	Nominee director	1,20,000
Raju	Small shareholder director	1,00,000
Ritu	Independent director	1,00,000
Shalini	Independent director	75,000

(4 marks)

ANSWER- Section 197(5) of the Companies Act, 2013 read with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes that a company may pay a sitting fee to a Director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of Directors, which shall not exceed Rs. 1 lakh per meeting of the Board or committees thereof.

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other Directors.

Based on the above stipulated provisions, the following mentioned sitting fees payable is:

Name	Remarks
Raja (Nominee Director)	Sitting fees exceeds maximum amount and should be reduced to Rs. 1,00,000
Raju (Small Shareholder Director)	Sitting fees is within limit
Ritu (Independent Director)	Sitting fees is within limit
Shalini (Independent Director)	Sitting fees is within limit but it should not be less than other directors and hence should be Rs. 1,00,000

QUESTION 2- Board of directors of Yes No Ltd. proposes to appoint Arjun as managing director. Arjun has recently celebrated his 71st birthday. Arjun has spent his entire career in power sector and will be a strategic fit for Yes No Ltd. Company Secretary of the company suggests that Arjun can only be appointed through special resolution. Do you agree with the Company Secretary ? (4 marks)

ANSWER- As per Section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of 21 years or has attained the age of 70 years.

However, appointment of a person who has attained the age of 70 years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Further, where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Accordingly, in the given case, appointment of Mr. Arjun in Yes No Ltd. can also be made by an application made by the Board of Directors to the Central Government. Therefore, advice of Company Secretary is not correct.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

QUESTION 3- Logic Ltd. wants to remove Radhika, Company Secretary of the Company. Explain the procedure.

ANSWER- A Company Secretary can be removed or dismissed like any other employees of the organization. Since he/she is appointed by Board, the Board of Directors of a company has absolute discretion to remove a Company Secretary or to terminate his/her services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

A Company Secretary can be removed in accordance with the terms of appointment and the Board can record the same. The procedure for removal of Company Secretary is:

- Convene a Board Meeting after giving notice to all the Directors of the company as per section 173 of the Companies Act, 2013, place the matter of removal of the Company Secretary and pass a resolution to the effect. The resolution shall state the effective date of termination of the Company Secretary.
- The Company shall thereafter serve a notice of termination to the Company Secretary. The period of notice shall be governed by the employment letter or in its absence the termination policy of the Company.
- The Company Secretary shall cease to be in office from the date of expiry of notice.
- Company is required to file e-Form DIR-12 within 30 days of cessation with the Registrar of Companies together with requisite filing fees along with evidence of Cessation. - Inform the stock exchange, if the company is listed.
- Make entries in the Register maintained for recording the particulars of Company Secretaries under section 170 of the Companies Act, 2013.
- Issue a general public notice, if it is so warranted, according to size and nature of the company.

Thus, Logic Ltd. has to follow above procedures to remove Radhika, Company Secretary of the company.

December 2021

QUESTION 1- X has been appointed as the Managing Director of XYZ Limited. The company does not have any other whole time directors. The terms and conditions of his appointment are as under :

- (i) Remuneration amounting to 5% of the net profits of the company.
- (ii) A fees of ₹1,00,000 per annum towards actuarial services, even though X does not hold any professional qualification in actuarial science.
- (iii) Sitting fees of ₹50,000 for every meeting of the Board or the Committee thereof attended by X.

The Company had defaulted in the repayment of interest and principal on term loans borrowed from banks, which default is still subsisting.

Suggest, whether the above remuneration is in line with the provisions of the Companies Act, if not also explain the remedial action required from the Company.

ANSWER- The overall limit of managerial remuneration as indicated under section 197 of the Companies Act, 2013 read with Schedule V of the Act inter alia includes the following conditions:

- Except with the approval of the Company in general meeting by a special resolution, the remuneration payable to any one managing director shall not exceed five percent of the net profit of the Company.
- The remuneration shall not include any fee for the services rendered by such director in other capacity if the services are of professional nature and in the opinion of the Nomination and Remuneration committee or the Board of Directors, as the case may be, the director possesses the requisite qualification for the practice of the profession.

- A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a Company may pay a sitting fee to a director which shall not exceed one lakh rupees per meeting of the Board or Committee thereof.

Section 197(2) of the Companies Act, 2013 provides that the percentages aforesaid shall be exclusive of sitting fees payable to Directors. Therefore, the sitting fees of Rs. 50,000 for every meeting of the board or Committee thereof, is not included in the overall remuneration.

Further, considering the above provisions, the fee payable for actuarial services is to be added to Mr. X remuneration as he does not hold any professional qualification to practice actuarial science.

In this case, the overall remuneration exceeds the limit of 5% of net profits as provided in the section. Therefore, the company has to get the approval of the shareholders by way of a special resolution in terms of Section 197 of the Act.

As the company has defaulted in payment of interest and principal on term loans to the banks, the company should also take a prior approval of the banks for paying the above remuneration to Mr. X before passing the special resolution by shareholders.

QUESTION 2- X, a finance expert having experience of 30 years. XYZ Ltd wants to appoint him as a Chief Financial Officer at a salary which is more than that of director of the company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and Schedule-V apply to X.

ANSWER- Section 197 of the Companies Act, 2013 contains certain limits with respect to remuneration of Directors including managing director and whole time director and manager. However, these limits do not apply to other key managerial personnel i.e. the Chief Executive Officer, the Chief Financial Officer and the Company Secretary.

Similarly, Schedule V contains certain limits with respect to remuneration of managing director, whole time director and manager. However, these limits also do not apply to other key managerial personnel, i.e. the Chief Executive Officer, the Chief Financial Officer and the Company Secretary.

Thus, the limits on managerial remuneration as contained in section 197 of the Companies Act, 2013 and schedule V shall not apply to Mr. X.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 01:54:56pm

Authenticated by Lex-Sign.com

Certificate

of

Signature Completion

This document has been signed through



Digitally signed by DS LEX SIGN Technologies
Private Limited (Lex-Sign.com)

