JAHANGIR TUTORIALS

COMPANY

LAW

SCANNER

PROF ZUBAIR JAHANGIR

PART 1
CHP 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 theobjects of the company and that no portion shall be paid or transferred directly or indirectlyby way of dividend or bonus or by way of profit to its members.

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

(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 withother members of the company in the same class. The scale of rights of members of thesame 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(t) 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 whichthe 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 ownor 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 itat 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) Cl & 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.

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.

CHP 2-SHARE AND SHARE CAPITAL

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.

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;
bIt 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 ofdividend; 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 paymentof 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 sumdue to it from the shareholder;

(5) where, for any other reason, the failure to pay the dividend or to post the warrantwithin the period under this section was not due to any default on the part of thecompany.

In this case, delay has taken place due to strike in the postal department and it canbe 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***

Type of company	*Nature of default*	*Whether Articles of Association of the company authorised to issue shares with DVR ?*
A Ltd. – Unlisted company	*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.*	*Yes*
B Pvt. Ltd.	.....	*No*

Ans- Section 43 of the Companies Act, 2013 read with Rule 4 of Companies (Share Capitaland Debentures) Rules, 2014 provides that company can issue shares with DifferentialVoting Rights (DVRs) if company's Articles authorise it to issue differential voting rightshares. 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 shareswith s if it has defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year which it is proposedto be issued. A Ltd. has made default during financial year 2018-19 & 2019- 20only in respect of filing annual return, which was made good during the financialyear 2020-2021. Articles of Association of A Ltd. also authorise the company toissue shares with DVRs.

B Pvt. Ltd. cannot issue shares with DVRs unless it alter its Articles of Associationin 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 ofthe Companies (Incorporation) Rules, 2014.

Further, communication to company and officer can be made by electronic transmission. Electronic transmission means communication delivered by fax, email orby 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 CompaniesAct, 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 undervaluedor 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.

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.

CHP 3- 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 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.

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 followingmatters :

- *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 ownersresiding 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. Aforeign register is deemed to be a part of the company's principal register and it shouldbe 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 atthe registered office as soon as possible. The company may discontinue the keeping ofany 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 andevery 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 Articlesof 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.
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 memberand 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 whatevername 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. Whereasthe entry related to forfeiture of shares is made within seven (7) days and the same is inorder

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.

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.

CHP 4- DEBT CAPITAL AND DEPOSITS

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.

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.

June 2022

(a) Write any five differences between debenture the 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 the Companies Act, 2013.	Loan can be given to anyone.provisions of
Debenture can be classified as secured unsecured; convertible or non-convertible; redeemable or perpetual.	Loan can be classified as secured or 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.	No requirement to appoint trustee in case 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 inrepayment 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 fulfillmentof other provisions of the Companies Act, 2013

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.

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.

CHP 5-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., increaseor 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 byoperation of law. Even if the rights of a charge holder are assigned to a third party, it willbe 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 modificationof 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.
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.

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.

CHP 6- 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.

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 deprecation 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 deprecation 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.

CHP 7-CORPORATE SOCIAL RESPONSIBILITY

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

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.

CHP 8- ACCOUNT, AUDIT,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 of 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.

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 ofexpiry of his term is known as casual vacancy. As per section 139(8) of the CompaniesAct, 2013, Board of directors has power to fill casual vacancy in office of auditor withinthirty (30) days.

In case casual vacancy is occurred due to resignation of auditor, such appointmentshall be approved by the General Meeting convened within 3 months of therecommendation 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 newauditor 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:-:
(a) Every listed company;
(b) Every unlisted public company having:
(i) paid up share capital of Rs.50 crore or more during the preceding financial year; or
(ii) turnover of Rs.200 crore or more during the preceding financial year; or
(iii) 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
(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 Share-Capital**	**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.
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.

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.

CHP 9-TRANSPARECY AND DISCLOSURES

June 2022

(a) **Which parameters shall be included in the Dividend Distribution Policy by the top 500 listed entities as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ? (5 marks)**

Ans- As per the Regulation 43(A) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, the Dividend Distribution Policy shall include following parameters:

a) The circumstances under which the shareholders of the listed entities mayor 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

Parameters that shall be adopted with regard to various classes of shares

December 2020

QUESTION 1- KBC Ltd. filed Form PAS-3 with the Registrar of Companies (ROC), Mumbai as required under the Companies Act, 2013 with late fees as it was not filed within the due date. The ROC on examining the e-form, found it necessary to call for further information. He gave a notice to the company directing it to furnish the required information within the prescribed time. The company furnished only a part of the required information. Discuss the consequences of the action in such circumstances under the provisions of the Companies Act, 2013.

ANSWER- Rule 10(2) of the Companies(the Registration offices and Fees) Rules, 2014 provides that, where the Registrar on examining any application or e-form or document finds it necessary to call for further information or finds such application or e form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defect or incompleteness, by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within the prescribed time.
Rule 10(4) of the Companies (the Registration offices and Fees) Rules, 2014 provides that, in case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the stipulated period, the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or the company.
Accordingly, where any document is recorded as invalid by the Registrar, the document may be rectified by the person or company by only fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Companies Act, 2013.

June 2021

QUESTION 1- Every company is required to comply the disclosure requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in their Board Report.

ANSWER- As per Section 134 read with Rule 8(5) (x) of the Companies (Accounts) Rules, 2014, every company except (Small Companies and One Person Companies) is required to include the following in its Director's Report:
Statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
Disclosure Requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is applicable to every workplace, establishment, company or organisation employing 10 or more employees irrespective of its location or nature of industry. The said Act provides for constitution of a Committee to be known as the "Internal Complaints Committee".
Section 21 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 mandates that Internal Committee shall prepare an Annual Report and Section 22 of the said Act provides that the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the Annual Report.
Rule 14 of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules,2013 provides that the annual report which the Complaints Committee is required to prepare under Section 21 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 shall contain the following details:

(a) Number of complaints of sexual harassment received in the year;
(b) Number of complaints disposed off during the year;
(c) Number of cases pending for more than 90 days;
(d) Number of workshops or awareness programme against sexual harassment carried out;
(e) Nature of action taken by the employer or District Officer.

CHP 10- INTER CORPORATE LOANS, INVESTMENTS, GUARANTEE AND SECURITY RELATED TRANSACTIONS

June 2023

1. **Shortwalkers Limited was a listed company operating fitness centres all over India. In their Meeting on 1st April, 2022 the Board of directors of the company approved purchase of gym equipment for ₹ 75 crore from Fitness Solutions (Private) Limited a company managed by Anita, wife of Sunil, the CFO of Shortwalkers Limited. The annual turnover of Shortwalkers Limited for the last financial year is ₹ 500 crore. The entire shareholding of Fitness Solutions (Private) Limited was held by Anita and two other directors.**
In his report to the shareholders of Shortwalkers Limited, the auditor of the company made adverse remarks on the transaction stating that the approval of the Audit Committee and special resolution were not obtained before approving the deal.
The Board, in their report to the shareholders remarked that the purchase transaction was at arm's length price and Sunil, was not a related party and approval of audit committee and the shareholders was not necessary.
Referring to provisions of Companies Act, 2013, examine the submissions of the Board.

Ans- Section 188 of the Act, provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to —
i.sale, purchase or supply of any goods or materials;
ii.selling or otherwise disposing of, or buying, property of any kind;
iii.leasing of property of any kind;
iv.availing or rendering of any services;
v.appointment of any agent for purchase or sale of goods, materials, services or property;
vi.such related party's appointment to office or place of profit in the company, its subsidiary company or associate company; and
vii.underwriting the subscription of any securities or derivatives thereof, of the company.

However, such approval by the Board of Directors will not be required for transactions entered in the ordinary course of business and on an arm's length basis. In other words, approval of the Board of Directors will only be required for related party transactions which are either not in the ordinary course of business or not on an arm's length basis.

•Under regulation 23 of SEBI Listing Obligations and Disclosure Requirements) Regulations, 2015, (LODR), transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year exceeds rupees one thousand crore or ten percent of the consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower. The transaction entered here in case of Shortwalkers Ltd., shall be approved by Audit Committee as well as by the members in a general meeting, if the same exceeds 10% (Rs. 500Crores* 10%= Rs. 50 Crores) of the annual consolidated turnover as stated above.

•According to Section 2(76) of the Act, related party includes a KMP or his relative. As per Section 2(77) of the Act, relative includes wife and daughters. Hence, the contention of the Board that the supplier, i.e, Fitness Solutions (Pvt) Limited has neither a director nor his relative of Shortwalkers Limited as its director is not acceptable.
•Section 188(1) does not apply to any transaction entered into by the company in the ordinary course of business which are on arm's length basis.
•According to Section 188(2) of the Act, arm's length transaction means a transaction between two related parties that were conducted as if they were not related so that there was no conflict of interest.

In the instant case, since the transaction was between two related parties, due process should have been followed including approval of audit committee and approval of the company in general meeting by an ordinary resolution. The contention of auditor is correct.

December 2020

QUESTION 1- HIJ Engineers Ltd. has a paid-up capital of ₹20 lakh, Free Reserves of 3 lakh and Securities Premium of ₹ 2 lakh. It has granted a loan of ₹ 14 lakh to KLM Traders Ltd. The Board of Directors is proposing the following transactions without securing approval of the members :
(I) Sanctioning a loan of ₹ 2 lakh to KLM Cement Ltd. and
(II) Sanctioning a loan of ₹ 3 lakh to an employee of the company.
Can the Board of Directors sanction the aforesaid loans ?

ANSWER- Section 186 (2) of the Companies Act, 2013 provides that, no company shall directly or indirectly give any loan to any person or other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.
Further, Section 186(3) of the Companies Act, 2013 provides that where the aggregate of the loans and investment so far made, along with the investment or loan, proposed to be made or given by the Board, exceed the limits specified under section 186(2), no investment or loan shall be made unless previously authorised by a special resolution passed in a general meeting.
Hence, as per section 186(2) of the Companies Act, 2013, the limits for the loan and investment will be the amount whichever is more of the following:
(a) 60% of paid up share capital, free reserves and securities premium account= ₹15 lakh or
(b) 100% of free reserves and securities premium account = ₹5 lakh
In the instant case, since the company has already given loans of ₹14 lakh to KLM Traders Ltd and further proposed to grant loan, of ₹2 Lakh to KLM Cement Ltd, it will exceed the limit of ₹15 lakh, hence prior approval by special resolution in the general meeting will be required to be passed by HIJ. Engineers Ltd. in terms of Section 186(3) of the Companies Act, 2013.
As per Explanation w.r.t. to Section 186(2) of the Companies Act, 2013, the word person, used under this sub-section does not include any individual who is in the employment of the company.
Accordingly, there are no limit imposed on the right of a company to sanction a loan to an employee of the company under Section 186(2) of the Companies Act, 2013, the Board of directors can grant a loan of ₹3 lakhs to the employee. It does not require any approval from the members.

QUESTION 2- The following information as per latest balance sheet figures as on 31st March, 2019 is made available to you:

	₹ crore
Paid-up Share Capital	**150**
Free Reserve	**50**
Securities Premium Account	**20**
Capital Redemption Reserve	**10**

The company has not accepted any deposits as of now. The Board of Directors want to know what is the maximum amount it can accept by way of deposits from (i) members and (ii) the public.
Advise them.

ANSWER- As per Rule 3(4) of the Companies (Acceptance of Deposits) Rules, 2014, no eligible company can accept or renew-
(a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company;
(b) any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital, free reserves and securities premium account of the company.
In the instant case, as the net-worth of the company is exceeding ₹100 crore, so the company is assumed to be an eligible company. Further, aggregate of the paid-up share capital, free reserves and securities premium account is ₹220 crores and the company has not accepted any deposits as of now.
Accordingly, from the members, the eligible company can accept upto 10% of ₹220 crores i.e. ₹22 crores. From the public it can accept upto 25% of ₹220 crores i.e.₹55 crores.

June 2021

QUESTION 1- Jupiter Ltd. intends to acquire shares in another company. How much amount can be invested by Jupiter Ltd. without passing special resolution considering the facts mentioned below ?

Particulars	**Amount (₹ crore)**
Paid-up Share Capital	**1,000**
Free Reserves	**-340**
Securities Premium Account	**780**
Investment in another company	**780**

Examine.

ANSWER- As per section 186(2) of the Companies Act, 2013, no company shall, directly or indirectly:
(a) give any loan to any person or other body corporate;
(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,
exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.
Further, where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed

the limits specified under Section 186(2) of the Companies Act, 2013, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

Particulars	Amount in Rs. (Crore)
Paid-up share capital _____A	1000
Free Reserves. _____B	-340
Securities Premium Account___C	780
60% of paid-up capital, free reserves and securities premium account (A+B+C) x 60%= D i.e.,1440 * 60%	864
100% of free reserves and securities premium account (B+C) x 100% = E (780 – 340) i.e., 440 *100%	440
Higher of the two is D i.e., Rs.864 crore	
Investment in another company	780

Therefore, further investment that can be made by Jupiter Ltd. without passing special resolution will be higher of D or E reduced by investment already made i.e. (Rs.864- Rs.780= Rs.84 Crore) Answer 2(d)

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 2- Every company is required to have active website. Comment

ANSWER- The Companies Act, 2013 does not mandate companies to have an active website, but the SEBI (LODR) Regulations, 2015 requires that all listed entities shall maintain a functional website containing the basic information about the listed entity:
As per the provisions of the SEBI (LODR) Regulation, 2015, the listed entity shall disseminate the prescribed informations under a separate section on its website, including:
(a) details of its business;
(b) terms and conditions of appointment of independent directors;
(c) composition of various committees of board of directors;
(d) code of conduct of board of directors and senior management personnel;
(e) details of establishment of vigil mechanism/ Whistle Blower policy;
(f) criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;
(g) policy on dealing with related party transactions;
(h) policy for determining 'material' subsidiaries;
(i) details of familiarization programmes imparted to independent directors including the following details:-
(i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),
(ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and

(iii) other relevant details.
(j) the email address for grievance redressal and other relevant details;
(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
(l) financial information including:
(i) notice of meeting of the board of directors where financial results shall be discussed;
(ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
(iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.
(m) shareholding pattern;
(n) details of agreements entered into with the media companies and/or their associates, etc.;
(a) the information, report, notices, call letters, circulars, proceedings, etc. concerning non- convertible redeemable preference shares or non-convertible debt securities;
(b) all information and reports including compliance reports filed by the listed entity;
(c) information with respect to the following events:
(i) default by issuer to pay interest on or redemption amount;
(ii) failure to create a charge on the assets;
(iii) revision of rating assigned to the non-convertible debt securities.
It is important that the listed entity ensures the contents of the website are correct and updated at any given point of time.

QUESTION 3- Raman is a director of Mega Ltd., a company engaged in the business of selling mineral water. Rohini, wife of Raman, is a partner in M/s. Total, a partnership firm, engaged in the business of selling packaged juices. Raman also holds 100 shares in Zimba Pvt. Ltd., a company engaged in the business of manufacturing bottles. Board of directors of Mega Ltd. intends to grant loan to M/s. Total and Zimba Pvt. Ltd. within the limits specified under the Companies Act, 2013. Examine whether Mega Ltd. can grant loan. If yes, what are the conditions ?

ANSWER- According to section 185(1) of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by:
(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
(b) any firm in which any such director or relative is a partner.
(i) Accordingly, based on the above provisions of Section 185(1) of the Companies Act, 2013, Megha Ltd. cannot grant loan to M/s. Total, since it is a partnership firm in which wife of Raman (Director of the lending company) is a partner.
Section 185(2) of the Companies Act, 2013 prescribes that a company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that
(a) A special resolution is passed by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
(b) the loans are utilised by the borrowing company for its principal business activities.
The expression "any person in whom any of the director of the company is interested" includes any private company of which any such director is a director or member.
(ii) Accordingly, by complying with the conditions as prescribed above under Section 185(2) of the Companies Act, 2013, Megha Ltd. can grant loan to Zimba Pvt. Ltd. in which Raman is a member holding 100 shares.

QUESTION 4- Approval of the Audit Committee to a related party transaction can be granted by passing a circular resolution. Discuss.

ANSWER- Section 188(1) of the Companies Act, 2013 prohibits the Board from dealing with an item of business pertaining to a contract or arrangement with a related party through a circular resolution. However, the law is silent on dealing with any item of business by the Audit Committee through a circular resolution.
Here, the intention of the Legislature is required to be gathered from the language used; which means that attention should be paid to what has been said as also to what has not been said. As a consequence, though it cannot be added that the law imposes any restriction, the principle applicable on meetings of the Board would be applicable to the meetings of the Audit Committee too, while dealing with items of business on related party transactions.
As per the Secretarial Standard on Meetings of the Board of Directors (SS-1), the Audit Committee should discuss related party transactions which are not in the ordinary course of business or which are not on arm's length basis at its meetings and not through circulation. However, there is no bar on omnibus approval of limits being passed by a circular resolution by the Audit Committee.

December 2021

QUESTION 1- XYZ Ltd is an investment company whose principal business is acquisition of shares and debentures of other companies. The following figures were derived from the books of XYZ Ltd. :

Assets :	
Investment in shares and debenture	**₹95 Lakh**
Other Assets	**₹105 Lakh**
Total	**₹200 Lakh**
Income :	
Income from investment business	**₹12 Lakh**
Other Income	**₹18 Lakh**
Total	**₹30 Lakh**

Whether the company is an investment company as per section 186 and eligible to claim exemption given thereunder ? (3 marks)

ANSWER- As per the explanation given under section 186 of the Companies Act, 2013, investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income.
In light of the above explanation, the assets of XYZ Ltd. in form of investment in shares or debentures is less than fifty percent of the total assets of the company and also the income derived from the investment business is less than fifty percent of the total income of the company. Hence, either of the two conditions need to be satisfied to make an investment company and, in this case, neither of this condition is satisfied. So, XYZ Ltd. cannot be an investment company for the purpose of Section 186.

QUESTION 2- The Board of Directors of XYZ Ltd is considering the proposal for making the investment in ABC Ltd. The company has 5 directors on board and in the board meeting 4 directors were present, three of them given consent to the proposal and one director abstained from voting. Comment on the same. (3 marks)

ANSWER- As per section 186(5) of the Companies Act, 2013, no investment shall be made or loan or guarantee or security given by the company, unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting is obtained.
So, in this case the Board of Directors of XYZ Ltd. while considering the proposal for making the investment in ABC Ltd. has not complied with the provision of section 186(5) of the Companies Act, 2013, where the consent of all the directors present at the meeting is required. The resolution of the board of directors therefore is not valid and has no legal effect.

CHP 11-REGISTERS AND RECORDS

December 2020

QUESTION 1- Annual Return is a significant document in relation to the company.

ANSWER- Annual Return is a significant document in relation to the company
Annual Return is a significant document for the stakeholders of a company as it provides a very comprehensive information about various aspects of a company. It is perhaps the most important document required to be filed by every company with the Registrar of Companies. Apart from the Financial Statements, this is the only document to be compulsorily filed with the Registrar of Companies, every year irrespective of any events / happenings in the company. While the Financial Statements give information on the financial performance of a company, it is the Annual Return which gives extensive disclosure and greater insight into the non-financial matters of the company and the people entrusted with the management of the company.
Annual Return contains the following particulars in consonance with the Section 92(1) of the Companies Act, 2013:
(1) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
(2) its shares, debentures and other securities and shareholding pattern;
(3) its indebtedness [omitted by the Companies (Amendment) Act, 2017) (Yet to be notified by CG)];
(4) its members and debenture-holders along with changes therein since the close of the previous financial year;
(5) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
(6) meetings of members or a class thereof, Board and its various committees along with attendance details;
(7) remuneration of directors and key managerial personnel;
(8) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
(9) matters relating to certification of compliances, disclosures as may be prescribed;
(10) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors [indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them - omitted by the Companies (Amendment) Act, 2017) (yet to be notified by CG)] and
(11) such other matters as may be prescribed.

QUESTION 2- Every company is required to get pre-scrutiny and pre-certification of e-forms by a practising professional before filing with the Registrar of Companies (ROC). Is this true? Explain the relevant legal provisions.

ANSWER- Pre-Scrutiny - Pre-scrutiny is a functionality that is used checking whether certain core aspects are properly filled in the e-form. It can be done by the company itself and no professional is required. Pre scrutiny function is available for all forms and is to be done by all class of companies.
Pre-Certification - Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar of Companies. E-forms mentioned in Rule 8(12) of the Companies (Registration Offices and Fees) Rules, 2014 such as INC-22, AOC-4, MGT- 14, DIR-12 etc., are required to be pre-certified by Company Secretaries or Chartered

Accountants or Cost Accountants who are in whole-time practice by all class of companies except One Person Company and Small Companies.
Thus, every company is required to do pre-scrutiny of e-forms but pre-certification of certain forms is not mandatory for every class of company.

June 2021

QUESTION 1- Books of account have to be kept only at the registered office of the company. As a corporate consultant give your comments in this regard.

ANSWER- Section 128(1) of the Companies Act, 2013 requires every company to prepare and keep the books of accounts and other relevant books and papers and financial statements for every financial year at its registered office.
However, all or any of the books of accounts and other relevant papers may be kept at such other place in India as the Board of Directors may decide. When the Board so decides, the company shall, within 7 days of such decision, file with the Registrar of Companies, a notice in writing giving full address of that other place. Such intimation is to be made in e-form AOC 5 to the Registrar of Companies.
Therefore, Board of Directors of the company may decide any place, other than the Registered office of the company for keeping the books of accounts.

December 2021

QUESTION 1- X applied for 400 shares in XYZ Ltd and paid ₹ 2.50 on the face value of ₹10 but no allotment was made to him. Subsequently 400 shares were allotted and issued to him without his request and his name was entered in the register of members. X knew it but took no steps for rectification of the register of members. The company went into liquidation and X was held liable as a contributory. X claims that he is not liable as contributory. Whether his claim is tenable ?

ANSWER- Section 95 of the Companies Act, 2013 provides that the register, their indices and copies of annual returns maintained under section 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.
A register of members is prima facie evidence of the truth of its contents. Accordingly, if a person's name, to his knowledge, is there in the register of members of a company, he shall be deemed to be a member and onus lies on him to prove that he is not a member. He must promptly appeal to the Tribunal for rectification of the register under section 59 of the Companies Act, 2013 to take his name off the register, failing which the doctrine of holding out will apply.
In Re. M.F.R.D. Cruz, A.I.R. 1939 Madras 803, the court held "when a person knows that his name is included in the register of shareholders and he stands by and allow his name to remain, he is holding out to the public that he is a shareholder and thereby he loses his right to have his name removed".

CHP 12- OVERVIEW OF CORPORATE REORGANIZATION

June 2023

1. **Explain the exceptions, if any, to the Majority Rule in Foss v. Harbottle case law**

Ans- Exceptions to the majority rule:

•The majority rule in Foss v Harbottle 67 E.R.189 ; (1843) 2 Hare 461 states that no action can be brought by a minority member against the directors in respect of a wrong alleged to be committed to the company. However, the rule in Foss v Harbottle is not absolute but is subject to certain exceptions. Apart from the protection by the Companies Act, 2013, the minority shareholders are also protected by common law i.e., unwritten customs and practices having the force of law.

•In a noted case ICICI v Parasurampuria Synthetics limited, the Delhi High Court has ruled that an automatic application of the rule of majority as enunciated in Foss v Harbottle to the Indian corporate realities case would not be proper.
The Court has said that though financial institutions hold only a small percentage of the shares in a company, they provide the bulk of finance as working capital for the continuous day-to-day operations of

the company and therefore, to exclude them or to render them voiceless on application of the principles of Foss v Harbottle Rule would be unjust and unfair.

•The Rule also does not apply in case of ultra-virus acts. Where the directors representing the majority of shareholders perform an illegal act or ultra-virus act for the company, an individual shareholder has the right to bring an action / law suit to restrain the company by an order or an injunction of the Court from the carrying on any ultra-virus act by the company as decided in Bharat Insurance Limited v Kanhya Lal (A.I R 1935) case.

•When an act done by the majority amounts to a fraud on the minority shareholders, an action to restrain the company or the wrong doers can be brought by even an individual shareholder. The Court will see whether the resolution passed by the majority is bonafide for the benefit of the company as a whole (Allen v Gold Reefs of West Africa case law).

•If the wrong doers are in control of the company, the minority shareholders can take legal action for fraud by the majority.

The Court may entertain the plea because, if the minority shareholders are denied the right of legal action, their grievance would never reach the Court as the wrongdoers themselves being in control of the affairs of the company, they will never allow the company to sue the majority shareholders as decided in a case law (Edwards v Haliwell (1970) 2 All E.R)

2. **Mercury Limited is incorporated in USA and having its registered office in Los Angeles. Board of directors of Mercury Limited taken a decision to merge Mercury Limited with Mars Limited, a company incorporated in India having its registered office in New Delhi. Referring to the provisions of the Companies Act 2013, advice the Board of directors of Mercury Limited for Merger**

Ans- Yes, Mercury Limited a foreign company can merge with Mars Limited, an Indian Company as per Section 234 of Companies Act, 2013.

Section 234(2) of Companies Act, 2013 states that subject to the provisions of any other law for the time being in force, a foreign company may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash or partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

For the purpose of sub section (2), the expression "foreign company' means a company or body corporate incorporated outside India whether having a place of business in India or not.

Section 234(1) states that the provisions of this Chapter unless otherwise provided under any other law or the time being in force, shall apply mutatis mutandis to schemes of merger and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

June 2022

(a) Advise the Board of directors of Clean Ltd. regarding appointment in the following scenarios :

1. **Can Ram who is already director of Clean Ltd. be appointed as Chief Executive Officer (CEO) or Chief Financial Officer (CFO) of the same company ?**
2. **Is it possible to appoint Ram as Managing director of Clean Ltd. when Shyam is already a Manager of the same company ? (4 marks)**

Ans-

1. "Chief Executive Officer" means an officer of company, who has been designated as such by company - section 2(18) of the Companies Act, 2013. "Chief Financial Officer" means a person appointed as the Chief Financial Officer of company - section 2(19) of the Companies Act, 2013. The Companies Act, 2013 does not prohibit appointment of director as CEO or CFO of same company but company has to comply with other provisions of Act (i.e. disclosure of interest, office of profit or place etc.).

Further as per Regulation 77 of Table F, a director can be appointed as Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer of same company. Accordingly, Ram who is the director of Clean Ltd. can be appointed as CEO or CFO in the same company.

2. As per section 196(1) of the Companies Act, 2013 a company can appoint either Managing Director or Manager, but not both at the same time. Accordingly, Ram cannot be appointed as Managing Director of Clean Ltd. in case where Shyam is already appointed as a Manager of Clean Ltd. in view of section 196(1) of the Companies Act, 2013

June 2021

QUESTION 1- Appointed date and Effective date are very important in any merger or amalgamation through a scheme of arrangement. Do you agree ?

ANSWER- Appointed date and Effective date are two significant dates in any scheme of Merger and Amalgamation.
Mention of an appointed date is mandatory for the schemes falling under Section 232 of the Companies Act, 2013. Schemes involving Merger or Amalgamation or division of undertaking are required to fix an appointed date.
In Marshall Sons & Co. India Ltd. vs. ITO, it was held by the Hon'ble Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place, and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies, and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.
Section 232(6) of the Companies Act, 2013 states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.
The “Effective date” is the date when the amalgamation/merger is completed in all respects after having gone through the formalities involved, and the transferor company is dissolved by the Registrar of Companies and certified copy of the order for the scheme of compromise and arrangement is filed with ROC and all other required statutory authorities, if any.

December 2021

QUESTION 1- Govt. of West Bengal filed an application for winding up of KTC Ltd in the Tribunal citing sec. 271 of the Companies Act, 2013 in the interest of sovereignty and integrity of India which was opposed by the company stating that state government cannot file a petition for winding up. Is the claim of the company sustainable and why ? (3 marks)

ANSWER- Section 271(b) of the Companies Act, 2013 provides that a company may, on a petition under section 272, be wound up by the Tribunal if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.
Section 272(1) of the Companies Act, 2013 provides that subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—
(a) the company;
(b) any contributory or contributories;
(c) all or any of the persons specified in clauses (a) and (b);
(d) the Registrar;
(e) any person authorised by the Central Government in that behalf; or
(f) in a case falling under clause (b) of sub-section (1) of section 271, by the Central Government or a State government.
In view of the above provisions, the claim of the company is not sustainable.

CHP 13- MCA 21 AND FILLING IN XBRL

June 2021

QUESTION 1- Assistant Company Secretary of JKL Ltd. has made excess payment of ₹1 lakh to MCA for filing of E-forms. What is the procedure of refund of MCA-21 fees ?

ANSWER- In order to claim refund of multiple payments or incorrect payment or excess payment of MCA-21 fees, while using MCA services, following procedure is required to be followed:

- The Person is required to file the 'Refund Form' available on MCA21 portal for claiming refund.
- The refund of MCA21 fees is available in the following cases:

Multiple Payments -This includes cases where service seeker does multiple filings such as in e-Form No. SH-7 and makes payments more than once (multiple times) for the same service. However, refund shall not be allowed in respect of approved e-Forms.

(a) Incorrect Payments - This includes cases where the service seeker has made payment in respect of an e-Form or Stamp duty through an incorrect option under Pay miscellaneous fee facility.

(b) Excess Payments -This includes cases where any excess fee has been paid by the service seeker due to some incorrect data entered in the e-Form or incorrect data in MCA-21 system due to migration of data from legacy system.

- The refund form is to be filed within the stipulated time period. Also, there shall be deduction in the amount to be refunded based on time period within which refund e-form is filed.

December 2021

QUESTION 1- ABC Ltd. has not satisfied any conditions specified as per section 137 of the Companies Act for current financial year. The company has filed financial statement as per XBRL Taxanomy for the previous financial year. Is ABC Ltd. still required to file financial statements as per XBRL Taxanomy for the current financial year ? (3 marks)

ANSWER- As per Rule 3 of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015, the companies which have filed their financial statements as per XBRL taxonomy for the previous financial year under Rule 3(1) of the said Rules shall continue to file their financial statements and other documents in XBRL taxonomy though they may not fall under the class of companies specified therein in succeeding years.

Hence, as per the above provisions ABC Ltd. though has not satisfied any conditions specified as per Section 137 of the Companies Act, 2013 for current financial year, yet the company is required to file financial statements as per XBRL Taxonomy for the current financial year as it has filed the financial statements as per XBRL Taxonomy for the previous financial year.

QUESTION 2- Mention the requirements in relation to maintenance of minutes, as prescribed by the Secretarial Standards Board.

ANSWER- The requirements in relation to maintenance of Minutes, as prescribed by the Secretarial Standard Board are given below.

Minutes of Board Meeting

1. Minutes shall be recorded in books maintained for that purpose.
2. A distinct Minutes Book shall be maintained for meetings of the Board and each of its Committee.
3. A company may maintain its Minutes in physical or in electronic form.

Minutes may be maintained in electronic form in such manner as prescribed under the Companies Act, 2013 and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

4. The pages of the Minutes Book shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

5. Minutes shall not be pasted or attached to the Minutes Book or tampered with in any manner.
6. Minutes Book, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company. There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
7. Minutes Books shall be kept at the Registered Office of the Company or at such other place as may be approved by the Board.

Minutes of General Meeting

1. Minutes shall be recorded in books maintained for that purpose.
2. A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.
3. A company may maintain its Minutes in physical or in electronic form. Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall, however, follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

4. The pages of the Minutes Books shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

5. Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.
6. Minutes of Meetings, if maintained in loose leaf form, shall be bound periodically at least once in every three years. There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

Minutes Books shall be kept at the Registered Office of the company

CHP 14- GLOBAL DEVELOPMENT

June 2023

1. **The legislative authority for enacting corporate laws and securities laws in India is distinctly different from the authority for enactment of corporate laws and securities laws in USA. Explain**

Ans- In India both securities and corporate laws are centralized with the Parliament being the sole authority for enacting these statutes.
For example, Companies Act, 2013, Securities Contract (Regulation) Act, 1956, Limited Liability Partnership Act, 2008, Income Tax Act, 1961 are all important central laws uniformly applicable across the States and Union Territories in India.
ii) On the other hand, the corporate laws in USA is enacted and administered by the individual States having their own Constitution with the Secretary of State for the individual states looking after the incorporation and administration of Companies Act of that individual State.
Thus, in USA each State is competing with other states to attract companies to set up shop by offering easier incorporation terms and tax incentives.
iii) However, like in India, the security laws of USA are administered by a single, powerful central Authority called Securities Exchange Commission (SEC) which oversees the administration of stock exchanges. This is similar to Security Exchange Board of India (SEBI) which administers securities listed on recognized stock exchanges while the Ministry of Corporate Affairs (MCA) administers the Companies Act, 2013 and Allied Acts for regulating the functioning of the corporate sector.

2. **With reference to the provisions of Singapore Companies Act, explain when a Private Company need not hold annual general meeting? What is the due date of holding the annual general meeting of listed public company?**

Ans- A private company need not hold annual general meeting for a financial year under section 175A of the Singapore Companies Act under the following cases-
(a)If it is a private company in respect of which there is in force a resolution passed in accordance with sub section (2) to dispense with the holding of annual general meetings;
(b)If, at the end of that financial year, it is a private company and has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the period specified in section 203(1)(b); or
(c)If, at the end of that financial year, it is both a private company and a dormant relevant company the directors of which are, under section 201A; exempt from the requirements of section 201 for the financial year.
In accordance with section 175 of the Singapore Companies Act a general meeting of every company to be called the “annual general meeting” must, in addition to any other meeting, be held after the end of each financial year within 4 months in the case of a public company that is listed.

December 2020

QUESTION 1- In the United Kingdom, the name of the company may be entered in its register of members as a member in certain cases.

ANSWER- Section 724 of the U.K. Companies Act, 2006 deals with the Treasury Shares, a limited company can makes a purchase of its own shares out of distributable profits. The company may

(a) hold shares (or any of them) or

(b) deal with any of them, at any time,

in accordance with section 727 or 729 of the U.K. Companies Act, 2006 w.r.t. disposal and cancellation of treasury shares.

Accordingly, when such Treasury Shares are held by the company, then the name of the company must be entered in the register of members (or as the case may be, the company's name must be delivered to the registrar) as the member holding those shares

June 2021

QUESTION 1- What are the requirements to form a proprietary company under the Australian Corporations Act, 2001?

ANSWER- A proprietary company is a company that is registered as, or converts to, a proprietary company under the Australian Corporations Act, 2001.

A proprietary company limited by shares must have at least one shareholder and must have at least one director. That director must ordinarily reside in Australia.

A proprietary company must:

- be limited by shares or be an unlimited company with a share capital;
- have no more than 50 non-employee shareholders; and
- not do anything that would require disclosure to investors under the Chapter 6D of the Act (except in limited circumstances).

December 2021

QUESTION 1- Highlight the aspects of corporate governance in USA as per SOX Act.

ANSWER- The Sarbanes-Oxley Act (SOX) is the primary federal law governing corporate governance and accountability across multiple aspects of corporate business practice.

The primary objectives of SOX are to promote:

Fairness to Shareholders – SOX requires or promotes governance provisions that protect shareholder rights and allow shareholders to exercise those rights through governance procedures, such as shareholder meetings.

Fairness to Stakeholders – SOX requires or promotes governance provisions that take into consideration the interests of employees, suppliers, buyers, and the local community.

Heightened Director and Board Responsibilities – SOX places specific requirements on the composition of boards of Directors, including skill and independence requirements. Notably, in an effort to promote Director Independence in decision making, SOX requires corporations to employee committees for special purposes.

Director and Officer Ethics – SOX imposes additional obligations on corporations to establish and maintain ethical standards for officer and Director conduct and decision- making.

Disclosure and Accountability – SOX places requirements on boards to increase transparency in corporate governance practices. This includes implementing procedures for ensuring accurate accounting practices and public disclosure mechanisms.

Accounting and Disclosure Procedures – SOX imposed a number of reforms on the accounting and financial reporting requirements of public companies. The primary requirements are as follows:

- The Public Company Accounting Oversight Board (PCAOB) – SOX established the PCAOB to regulate auditors charged with reviewing the accounting procedures and disclosure statements of public companies.
- External Auditing Firms – SOX now requires that a firm in charge of auditing the corporation refrain from serving as independent consultants to that same firm. This includes refraining from book keeping, system designs and implementation, appraisals and valuations, actuarial services, human resources functions, and investment banking services for the audited company. Further, the corporation must change auditing firms at least every 5 years. There are also restrictions on the ability of company executives to have worked for the auditing firm within the prior year.

Securities Regulations – Much of the regulatory process prescribed by SOX is carried out by the Securities and Exchange Commission (SEC). SOX include provisions that strengthen the ability of the SEC to oversee corporate governance matters and enforce violations.

PART 2
CHP 15- BOARD CONSTITUTION AND POWERS

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 SEBI (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.

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.

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 1" 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.

4

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 Chariman 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 (LODR), 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.

1. 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

2. 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 Qualificationof Directors) Rules, 2014 following class of companies must have at least one womandirector:

- 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-upcapital 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 itis a listed company.

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

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 oftop 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 leastone independent woman director by 1st April, 2020. The top 500 and 1000 listed companiesshall

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] 44 Comp 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= Rs. 5,00,0005% 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:

a) Prior approval by ordinary resolution in the general meeting is obtained to make contribution to charitable fund.

b) The trust is bonafide.

Contribution towards Gratuity Fund for employees of company cannot be consideredas contribution towards charitable fund or trust. Gratuity Fund is directly related to businessof 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 ?**

Name of Company	*Paid up capital (Rs. in crore)*	*Turnover (Rs. in crore)*	*Aggregate outstanding loan, debenture and deposits (Rs. in crore)*
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 legal 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.

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

		c) In case of a Listed Entity having outstanding SR equity shares, the Audit Committee shall only comprise of Independent Directors. d) The chairperson of the audit committee shall be an independent director.
Nomination and Remuneration Committee	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.	According to Regulation 19 of the SEBI (LODR) Regulations, 2015 The Board of Directors shall constitute the Nomination and Remuneration Committee as follows: (a) the Committee shall comprise of at least three Directors and all Directors shall be non-executive Directors; (b) at least fifty percent of the Directors shall be Independent Directors; and (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; (d) The Chairperson of the nomination and remuneration committee shall be an Independent Director.
Stakeholders Relationship Committee		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. 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.

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.

CHP 16-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.

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 thearticles 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 directorsshall 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 Kavitawill 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 officein view of reconstruction of the company or amalgamation with other company and he is appointed as Managing Director or Whole time Director or Manager ofthe reconstituted company or body corporate resulting from such amalgamation. In the present case,

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

- Ojas is not eligible for compensation at all as per the provisions of section 202of the Companies Act, 2013.
  When a director (MD/WTD) resigns from his office at his / her will (i.e., otherwisethan because of the reconstruction or amalgamation) he cannot claim compensation for the loss of office. Accordingly, Naman also cannot claim anycompensation 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 Associationof 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 anadditional 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 on30th September, 2021, Mohan can continue up to 30th September, 2021

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.

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.

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.

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 incorportated 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

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.

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.

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.

CHP 17- APPOINTMENT AND REMUNERATION OF KMP

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.

2

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.

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.

CHP 18- MEETING OF BOARD AND ITS COMMITTEES

June 2023

1. **Draft minutes of 19th meeting of the Board of directors of Zwiggy 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.

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.

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.

CHP 19-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.

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 ?

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

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 ofthe 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 containingthe 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 inaddition to the 21 days.

	Case-I - Sky Ltd.	*Case -11- Moon Ltd.*
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

(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 :

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

(4 marks)

Ans- Company shall transact such items of business as the Central Government may, bynotification, declare to be transacted only by means of postal ballot. Provided that anyitem 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 resolutionthrough 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

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.

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

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 of the Resolution	No. of Shares	I/ We assent to the Resolution (FOR)	I/We dissent to the Resolution (AGAINST)

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.

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. Advice 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.

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

CHP 20- VIRTUAL MEETINGS

June 2022

(a) The Company Secretary and Chairperson shall take due and reasonable care while handling virtual meeting.' Evaluate the statement. (5 marks)

Ans- The Chairperson of the meeting and the Company Secretary while handling virtualmeeting shall take due and reasonable care with respect to the following:

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures to record proceedings;

(b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

(c) to record proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before thetime of completion of audit of that particular year;

(e) to ensure that no person other than the concerned director are attending or haveaccess to the proceedings of the meeting through video conferencing mode orother audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of themeeting.
The directors, who are differently abled, may be facilitated by the Board to allow aperson to accompany him provided such Director requests the Board to allow a personto accompany him and ensures that such person maintains confidentiality of the mattersdiscussed at the meeting.

(b) Rajdeep, a director of the company, intimated his willingness to participate in the Board meeting scheduled to be held in August, 2021 through video conferencing. He declared his intention for participation in the scheduled Board meeting through video conferencing mode to company in July, 2021. The Chairman of the company has informed Rajdeep that he has to inform at least 3 months in advance to participate in the Board meeting through video conferencing. Considering the applicable provisions of the Companies Act, 2013, decide whether the action of the Chairman is valid ? Can Rajdeep attend the Board meeting scheduled to be held in August, 2021 through video conferencing ? (4 marks)

Ans- The provisions for conducting Board meeting through video conferencing has beenspecified in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Director can attend Board meeting electronically. At the beginning of calendar year, director may intimate his intention to participate in Board meeting through video conferencing. Such declaration shall be valid for one year. If he does not intimate, it shall be presumed that the director shall attend the Board meeting in person.

Para 1.3.4 of Secretarial Standard on Board Meeting states that, the notice of the Board meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio-visual means.

A director intending to participate through video conferencing or audio-visual means shall communicate his intention to the Chairperson or the Company Secretary of the company. If the director intends to participate through video conferencing or other audio-visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

It was held in case of *Rupak Gupta* vs. *UP Hotels Ltd.*, Sub Rule 3(3)(e) of Companies (Meeting of Board and its Powers) Rules, 2014 does not intend to say that if an intimation to participate in a meeting through electronic mode is not given at the beginning of the year, the directors are not entitled to participate in any meeting through electronic mode. Therefore, the director does not give intimation at beginning of the calendar year, he can attend through video conference and preventing him from appearing through video conferencing is improper.
Accordingly, one can say that the action of the Chairman is not valid. Rajdeep canparticipate in the Board meeting through video conferencing

(c) Explain the following terms with reference to a virtual meeting :

1. **Electronic mode**
2. **Roll call. (4 marks)**

Ans- Secretarial Standard -1 (SS-l) defines "Electronic Mode" means Meetings through video conferencing or other audio-visual means. "Video conferencing" or "otheraudio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

- The requirement for roll call is in line with the requirement under Rule 3(4) and Rule 3(5) of the Companies (Meetings of Board and its Powers) Rules, 2014. During the roll call, every Director participating through Electronic Mode should state, for the record, the following namely: (a) name; (b) the location from where he is participating; (c) that he has received the Agenda and all the relevant material for the Meeting; and (d) that no one other than the concerned Director is attending or having access to the proceedings of the Meeting at the location mentioned in (b) above.
- A roll call is nothing but identifying and confirming the attendance of the director participating through Electronic Mode

December 2020

QUESTION 1- What do you understand by the term "secured computer system' in the context of virtual board meetings?
Can all matters required to be approved by meeting of Board of Directors be approved by video conferencing?

ANSWER- According to Secretarial Standard-1, Secured Computer system in the context of virtual Board Meetings means computer hardware, software and procedure that
(i) are reasonably secure from unauthorised access and misuse;
(ii) provide a reasonable level of reliability and correct operation;
(iii) are reasonably suited to perform the intended functions; and
(iv) adhere to generally accepted security procedures
Section 173(2) of the Companies Act, 2013 read with Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014, prescribes that the following matters shall not be dealt with in any meeting held through video conferencing or other audio-visual means:
(a) The approval of the Annual Financial Statements;
(a) The approval of the Board's report;
(b) The approval of the Prospectus;
(c) The Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013;
(d) The approval of the matter relating to amalgamation, merger, demerger acquisition and takeover.
However, where there is quorum present in a Board meeting through physical presence of directors, any other director may participate through video conferencing or other audio- visual means.
Accordingly, as per the above mentioned provisions, all matters required to be approved by meeting of Board of Directors cannot be approved by video- conferencing.

PART 3
CHP 21- LEGAL FRAMEWORK GOVERNING CS

June 2023

1 (i) Write a note on UDIN and eCSin.
(ii) Highlight the risk involved in the functioning of a mega professional firm.

Ans-
(i). UDIN: The Unique Document Identification Number as governed by the UDIN Guidelines shall verify the authenticity of various documents signed or certified by Company secretaries in Practice. As per the UDIN Guidelines, a unique number for the identification of documents attested by Company Secretaries in Practice shall be generated at the time of signing the Certificate/ Report which shall mandatorily be mentioned in the Certificate/Report along with the CoP number.
eCSin: The Employee Company Secretary Identification Number as governed by the eCSin Guidelines shall enable the Institute to identify the appointments and cessations of Company Secretaries. eCSin is a system generated unique number for identification of the Company Secretaries employed in a particular company which shall be generated by the Company Secretary at the time of employment as a Company Secretary (KMP or otherwise), as well as at the time of demitting office in any manner.
Both the Guidelines have been made mandatory by the Council of ICSI w.e.f 1st October, 2019.

(ii). Risks involved in the functioning of a Mega Professional Firm are as follows:
- Lack of understanding and multiplicity of directions to the staff could be disastrous;
- More cost on infrastructure and technology;
- Dominance of senior partners over the younger partners;
- Defining exit route is difficult;
- Lack of transparency may lead to disputes;
- If crack develops in mutual faith and trust, difficult to cure;
- Communication gap between partners.

June 2022

(a) Kirti, who is a Practicing Company Secretary is specialized in the areas of Secretarial Audit. On account of receiving many assignments and unable to handle the work alone, she permits Mohan, her friend who is a Company Secretary but not in practice and who is also a lawyer but not a member of any Bar Council, to conduct the Secretarial Audit and give reports on her behalf. There is no written agreement between Kirti and Mohan to this effect; however, the oral understanding between both of them is that the fees received from the assignments shall be passed on to Mohan and Kirti in equal proportion. Examine the validity of this arrangement in light of the relevant provisions related to misconduct under the Company Secretaries Act, 1980. (5 marks)

Ans- Part I of the First Schedule to the Companies Secretaries Act, 1980 deals with professional misconduct in relation to Company Secretaries in practice.

Clause 1 of Part I of the First Schedule provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.

This clause read with clause 11 allow another person to practice in the name of a Company Secretary in Practice provided such other person is also a Company Secretaryin Practice and is in partnership with or is employed by the Company Secretary in Practice in whose name the work is to be carried out. Two persons are said to be in Partnership when they work together on mutual faith and agency. Sharing of remunerationdoes not make them partners. Thus, an associate who is not a part of decision makingprocess does not become a partner.

In the given case, Practicing Company Secretary has engaged Mohan who is not a practicing Company Secretary to carry Secretarial Audit in her name. It is a misconducton her part. Moreover, she has agreed to share 50% fees of assignment with Mohan.

Clause 2 of Part I of the First Schedule does not prohibit a Company Secretary in Practice from sharing fees, commission or brokerage in the fees or profits of his professional business, with any other member of the Institute or a partner or a retired partner or the legal representative of a deceased partner. Accordingly, sharing of the fees with Mohan shall be seen as a professional misconduct on the part of Kirti.
However, permitting Mohan to conduct the Secretarial Audit and give reports on herbehalf will be seen as a professional misconduct under the provisions of the CompanySecretaries Act, 1980

December 2020

QUESTION 1- Kavita, a practicing company secretary, posted a request on whatsapp group of practicing company secretaries for providing secretarial audit in any company. She also made a similar request on whatsapp to her college friends. Has she committed professional misconduct?

ANSWER- According to Clause 6 of Part I of the first Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he/she 'solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication, interview or by any other means'. However, there are two exceptions. According to the said clause, nothing contained in this clause shall be construed as preventing or prohibiting

(i) Any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice.

(ii) A member from responding to tenders or enquiries issued by various users of

(iii) professional services or organizations from time to time and securing professional work as a consequence.

(iv) Accordingly, when Kavita posted a request on What'sapp group of Company Secretaries in Practice, it would not amount to professional misconduct. However, when she sends messages to her college friends seeking professional work it would amount to professional misconduct.

June 2021

QUESTION 1- FMP & Associates, Company Secretaries, has sent a letter to the foreign exchange department of Reserve Bank of India stating that the firm has three partners who specialise in the law of Foreign Exchange & Management and asked the said Authority to include their name in the panel, whenever formed for providing advisory services. Comment with reference to the provisions of the Company Secretaries Act, 1980. (5 marks)

ANSWER- Clause 6 of Part I of First Schedule to the Company Secretaries Act, 1980 states that a Company Secretary in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the members maintain their independence of judgement and able to command respect from their prospective clients.

Accordingly, CS firm FMP & Associates and its partners are guilty of professional misconduct under Clause 6 of Part I of First Schedule to the Company Secretaries Act, 1980 as it has solicited professional work from the Reserve Bank of India by inquiring about the maintenance of the panel and advertising about the partners of the firm having specialised knowledge of foreign exchange and management law.

QUESTION 2- A complaint of professional misconduct is filed with ICSI against Swapan, a practising member. The Disciplinary Committee of ICSI is of the opinion that Swapan is guilty of professional misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980. The Committee, after affording Swapan an opportunity of being heard, ordered for removal of his name from Register permanently and also imposed penalty of ₹10 lakh. Is the action of the Committee valid ? What actions can the Board of Discipline (a separate authority) take if it is of the opinion that a member is guilty of professional misonduct mentioned in the First Schedule to the Act, 1980 ? (5 marks)

ANSWER- As per section 21B(3) of the Company Secretaries Act, 1980 where the Disciplinary Committee is of the opinion that a member is guilty of professional or other misconduct as mentioned in the Second Schedule or both the First Schedule and the Second Schedule to the Company Secretaries Act, 1980, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

(a) Reprimand the member;

(b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to Rs. 5 Lakhs.

Applying above provisions to Swapan, a practising member, the order for permanent removal of name from Register of members is valid but fine can be imposed maximum upto Rs. 5 Lakhs.

As per section 21A(3) of the Company Secretaries Act, 1980 Where the Board of Discipline is of the opinion that a member is guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of 3 months;

(c) impose such fine as it may think fit which may extend to Rs. 1 lakh.

DECEMBER 2021

QUESTION 1- Can a company secretary advertise himself as per the guidelines of the ICSI 2020 ? Mention few of the restrictions in this regard.

ANSWER- As per the ICSI 2020 guidelines, the following activities are permitted for a company Secretary in Practice as means to advertise:

i) Display the scope of work on his/her own website.
ii) Creating a visual identity in compliance with the Guidelines for use of individual Logo issued by the Council of ICSI.
i) Display of Location and decor of the workplace, meeting rooms, etc.
ii) Display of Firm name, Logo or any other identity on Uniform, Office/s, office stationary& equipment/ material and providing Training to Staff.
iii) Professional Updates and Write ups in any mode.
iv) Appearing on local radio or television.
v) Giving speeches/lectures at any platform including Seminars, Conferences, training programmes, Workshops, Conventions, etc. so organised by any forum.
vi) Holding professional seminars, conferences and workshops.
vii) Sponsoring any event (cultural, professional or otherwise) or helping with community programmes or doing voluntary work as a professional for charitable organizations.
viii) Use of social media like Facebook, Instagram, Linkedin, Twitter, Youtube, WeChat, Telegram and Whatsapp or and other media of similar nature

The restrictions are given below :
The Advertisement shall:
(i) not be in violation of provisions of Company Secretaries Act, 1980;
(ii) not be false or misleading;
(iii) not claim superiority over any or all other Company Secretaries;
(iv) not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
(v) not contain fabricated or false testimonials or endorsements concerning the Company Secretary;
(vi) not refer the Company Secretaries in the terms such as "specialists" or "experts";
(vii) not represent that the quality of the professional services to be performed is greater than the quality of professional services performed by other professionals. Statements comparing one professional's services to that of another are not allowed; not constitute a guarantee, warranty, or prediction regarding the outcome of any professional assignment;
(viii) in no way indicate that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of the desired outcome;
(ix) not contain any reference to past successes or results which indicates a guarantee, warranty or prediction of result of future professional assignments. eg. We made M/s. Xxx win the case, Meet the masters;
(x) not be designed for "pleasing customers," which might mislead or eventually harm customers or third parties;
(xi) not contain any humorous slogans. E.g. Save Rs. Xxxx Come to us, we will tell you how.

CH 22- Secretarial Standards Board

June 2022

(a) Company Secretary of Black Ltd. has suggested following style of assigning serial number to its Board meeting :

1. **Serially numbering on Calendar Year basis as follows : "1/2015", "2/2015", "3/2015" and so on In the next year, numbering would be "1/2016", "2/**
2. **2016", "3/2016" and so on.**
3. **Serially numbering on financial year basis as follows : "1/2015-16", "2/2015- 16", "3/2015-16" and so on or 1/15-16, 2/15-16, 3/15-16 and so on.**
4. **Continuous serially numbering across years : 11th Meeting, 12th Meeting and so on.**
5. **Board of directors of Black Ltd. would like to know that which of the above style of assigning serial number to Board meeting is valid as per Secretarial Standard (SS-1) ? How serial number to the Adjourned Board meeting should be given to comply with SS-1 ? (5 marks)**

Ans- As per para 1.2.1 of Secretarial Standard-I (SS-1), every Meeting of the Board shouldbe serially numbered for ease of reference. While numbering serially, the company maychoose to follow its existing system of numbering, if any, or any new system of numbering, which should be distinct and enable ease of reference and/or cross reference. Here, a company may choose to either count and give continuous numbering from its incorporationor give continuous numbering from Meetings held on or after 1st July, 2015, this beingthe date from which SS-1 became effective. In any case, the company should follow auniform and consistent system.

Accordingly, all styles {i.e. (i) to (iii)} presented for assigning serial number to the Board meeting by the Company Secretary are valid and complying SS-1. It is advisablethat the Board be informed about the system of numbering of the Meeting and/or any change in the system of numbering; and the same be recorded in the Minutes.

Serial number of the original meeting and the adjourned meeting should be the same. For e.g.: In case the serial number of the original meeting is 12th Meeting, the serialnumber of the adjourned meeting should be 12th Meeting (Adjourned)

CHP 23-MEGA FIRMS

June 2023

1 CS Manish, a Company Secretary in practice is an expert in Goods and Service Tax. On being approached by a reputed University at Mumbai, Manish took up teaching assignment of indirect tax laws at University from 11 A.M. to 3 P.M. on every Tuesday and 2 P.M. to 5 P.M. on every Friday. Remuneration was contracted to be fixed for the assignment. The University was recognised by the Council of ICSI for imparting teaching. Has Manish committed professional misconduct in terms of provisions of the Company Secretaries Act, 1980?

Ans- Clause (10) of Part I of the First Schedule to Company Secretaries Act, 1980 stipulates that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if "he engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage."

Regulation 168(1) of the Company Secretaries Regulations, 1982 provides that the prior permission of the Council by a resolution is required for a Company Secretary to engage in any business or occupation other than the profession of Company Secretary. The Council has expressly permitted a PCS to take up following vocations:

- Authoring Books and Articles;
- Holding of Life Insurance Agency License for the limited purpose of getting renewal commission;
- Holding of public elective offices such as M.P., M.L.A., M.L.C. and others;
- Honorary office-bearership of charitable, educational or other non-commercial organisations.
- Acting as Justice of Peace, Special Executive Magistrate and the like;
- Teaching assignment under the Coaching section/department of the Institute and other Institutes such as the Institute of Cost & Works Accountants of India, the Institute of Chartered Accountants of India, Management Institutes, Universities and any college affiliated to a University and such other organization as may be recognised by the Council of the Institute from time to time, so long as the hours during which a member in practice is so engaged in teaching do not exceed average three hours in a day irrespective of the manner in which such assignment is described or the remuneration receivable (whether by way of fixed amount or on the basis of any time scale or in any other manner) by the member in practice for such assignment.

Here CS Manish, a Company Secretary in Practice, an expert in Goods & Service Tax on being approached by a reputed university at Mumbai, took up teaching assignment of indirect tax laws at the university from 11 A.M. to 3 P.M. on every Tuesday and 2 P.M. to 5 P.M. on every Friday which comes to seven hours for two days. The average hours per day exceed three hours. The fact that remuneration was contracted to be fixed for the assignment and that the university was recognised by the Council of ICSI for imparting teaching will not help CS Manish. In view of the above Manish has committed professional misconduct in terms of provisions of Company Secretaries Act, 1980.

December 2020

QUESTION 1- Piyush a practicing company secretary is planning to establish a multi-disciplinary Professional firm to provide secretarial, financial and medico-legal services. For this purpose, he has invited the following persons for forming the multidisciplinary firm:
(i) Atul, a practicing Chartered Accountant
(ii) Dr. Mukesh, a practicing physician
(iii) Pramod, an advocate enrolled on Bar Council of Kerala
(iv) Pratap, a medical insurance agent
(v) Shyam a member of the Institute of Actuaries of India
Can Piyush constitute a multi-disciplinary firm with these persons? Is there any upper limit as to the number of partners who can constitute such a firm ?

ANSWER- Regulation 165A of The Company Secretaries Regulations, 1982 as inserted by the Company Secretaries (Amendment) Regulations, 2020, provides that a Company Secretary in practice may form multi- disciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of The Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.
Regulation 168B of Company Secretaries Regulations, 1982, determines the membership of professional body for partnership, accordingly for the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Company Secretaries Act, 1980, a person shall be a member of any of the following professional bodies, namely: -
- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
- The Institute of Cost Accountants of India established under the Cost and Works Accountants Act, 1959;
- Bar Council of India established under the Advocates Act, 1961;
- The Institute of Engineers or Engineering from a University established by law or an institution recognised by law;
- The Indian Institute of Architects established under the Architects Act, 1972;
- The Institute of Actuaries of India established under the Actuaries Act, 2006;
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary is recognised by the Council under Section 38(2) of the Company Secretaries Act, 1980.

Accordingly, in the present case Piyush can form a partnership only with Atul, a practicing Chartered Accountant, Pramod, an Advocate enrolled under Bar Council of Kerala and Shyam, a member of the Institute of Actuaries of India.
According to Section 464(1) of the Companies Act, 2013 read with Rule 10 of the Companies (Miscellaneous) Rules 2014, no association or partnership can be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Companies Act, 2013 or is formed under any other law for the time being in force. Provided that the number of persons which may be prescribed under this sub-section shall not exceed 100.

December 2021

QUESTION 1- It is essential to device "performance, contribution and efficiency based" revenue sharing model in MDFs. Explain

ANSWER- In the long term success of the MDF the revenue sharing model has to be designed to suit the given situation. Partners may adopt simple revenue sharing model to share profits and losses equally. In this model it is assumed that each one is bringing equal business and generating equal revenue. However, in reality if it doesn't happen it may give rise to sense of discomfort against the person who is continuously showing less contribution but at the same time getting equal share of profits.

Therefore, it is essential to device "performance, contribution and efficiency based" revenue sharing model. Assume a situation where A,B,C,D and E are the partners expert in different disciplines. The revenue sharing model could be the following:

1. Partner bringing new client shall be given referral or induction share, say, @ 15% of the fees settled and received; it can be for the first year or for given number of years;
2. Certain percentage of fees, say 15% shall be retained in business in common pool for meeting expenses;
3. 70% of the fees shall be given to the partner of partners who actually work on the assignment (assignment share). When more than one partners are involved in an assignment their share can be determined based on respective role;
4. At the year end after meeting expenses resultant profit shall be shared in proportion of contribution of individual in the gross earnings/net profit of the firm;
5. Internally, different verticals can be created and surplus generated by each one can be assessed as an independent cost centre.

This model motivates each partner to bring more and more business into the firm and also to work for maximization of his share and wealth of the firm.

There could be more tailor made revenue sharing models, however, the model based on performance, contribution and efficiency is likely to work better.

Certificate

of

Signature Completion

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