

**JAHANGIR TUTORIALS**

**SETTING UP OF  
BUSINESS,  
INDUSTRIAL &  
LABOUR LAWS.**

**SCANNER  
(NEW SYLLABUS)**

**PROF ZUBAIR  
JAHANGIR**

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## Lesson 1 - Selection of Business Organization

**June 2022**

**(a) Degree of the Control plays the vital role in selection of a suitable form of the business organization. Explain. (4 marks)**

**Ans-** The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organisation.

In sole proprietorship and OPC: ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.

In partnership: management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

In a company: however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organisation rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organisation.

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**DECEMBER 2020**

**Question 1- X is planning to start a mobile based and web based business. In selection of suitable form of a business organisation, 'degree of control and management' plays a significant role. Explain how this factor affects the choice of form of organisation**

**Answer-** The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organisation.

**In sole proprietorship and OPC** - ownership, management and control are completely fused and therefore, an entrepreneur has complete control over his business.

**In partnership** - management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

**In a company** - however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board of Directors, who are generally the elected representative of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organisation rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organisation.

So, while deciding to commence a business in any form 'X' should just not only consider risk, return, sharing, and control over decision making but should also consider the nature of business and the funding requirement over the period of time.

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## Lesson 2 - Corporate Entities – Companies

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## Lesson 3 - Limited Liability Partnership

**June 2023**

**1. ABC LLP has its registered office in Kanpur (U.P.). For better administrative convenience, the LLP wants to shift its registered office from Kanpur to NCT of Delhi. Advise the LLP regarding the various formalities which need to be complied with for shifting its registered office from Kanpur to NCT of Delhi under Limited Liability Partnership Act, 2008.**

**Ans -** Procedure for Changing the registered office from Kanpur (Uttar Pradesh) to NCT of Delhi

The limited liability partnership (LLP) may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place.

The following formalities are required to be complied by the LLP firm to change its registered office from one State to another State:

1. Pass resolution for change of address.
2. Consent of secured creditors is required.
3. Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated and circulated in that district giving notice of change of registered office.
4. Notice of change of place of registered office shall be given to Registrar in Form- 15 within 30 days of publishing of general notice as prescribed under Rule 17 of the Limited Liability Partnership Rules, 2009 along with the prescribed fees.
5. Where there is any conviction, ruling, order or judgment of any Court, tribunal or other authority against the limited liability partnership, the particulars of such prosecutions initiated against or show cause notices received by the limited liability partnership for the alleged offences under the Limited Liability Partnership Act, 2008 shall be stated in the notice of change of place of registered office to be filed with the Registrar.
6. Where the change in place of registered office is from one state to another state, the limited liability partnership shall file the notice in Form 15 with the Registrar from where the limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction the registered office is proposed to be shifted.
7. The LLP Form 3 is required to be filed for "Information with regard to limited liability partnership agreement and changes" along with the supplementary agreement as attachment. Accordingly, ABC LLP is advised to follow the abovementioned procedure.

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**June 2022**

**(a) Explain the procedure for changing the name of Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008. (4 marks)**

**Ans-** The procedure for change of name is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008 (LLP Act). According to Rule 20 of LLP Rules, 2009, the limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

The procedure for change of name is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008 (LLP Act). An application for changing the name of the LLP should be, first, submitted to the ROC, LLP.

Along with the name change application, the partners need to submit the following documents.

1. Certified copy of consent of all partners involved for the name change;
2. Copy of the existing legal agreement;
3. Trademark copy or copy of the registration certificate.

After the suggested name gets approved, one has to file Form LLP-5, giving notice of the change in the Name. The form has to be submitted to the Registrar within 30 days.

The ROC, after taking into consideration the application, will approve/deny the name change.

If the name is approved, the ROC will issue a certificate and the new name will be effective from the date mentioned in the certificate.

Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.

**DECEMBER 2020**

**Question 1- What are the duties of Designated Partner of LLP ?**

**ANSWER-** The LLP Agreement must specify the various rights and duties of the Designated Partners as may be mutually agreed by them. In the absence of such separate agreement between the partners about such rights and duties, etc., the provisions of Schedule I of the Limited Liability Partnership Act, 2008 will apply as prescribed in Section 23(4) of the said Act.

**Duties of Designated Partner**

- The Designated Partner shall devote their whole time and attention to the said partnership business diligently and faithfully by employing themselves in it, and carry on the business for the greatest advantage of the partnership.
- The Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Limited Liability Partnership Act, 2008, including filing of any document, return, statement and the like report etc.
- They shall protect the property and assets of the LLP.
- Upon every reasonable request, they shall inform the other partners of all letters, writings and other things which shall come to their hands or knowledge concerning the business of the LLP.
- They shall punctually pay their separate debts to the LLP.

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The Designated Partners shall be responsible for the doing of all such other acts arising out of LLP Agreement.

## **DECMEBER 2021**

**Question 1- XYZ Trading LLP registered under LLP Act, 2008 wants to change its name to PQR Solutions LLP. Explain the procedure to be followed by XYZ Trading LLP for changing its name under the provisions of LLP Act, 2008.**

**ANSWER-** The procedure to be followed by XYZ Trading LLP for changing its name to PQR Solutions LLP is as follows:

— Check for name change provision in LLP agreement, if there is no provision, obtain consent of all partners.

— Check Name availability on MCA Website. File Form RUN LLP with prescribed fees. Once the name is approved by the ROC, it shall be available for adoption for a period of 3 months from the date of intimation by the Registrar.

Attachments:

- Certified true Copy of Resolution of LLP
- Consent of all the partners of the firm
- NOC from owner of trademark, if applicable

— After the suggested name gets approved, LLP has to file Form LLP-5, giving notice of the change in the name to the Registrar of Company. The ROC, after taking into consideration the application, will approve/deny the name change.

— The Registrar on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the changed name shall be effective from the date of such certificate.

— Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.

— File Form 3 accompanying the supplementary agreement within 30 days with the prescribed fees. The same will be approved from the Registrar of Companies.

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## Lesson 4 - Startups and its Registration

**June 2023**

1. **J is a B.Tech. in Computer Science from Indian Institute of Technology, Roorkee. J has invented a new procedure for making of battery having long life as compared to lithium battery available in the market. The invention has been patented by J. J has made an online application over the portal setup by the Government of India for initial funding under start-up. In the online application, J observed that there is a column for seed funding. Advise J on the meaning and importance of Seed Capital.**

**Ans -** J is advised on the meaning and importance of Seed Capital as under:

Start-up business needs the nurturing of finance to explore and grow. The funding done at the nascent stage is called seed funding and the capital is known as a seed capital.

Technically, seed capital is the initial capital used at the time of starting the business. This capital can come from the founders, families or friends. It is required for the market research, product development, and other initial stage operations.

Seed funding permits exploration of the business idea and converting it into a viable product or service that further attracts venture capitalists. A business founder must be clear on how to utilise seed capital in the most optimum manner to ensure smooth transition to the advanced stage of the business.

Seed funding is a risky investment option, as most funding agencies would like to adopt a wait and watch approach to see whether the idea has a business potential. From the founder's point of view, the option of obtaining seed funding has to be carefully utilised as obtaining seed funding may result in dilution of ownership of the founder.

The paperwork involved in seed funding is relatively less and straightforward, compared to advanced rounds of funding. Even the legal fees required are also quite less. The interest rates too are usually lower and there are mostly no restrictions in the manner of business working as it is still in the nascent stage.

Financing is generally of two types i.e.(a) equity financing, or (b) debt-financing.

2. **Durgesh is working as a driver in a cab provider company. One day, a passenger advised him that he can own a car by availing financial assistance under Pradhan Mantri Mudra Yojna (PMMY). He seeks your advice regarding the procedure for availing the Transport Vehicle Loan for commercial use from MUDRA Bank. Advise Durgesh.**

**Ans -** Mudra loan is extended for a variety of purposes which result in income generation and employment creation. The loans are extended mainly for:

- Business loan for Vendors, Traders, Shopkeepers and other Service Sector activities;
- Working capital loan through MUDRA Cards;
- Equipment Finance for Micro Units;
- Transport Vehicle loans-for commercial use only;
- Loans for agri-allied non-farm income generating activities, e.g. pisciculture, bee keeping, poultry farming etc;
- Tractors, tillers as well as two wheelers used for commercial purposes only.

Once the beneficiary identifies an idea and comes up with a business plan, he is supposed to select the business category under which he wishes to avail the loan (Shishu, Kishor or Tarun). Durgesh can contact the nearest public/ private sector bank where he can apply for business loan under Pradhan Mantri Mudra Yojna - (PMMY). The list of institutions partnering in the MUDRA initiative is available on the MUDRA portal. An application form under this scheme will be available with each of the above listed institutions.

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This application form has to be submitted along with the following documents for the approval of the loan:

- Proof of Identity (Self attested Voter ID/Driving License/PAN Card/ Aadhaar Card/Passport/any other Photo ID issued by Government)
- Proof of Residence (Recent Telephone Bill/Electricity Bill/Property Tax Receipt (not older than 2 months)/ Voter ID Card/Aadhaar Card/Passport/Domicile Certificate/ Certificate Issued by a local authority)
- Applicant's recent photograph (not older than 6 months)
- Quotation of Machinery/other items to be purchased
- Name of the Supplier/Details of Machinery/Price of Machinery
- Proof of Identity/Address of the Business Enterprise (relevant licenses & certificates)
- Proof of Category (SC/ST/OBC/Minority etc.)

Apart from the above-mentioned documents, individual banks could ask for other documents as needed. The Banks are not supposed to take any processing fee and are not supposed to ask for any collateral. The repayment period is also extended to 5 years. But it is also made clear that the applicant should not be a defaulter to any Bank or financial institution. MUDRA Bank is not a separate bank (like SBI etc). It

is a government financing scheme to provide business loan to new small businesses in India. MUDRA will be operating as a refinancing institution through State / Regional level intermediaries.

MUDRA's delivery channel is conceived to be through the route of refinance primarily to NBFCs / Micro Finance Institutions (MFIs), besides other intermediaries including Banks, Primary Lending Institutions etc. The rate of interest will be fixed by the institutions time to time based on guidelines from the RBI.

### **June 2022**

**(a) "Start-ups India" initiative is used to promote growth and to help Indian economy by the Government of India. Explain the benefits which are being given to entrepreneurs establishing start-ups.**

**(4 marks)**

**Ans-** To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing start-ups are as under:

1. *Simple Process* - Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested in setting up a startup can fill a simple form on the website and upload certain documents. The entire process is completely online.
2. *Reduction in Cost* - The government also provides lists of facilitators of patents and trademark. They will provide high quality Intellectual Property Rights Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startups will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.
3. *Easy access to Funds* - a 10,000 crore rupees fund is set up by the government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.
4. *Tax holiday* - Startups will be exempted from income tax for certain period provided they get a certification from Inter-Ministerial Board.
5. *Apply for Tenders* - Startups can apply for government tenders. They are exempted from the

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prior experience/turnover criteria applicable for normal companies answering to government tenders.

6. *R & D facilities* - Seven new research parks will be set up to provide facilities to startups in R&D sector.
7. *No time - consuming compliances* - various compliances have been simplified to startups to save time and money. Startups shall be allowed to self- certify compliance (through the startup mobile app) with 9 labour and 3 environment laws.
8. *Tax saving for Investors* - People investing their capital gains in the venture funds set up by government will get exemption from capital gains. This will help startups to attract more investors.
9. *Choose your investor* - The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.
10. *Easy Exit* - In case of exit, a startup can close its business within 90 days from the date of application of winding up.
11. *Meet other entrepreneurs* - Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities

**(b) Define the term 'MUDRA Banks'. (4 marks each)**

**Ans-** Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking finance institutions which then provide credit to MSMEs.

It will provide its services to small entrepreneurs outside the service area of regular banks, by using agents. About 5.77 crore (57.6 million) small business have been identified as target clients using the NSSO survey of 2013. Only 4% of these businesses get finance from regular banks. The Bank will also ensure that its clients do not fall into indebtedness and will lend responsibly.

The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

- Shishu: Allowed loans up to Rs. 50,000 (US\$780)
- Kishore: Allowed loans up to Rs. 5 lakh (US\$7,800)
- Tarun: Allowed loans up to Rs. 10 lakh (US\$16,000)

Those eligible to borrow from MUDRA Bank are:

- Small manufacturing unit
- Shopkeepers
- Fruits and Vegetables vendors
- Artisans

The basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available only for commercial and business purposes and not for personal purposes. At the most, borrower can buy vehicle from mudra loan, given that it is used for commercial purposes. Lastly, this loan is for new business and is only applicable for small business owners

## **DECEMBER 2020**

**Question 1- Crowd Funding is a recent phenomena being practiced for getting seed funding usually through the internet. Elucidate.**

**ANSWER-** Crowd funding

This is a recent phenomenon being practiced for getting seed funding through small amounts collected from a large number of people (crowd), usually through the internet. Now we have companies existing in India which are specializing in "Crowd Funding".

The entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success.

The entrepreneur needs to put up on a portal his profile and presentation, which should include the business idea, its impact, and the rewards and returns for investors. It should be supported by suitable images and videos of the project.

SEBI in 2014, even rolled out a "Consultation paper on Crowd Funding in India" proposing a framework in the form of Crowd funding to allow start-ups and SMEs to raise early stage capital in relatively small sums from a broad investor base. The Consultation Paper defined Crowd funding as solicitation of funds (small amount) from multiple investors through web-based platform or social networking site for specific project, business venture or social cause. However, SEBI has not issued any regulation in this regard.

## **JUNE 2021**

**Question 1- PQ Pvt. Ltd. is the newly incorporated company engaged in manufacturing of machinery parts proposes to raise the funds through Private Equity and Angel Investors. Explain these equity financing options available to the company**

**ANSWER-** Start-ups are usually equity financed/funded by way of a venture capital/ private equity investors and/or angel investors.

(a) Venture Capitalist/Private Equity

Venture capital ("VC") / Private Equity ("PE") is often the first large investment a start-up can expect to receive. Convertible instruments are usually the preferred option and most commonly used securities for VC/PE investment which includes compulsory convertible preference shares and compulsory convertible debentures. The investor and start-up will normally enter into a non-binding offer based on the preliminary valuation of the start-up usually followed with a financial, legal and technical due diligence on the start-up as required by the investors. Due diligence will help the investors to finalize the representation and warranties and also to identify conditions precedent to the completion of investments and conditions subsequent in the aforesaid transaction documents.

(b) Angel Investors

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake.

Under the SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

(1) Angel funds shall invest in venture capital undertakings which:

(a) complies with the criteria regarding the age of the venture capital undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force;

(b) have a turnover of less than Rs. 25 Crore;

(c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 Crore; and

(d) are not companies with family connection with any of the angel investors who are investing in the company.

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- (2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.
- (3) Investment by an angel fund in the venture capital undertaking shall be locked- in for a period of one year.

## **DECEMBER 2021**

**Question 1- Explain the unconventional modes of financing options for Start Ups which are becoming popular in India.**

**ANSWER-** The following are the unconventional modes of financing options for Start-ups which are becoming popular in India:

### **Crowd Funding**

This is recent phenomena being practiced for getting seed funding through small amounts collected from a large number of people (crowd), usually through the Internet. Now we have companies existing in India which are specializing in "Crowd Funding". The entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success. The entrepreneur needs to put up on a portal his profile and presentation, which should include the business idea, its impact, and the rewards and returns for investors. It should be supported by suitable images and videos of the project.

### **Incubators**

These set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an equity stake ranging from 2-10%. Incubators offer office space, administrative support, legal compliances, management training, mentoring and access to industry experts as well as to funding through angel investors or VCs. These are usually government-supported institutes like the IIMs or IITs, technical institutes or private business incubators run by industry veterans or companies. The incubation period can be 2-3 years and admission is rigorous. Some of the top options in India include IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT, Kanpur, SIIC and the Sriram College of Commerce (SRCC).

**QUESTION 2- Raman wants to start the business of fruits and vegetables vendor. He seeks your advice on the criteria, business categories with the maximum amount of loan allowed and eligibility for obtaining loan under the scheme of Pradhan Mantri Mudra Yojana. Advise Raman.**

**ANSWER-** Eligibility Criteria for Mudra Loan

For obtaining loan under Pradhan Mantri Mudra Yojana, the basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available if and only if it is for commercial and business purposes and not for personal purposes. The loan can be availed in any of the following business categories:

Business Categories with maximum allowed loan sum are as under:

Shishu : Allowed loans up to Rs. 50,000 Kishore : Allowed loans up to Rs. 5 lakh Tarun : Allowed loans upto Rs. 10 lakh

Those eligible to borrow from MUDRA bank are:

- Small manufacturing unit
- Shopkeepers
- Fruit and vegetable
- Vendors
- Artisans

Accordingly, Raman can avail the MUDRA Loan for carrying on the business of fruits and vegetable vendor.

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## Lesson 5 - Micro, Small and Medium Enterprises

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## Lesson 6 - Conversion of Business Entities

**June 2022**

(a) Adam formed a One Person Company (OPC) on 16th April, 2021 for manufacturing electric cars. The nephew of Adam was nominee, duly nominated by him. Due to an accident, Adam expired and his nephew Manu took over the charge of the Company. Earlier he was working as Doctor in Private Hospital. The turnover of the OPC for the financial year ended 31st March, 2022 was about `2.25 crore. There being no other Shareholder, Manu decided to sale the business, however, a corporate advisor advised to convert it voluntary into a private limited company to induct his wife, who shall hold 51% equity and shall be whole time managerial person.

**Can it be done ? Examine the legal provisions of the Companies Act, 2013.**

**(5 marks)**

**Ans-** The procedure of conversion of a One Person Company (OPC) into Private Limited Company as per Section 18 of the Companies Act, 2013 (the Act) and Rule 6 of Companies (Incorporation) Rules of 2014 is given as follow:

The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:-

- (a) Altered Memorandum of Association (MOA) and Articles of Association (AOA);
- (b) copy of resolution;
- (c) the list of proposed members and its directors along with consent;
- (d) list of creditors; and
- (e) the latest audited balance sheet and profit and loss account.

On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

Hence, by complying with above mentioned provisions, OPC can be converted into Private Limited Company

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**JUNE 2021**

**Question 1- EFG Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on the following matters :**

- (i) Provisions regarding notice of general meeting**
- (ii) Whether company required to obtain 'No Objection Certificate'.**
- (iii) Types of e-forms required to be filed with ROC for such conversion**
- (iv) Penalty for contravention of provisions with respect to conversion.**

**Answer-** Legal Provisions related to Conversion of Private Company into One Person Company

are given in Section 18 of the Companies Act, 2013 read with Rule 7 of the Companies (Incorporation) Rules, 2014 which are as under:

A private company other than a company registered under section 8 of the Companies Act, 2013 having paid up share capital of Rs.50 Lakh or less and average annual turnover during the relevant period of Rs.2 crore or less may convert itself into one person company by passing a special resolution in the general meeting.

Or

A private company other than a company registered under section 8 of the Companies Act, 2013 may convert itself into one person company by passing a special resolution in the general meeting. (Amendment Effective From 1st April 2021)

(i) NOTICE OF GENERAL MEETING:

Section 101 of the Companies Act 2013 provides that company shall issue notice of General Meeting in writing to below mentioned persons at least 21 days before the actual date of the General Meeting:

- every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- the auditor or auditors of the company; and
- every director of the company.

Notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

(ii) As per Rule 7(2) of the Companies (Incorporation) Rules, 2014, before passing such special resolution in the Extra-Ordinary General meeting (EGM) to get approval of shareholders for Conversion of Private Company into One Person Company (OPC), the Company shall obtain No Objection Certificate in writing from existing members and creditors.

(iii) ROC FORM FILING

E- Form MGT.14 - Copy of the special resolution is required to be filed with concerned ROC through filing of form MGT. 14 within 30 days of passing Special Resolution in the EGM.

E-Form INC.6 - An Application for conversion of a Private Company into a OPC is required to be filed in e-Form INC.6 to the concerned Registrar of Companies, with all the necessary annexures and with prescribed fees.

(iv) PENALTY – As per Rule 7A of the Companies (Incorporation) Rules, 2014, if a One Person Company (OPC) or any officer of such company contravenes the provisions with respect to conversion, the OPC or any other Officer of such company shall be punishable with fine which may extend to Rs. 5,000/- and with a further fine which may extend to Rs. 500/- per day after first offence, during which such contravention continues.

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**DECEMBER 2021**

**Question 1- Designated Partners of Sara LLP wants to convert LLP into Private Limited Company for further growth of their organization. They have already got the name approved and have secured the DSC and DIN. Now they seek your advice for further processes of conversion of their LLP into Private Limited Company. Advise.**

**ANSWER-** As LLP has already got the name approved and have secured the DIN and DSC requirement now LLP needs to file Form URC 1 for Conversion of LLP into Private Limited Company.

Filing Form no. URC -1

As per Rule 3 of the Companies (Authorised to Registered) Rules, 2014, for the purposes of section 366(2) of the Companies Act, 2013, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration:

Provided that there shall be two or more members for the purposes of registration of a company under this sub-rule.

Provided further that a company with less than seven members shall register as a private company. A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:-

- (i) a list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm as the case may be;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
- (iii) in case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
- (iv) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (v) written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
- (vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;
- (vii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

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## Lesson 7 - Non-Corporate Entities

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## June 2023

1. **A and B are the civil contractors having their own separate proprietorships. The State Government has issued the tender for construction of 10 kms. road. As per the terms of the tender, the bid can be submitted either by a partnership firm or a company only. A and B wish to form a partnership firm to become eligible for bidding in the aforesaid tender. Advise them the key ingredients of a Partnership Agreement.**

### Ans –

A and B are advised on the key ingredients of a Partnership Agreement as under:

1. **Definitions and vital information**  
The partnership deed normally carries the name of the business, the address of its principal place of business and a short summary of the nature of business the partners intend to operate.
2. **Investment**  
The deed gives important financial details of the partnership, such as the amount of capital to be invested by each partner, the Profit /Loss sharing of each partner, the salaries to be paid to each partner and the method of distributing the business income. The partnership deed also documents the accepted method of raising additional capital, if necessary, how loan funds may be raised and rate of interest if any, applicable on the loans.
3. **Accounting**  
  
The partnership deed provides for the accepted method of accounting for the cash flow, profit and loss, assets and liabilities of the business, it also defines the fiscal year to be used in accounting statements and how these statements will be distributed among the partners and other shareholders.
4. **Duties, powers and obligations of the partners**  
The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed. The Deed may also provide designate a partner as the Managing Partner, who will be responsible for day- to-day management and conduct of the business.
5. **Withdrawals**  
The document must also provide for actions to be taken in case of the voluntary withdrawal or death of a partner. In such a case, accounts will have to be drawn up to ascertain the assets, liabilities and the entitlement of each partner (including the outgoing partner).
6. **Expulsion**  
If a partner is proving to be a hindrance or detriment to the business, or loses legal rights in a bankruptcy or other court action, the other partners must have a method of modifying the partnership rights of or expelling him.
7. **Dissolution**  
The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts among the partners would be settled at the termination of the business.
8. **Arbitration**  
As in all business contracts a partnership deed must provide for the means of arbitration of disputes. The main goal of the deed is to avoid expensive litigation over details that have not been fully worked out in the signed agreement.

## June 2022

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**(a) Mohan has completed MBA in dairy farming and is keen in uniting farmers in Rajasthan by forming a Multi State Co-operative Society. Brief Mohan on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed. (4 marks)**

**Ans-** An application in Form -1 (under sub-rule (1) of rule 3 of the Multi State Cooperative Societies Rules, 2002) should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

2. A certificate from the bank stating credit balance there in favour of the proposed multi-state co-operative society.
3. A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.
4. Proposed bye-laws of the multi-state cooperative society, duly signed by each of the persons who sign the application for registration.
5. Proposed area of operation for registration shall initially be permitted for two contiguous states only.
6. The list of persons who have contributed to the share capital, together with the amount contributed by each of them and admission fee paid by them along with their ID address proof duly attested by the Chief Promoter.
7. Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence under the rules before registration and dispatch or hand over registration documents.
8. Contact number and e-mail address of the Chief Promoter or Society on cover page.

For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted along with documents mentioned above:

1. No Objection Certificate from the Registrar of Cooperative Societies of the States/ U.T. where the area of operation of the society is proposed to be confined.
2. A certificate to the effect that the credentials of the Chief Promoter/Promoters have been verified by the Registrar of Co-operative Societies of the state where the head office is proposed to be located.

All documents to be submitted in original with the signatures of the Chief Promoter/ Promoters on each page

## **DECEMBER 2020**

**Question 1- B is the Sole Proprietor of BN Metals. The business of the Company is to manufacture the parts of Boiler used in Turnkey Power Projects. The previous year's turnover was ₹348 Crore. B is now participating in a big tender having cost estimates of ₹145 Crore. However, as per tender specification, B is qualified to submit the tender but in view of the consultant appointed by him, the form of business should be Company or LLP. Explain limitations of Sole Proprietorship form of business organisation.**

**ANSWER-** A sole proprietor generally suffers from the following limitations:

- (1) **Limitation of management skills :** A sole proprietor may not be able to manage the business efficiently as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.
- (2) **Limitation of resources :** The sole proprietor of a business is generally at a disadvantage in raising sufficient capital. His own capital may be limited and his personal assets may also be insufficient for raising loans against their security. This reduces the scope of business growth.
- (3) **Unlimited liability :** The sole proprietor is personally liable for all business obligations. For payment of business debts, his personal property can also be used if the business assets are insufficient.
- (4) **Lack of continuity :** A sole proprietor organisation suffers from lack of continuity. If the proprietor is ill, this may cause temporary closure of business. If he dies, the business may be permanently closed.

## **JUNE 2021**

**Question 1- Neeraj Walia is head of family consisting of his wife and two sons. Fore-fathers of Neeraj Walia have accumulated huge wealth in the form of land and immovable properties. Now, with the ancestral wealth Neeraj Walia plans to carry on real estate and resorts business by creating HUF. He has approached you to create a HUF Deed, advise him on key points including taxation aspects to be considered in creation of HUF Deed.**

**ANSWER-** Key points in creation of HUF

- Under Income Tax Act, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to an individual assessee.
- One cannot transfer his own assets / money into HUF.
- If one have ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- One can transfer the money received on sale of ancestral property / assets into HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc. and will be assessed under HUF.
- Existence of property or multiple members is not a pre-requisite to create HUF. A family which does not own any property may still have the character of HUF. This jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.
- Any gifts received by the members of HUF (birthday, marriage etc.) can be treated as assets of HUF.
- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh. HUF will also gain from the tax slab structure of computing income tax.
- Apart from basic exemption of Rs. 2.50 lakh, Section 80C deduction upto Rs. 1.5 lakh is also available.

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## **DECEMBER 2021**

**Question 1- Mahesh Nidhi Limited was incorporated on 30th September, 2020. The Board of Directors seek your advice about the compliances need to be done in respect of each of the following :**

**(i) Compliances which are required to be done upto the end of first financial year of the Company. Opening of branches of Mahesh Nidhi Limited**

**ANSWER-** As per Rule 5(1) of the Nidhi Rules, 2014 deals with requirements for minimum number of members, net owned fund etc. It provides that every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has:

- Not less than two hundred members
- Net Owned Funds of ten lakh rupees or more
- Unencumbered term deposits of not less than ten per cent of the outstanding deposits
- Ratio of Net Owned Funds to deposits of not more than 1:20.

Thus Mahesh Nidhi Ltd. needs to ensure above requirement upto end of the first financial year of the Company.

**(ii) Rule 10 of the Nidhi Rules, 2014 lays down conditions for opening branches by a Nidhi Company as follows:**

— A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years. A Nidhi may open up to three branches within the district.

— If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.

— Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.

— Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.

**QUESTION 2- Anish along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters :**

**(a) What is the minimum paid-up capital requirement in case of a Section 8 Company ?**

**(b) Whether a firm can be member of the Section 8 Company ?**

**(c) Whether the Section 8 Company can pay dividend to its members ?**

**(d) Whether a Section 8 Company is required to appoint a Company Secretary to ensure compliance with the provisions of Companies Act, 2013 ?**

**As a Company Secretary, advise Anish with reference to the provisions of Companies Act, 2013.**

**ANSWER-** In line with the relaxation announced for Section 8 Companies under the Companies Act, 2013, Section 8 companies are not required to maintain a minimum share capital.

(a) Yes, under the Section 8(3) of the Companies Act, 2013 a firm can be member of the Section 8 Company.

(b) No, according to Section 8(1) (c) of the Companies Act, 2013 Company cannot pay dividend to its members as it prohibits the payment of dividends to its members.

(c) No, Section 8 companies are not required to appoint a company secretary to ensure compliance with the provisions of the Companies Act 2013 vide MCA Notification dated June 05, 2015.

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## Lesson 8 - Financial Services Organisation

**June 2023**

### 1. Differentiate between 'Asset Finance Company' and 'Infrastructure Finance Company'.

**Ans –**

- (ii) Asset Finance Company (AFC) - An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.
- (iii) Infrastructure Finance Company (IFC)- IFC is a non- banking finance company-
  - (a) which deploys at least 75 per cent of its total assets in infrastructure loans,
  - (b) has a minimum Net Owned Funds of 300 crore,
  - (c) has a minimum credit rating of 'A' or equivalent, and
  - (d) has a CRAR of 15% with Tier I capital at 10%.

### 2. Referring to the provisions of Companies Act, 2013, state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Non- Banking Financial Company (NBFC).

**Ans -** The Reserve Bank of India ("RBI or Bank") cancel a certificate of registration granted to a non-banking financial company if such company-

- i. Ceases to carry on the business of a non-banking financial institution in India; or
- ii. has failed to comply with any condition subject to which the certificate of registration had been issued to it; or
- iii. at any time fails to fulfil any of the conditions referred to in clauses (d) to (g) of sub-section (4); or
- iv. fails-
  - a. to comply with any direction issued by the Bank; or
  - b. to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank; or
  - c. to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or
  - d. has been prohibited from accepting deposit by an order made by the Bank and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such term as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition. Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

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### 3. Explain the procedure for registration of Asset Reconstruction Company (ARC).

**Ans** - The procedure for registration of Asset Reconstruction Company (ARC) is given below:

- Firstly, a company has to be incorporated under the Companies Act, 2013. The company may be a private company or a public company.
- Secondly, after incorporation, the company has to register itself with the Reserve Bank of India (RBI). Asset Reconstruction Companies are governed by the Asset Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 issued by the Reserve Bank of India as amended from time to time.
- Every ARC shall apply for registration in the form of application hosted on the RBI website and obtain a certificate of registration from the Bank as provided under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
- The ARC seeking registration from the RBI shall submit their application in the format as specified, duly filled in with all the relevant annexures/ supporting documents to the Chief General Manager-in- Charge, Department of Regulation, Central Office, Reserve Bank of India;
- An ARC, which has obtained a certificate of registration issued by the Bank under Section 3 of the SARFAESI Act, can undertake both securitization and asset reconstruction activities.
- An ARC shall commence business within six months from the date of grant of Certificate of Registration by RBI. However, on the application by the ARC, RBI may grant extension for further period not exceeding 12 months from the date of grant of Certificate of Registration.
- Provisions of section 45 -1A, 45-IB and 45-IC of Reserve Bank of India Act, 1934 shall not apply to non- banking financial company, which is an ARC registered with the Bank under Section 3 of the SARFAESI Act.

**June 2022**

#### (a) ARCs can maximize recovery value with minimum cost. Explain the benefits of incorporating an Asset Reconstruction Company (ARC).

**Ans- Benefits of incorporating an Asset Reconstruction Company (ARC)**

1. As the cash realisation activity from defaulting borrowers is a lengthy and cumbersome procedure, relieving banks of the burden of NPAs will allow them to focus better on managing the core business including providing new business opportunities for the ARC.
2. The transfer should keep restore depositor and investor confidence by ensuring the lender's financial health. The bank uses it as a method to hive off bad loans from their balance sheet. ARCs can maximize recovery value while minimum cost.
3. ARCs also helps building industry expertise in loan resolution and restructuring management, besides serving as a catalyst for important legal reforms in bankruptcy proceeding and loan collection.

ARCs play an important role in developing capital markets through secondary asset instruments

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## **DECEMBER 2020**

### **Question 1- Define the term 'Net Owned Fund'.**

**ANSWER-** According to Rule 3 of the Nidhis Rules, 2014, Net Owned Fund means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet.

Further, the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

## **DECEMBER 2021**

### **Question 1- Payments banks is a new model of banks conceptualized by the Reserve Bank of India. Describe the key issues which require compliance by an applicant Company**

**ANSWER-** The main objective of payments bank is to widen the spread of payment and financial services to small business, low-income households, migrant labour workforce in secured technology-driven environment.

Key issues which requires compliance by an applicant company are summarised below:

- The banks will be registered as public limited company under the Companies Act, 2013
- The bank must use the term "payments bank" in its name to differentiate it from other types of bank.
- The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949.
- The minimum capital requirement is Rupees 100 crore. For the first five years, the stake of the promoter should remain at least 40%.
- Foreign shareholding will be allowed in these banks as per the rules for FDI in private banks in India.
- The voting rights will be regulated by the Banking Regulation Act, 1949. The voting right of any shareholder is capped at 10%, which can be raised to 26% by Reserve Bank of India. Any acquisition of more than 5% will require approval of the RBI.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- Initially, the deposits will be capped at Rs. 100,000 per customer, but it may be raised by the RBI based on the performance of the bank.
- The bank cannot undertake lending activities. 25% of its branches must be in the unbanked rural area.

## Lesson 9 - Business Collaborations

**June 2023**

1. **A non-resident entity desires to set-up an equity based joint venture in India. However, there are certain restrictions under FDI Policy of Government of India. Describe the restrictions to a non-resident entity under FDI Policy of Government of India.**

**Ans –**

- A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.
- A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.
- Foreign Portfolio Investors (FPI) may make investments in the manner and subject to the terms and conditions specified in Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
- A Foreign Venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
- NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

2. **Explain any five benefits of forming a Special Purpose Vehicle (SPV).**

**Ans -** The following are the benefits of Special Purpose Vehicle (SPV):

1. Ownership of Assets - An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
2. Minimum Statutory Requirement-Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
3. Clarity of documentation-It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.
4. Tax benefits-SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.
5. Legal protection - By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
6. Accounting Reasons- Debts raised through SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture and enhances the debt raising ability of the sponsor. Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.
7. The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.

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8. The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

**June 2022**

- (a) **The promoters of SBP Ltd. and CJP Ltd. met for developing the Supply Chain Management System for Cultural and Traditional items of specific geographical area(s). SBP Ltd. is in logistic and marketing, however, CJP Ltd. is a software developer. Both the promoters concluded that a separate Company be formed for running of the business through e-commerce. Social Media influencer shall be hired for promotion of the business. The legal advisors have advised for setting up a Contractual Joint Venture for a period of 25 years.**

**Explain the key characteristics of Contractual Joint Venture. (5 marks)**

**Ans-** The key characteristics of contractual Joint Venture are:

- Two or more parties have a common intention- of running a business venture.
- Each party will bring some inputs in the form of money, technology or materials.
- Each party exercises a certain degree of control on the venture.
- The relationship is not a transaction to transaction relationship but has a character of relatively longer time duration.

The contractual Joint Venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some element of control in the joint venture.

The contractual Joint Venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited team or where the laws of the host country do not permit the ownership of property by foreign citizens.

For the purposes of contractual joint venture, the relationship between parties is set forth in the contract or agreement concluded between them.

The way joint venture company would carry out its operations is always based on the negotiations between the parties, the results of which reflect in the joint venture agreement entered into between the parties.

The licensing agreement, know-how agreement, technical services or technical assistance agreement, franchise agreement and agreement covering all other commercial matters might even form annexes to the main joint venture agreement. These can be signed once the joint venture company is established.

An example of a contractual joint venture is a franchisee relationship

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## **DECEMBER 2020**

**Question 1- Contractual joint venture is useful where the establishment of a separate legal entity is not needed or creation of such a separate legal entity is not feasible. Comment.**

**ANSWER-** The key characteristics of contractual Joint Venture are:

- Two or more parties have a common intention - of running a business venture.
- Each party will bring some inputs in the form of money or materials.
- Both parties exercises a certain degree of control on the venture.
- The relationship is not a transaction to transaction relationship but has a character of relatively longer time duration.

The contractual Joint Venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture. The contractual Joint Venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited team or where the laws of the host country do not permit the ownership of property by foreign citizens.

For the purposes of contractual JV, the relationship between parties is set forth in the contract or agreement concluded between them.

The way a Joint Venture Company would carry out its operations is always based on the negotiations between the parties, the results of which are reflected in the joint venture agreement entered into between the parties.

The licensing agreement, know-how agreement, technical services or technical assistance agreement franchise agreement and agreement covering all other commercial matters might even form annexes to the main joint venture agreement. They can be signed once Joint Venture Company is established.

An example of a contractual joint venture is a franchisee relationship.

## **JUNE 2021**

**Question 1- Contractual joint venture is useful where the establishment of a separate legal entity is not needed or creation of such a separate legal entity is not feasible - Comment.**

**ANSWER-** The key characteristics of Contractual Joint Venture are:

- Two or more parties have a common intention - of running a business venture.
- Each party will bring some inputs in the form of money or materials.
- Both parties exercises a certain degree of control on the venture.
- The relationship is not a transaction to transaction relationship but has a character of relatively longer time duration.

The Contractual Joint Venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture.

The Contractual Joint Venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited team or where the laws of the host country do not permit the ownership of property by foreign citizens.

For the purpose of Contractual Joint Venture, the relationship between parties is set forth in the contract or agreement concluded between them.

The way Joint Venture entity would carry out its operations is always based on the negotiations between the parties, the results of which reflect in the joint venture agreement entered into between the parties.

The licensing agreement, know-how agreement, technical services or technical assistance agreement, franchise agreement and agreement covering all other commercial matters might even form annexes to the main joint venture agreement. They can be signed once Joint Venture Company is established.

An example of a contractual joint venture is a franchisee relationship.

**Question 2- A Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for a special purpose. Elucidate.**

**ANSWER-** Purpose of Special Purpose Vehicle

Yes, this is true that Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for special purpose as stated below:

The main purpose of a Special-Purpose Vehicle is to allow the parent company to make highly leveraged or speculative investments without endangering the entire company.

If any SPV goes bankrupt, it will not affect the parent company. SPVs are mostly formed to raise funds from the market or when Government Regulations specify creation of a separate vehicle for carrying out any specified activity.

SPVs are created by a parent company to implement large scale projects and operations of an SPV are legally limited to specific assets.

SPVs are also formed by bank and financial institution for Securitisation. The total assets of banks or financial institution mainly comprise of loans and receivables along with their future cash flow to a separate entity, which may be formed for a specific purpose. The SPV is allowed to raise debt which will be backed by these receivables and their future cash flows. The difference between the incomes received from these receivables and cost of servicing the debt will be profit/earning of the SPV. By securitization through

SPV the risk involved in this activity is separated from the general business of the bank.

Government also forms SPVs for special projects. Purpose behind formation of SPV is to get easy finance and various approvals from State and Central Government at many levels and on completion of projects, it provides easy exit route for Government.

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## Lesson 10 - Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company

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## Lesson 11- Setting up of Business outside India and Issues Relating thereto

**June 2023**

1. Agarwal Enterprises Ltd. (AEL) is a resident company in India for the last 15 years. The company is operating in various sectors e.g. power, infrastructure, ports, oil, telecommunications and IT etc. Now, the company is planning to make an investment of ₹ 10,000 crore in Australia based solar power projects through the joint venture in Australia. The latest audited financial statements of the company revealed the following data as on 31st March, 2023 : Paid up Share Capital : ₹ 2,000 crore Reserve & Surplus : ₹ 1,000 crore Long-term Borrowings : ₹ 1,500 crore Creditors : ₹ 300 crore Referring to the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 and Notifications issued by the Reserve Bank of India, advise whether the company can make desired investment under the automatic route in the financial year 2023-24 (Assume USD 1 = ₹ 80).

**Ans -** In terms of Regulation 6 of the Notification No. FEMA 120/RB- 2004 dated July 7, 2004, as amended from time to time, an Indian Party has been permitted to make investment / undertake financial commitment (FC) in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank from time to time. With effect from July 03, 2014, any financial commitment upto USD 1 (one) billion shall only come under the automatic approval. The eligible limit of investment under the automatic route is 400% of the net worth of the Indian Party as per the last audited balance sheet. It has been decided that any financial commitment exceeding USD 1 (one) billion (or its equivalent) in financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route. (i.e., within 400% of the net worth as per the last audited balance sheet)

It may be noted that "net worth" shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013, means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the given case, Agarwal Enterprises Limited (AEL) is planning to make an investment of ₹10,000 crore which is equivalent to USD 1.25 billion (₹10,000/₹80).

The net worth of AEL is ₹ 2,000+ ₹ 1000 = Rs 3,000 crore.

The eligible limit of investment under the automatic route is 400% of the net worth i.e. ₹ 3000 × 400%=₹ 12,000 crore which is equivalent to ₹12000/₹80 = USD 1.5 billion.

However, the proposed investment is exceeding the limit of USD 1 billion i.e. USD 1.25 billion. Therefore, the company cannot make investment under automatic route.

### Alternate Answer

According to Foreign Exchange Management (Overseas Investment) Rules, 2022 read with Foreign Exchange Management (Overseas Investment) Regulations, 2022 & Foreign Exchange Management (Overseas Investment) Directions, 2022:

The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

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It may be noted that “net worth” shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013, means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the given case, Agarwal Enterprises Limited (AEL) is planning to make an investment of ₹10,000 crore which is equivalent to USD 1.25 billion (₹10,000/₹80).

The net worth of AEL is ₹ 2,000+ ₹ 1000 = ₹ 3,000 crore.

The eligible limit of investment under the automatic route is 400% of the net worth i.e. ₹ 3000 × 400%=₹ 12,000 crore which is equivalent to ₹12000/₹ 80 = USD 1.5 billion.

However, the proposed investment is exceeding the limit of USD 1 billion i.e. USD 1.25 billion. Therefore, the company cannot make investment under automatic route.

## **June 2022**

**(a) ABC Ltd., involved in manufacturing or trading activities, established its branch office outside India includes a firm or association of persons. The permission in this regard has to be obtained from the RBI under the FEMA Act 1999. Highlight the permitted activities by RBI in the light of RBI Master Circular of 2016. (5 marks)**

**Ans-** As per the Reserve Bank of India Master Direction 2016– ‘Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad’, the permitted activities are given as under:

1. Establishment of Special Purpose Vehicle (SPV) are permitted under the Automatic Route.
2. Establishment of step down subsidiary.
3. Establishment of unincorporated/ incorporated entities in oil sector under the Automatic Route.
4. Construction and maintenance of submarine cable systems under the Automatic Route.
5. Natural resources sector.

Further, Master Direction 2016 provides that Indian Party should not be on the Reserve Bank’s Exporters’ caution list / list of defaulters to the banking system circulated by the Reserve Bank / Credit Information Bureau (India) Ltd. (CIBIL) / or any other credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank.

Indian Party are not permitted in an overseas entity located in the countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories” as per list available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank of India from time to time

## **DECEMBER 2020**

**Question 1- A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The permission to set-up a Branch Office has to be obtained from the RBI under the FEMA, 1999 provisions. In light of the RBI Master Circular of 2016, highlight the activities which are permitted by the RBI.**

**Answer-** Permitted Activities for a branch office by the Reserve Bank of India are as under:

- (1) Export / Import of goods
- (2) Rendering professional or consultancy services
- (3) Carrying out research work, in areas in which the parent company is engaged.
- (4) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (5) Representing the parent company in India and acting as buying / selling agent in India
- (6) Rendering services in information technology and development of software in India
- (7) Rendering technical support to the products supplied by parent / group companies
- (8) Foreign airline / shipping company.

**Question 2- Can a Navratna Company in Oil and Gas sector in India, which are duly approved by the Government of India, invest in Overseas Unincorporated entities in oil sector without any limit under automatic route?**

**Answer-** According to the Master Direction of Reserve Bank of India, Investment (or financial commitment) in unincorporated/ incorporated entities overseas in oil sector under the Automatic Route are as under:

- (1) Investments (or financial commitment) in unincorporated / incorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) may be permitted by AD Category - I banks, without any limit, provided such investments are approved by the competent authority.
- (2) Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to the limit prescribed provided the proposal has been approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment. Investment in excess of the prescribed limit shall require prior approval of the Reserve Bank.

In view of the above, Navaratna Company which are duly approved by the Government of India, invest in overseas Unincorporated entities in oil sector without any limits, under the automatic route.

**JUNE 2021**

**Question 1- Somit Kapoor is an Indian businessmen dealing in manufacturing of antique designer jewels. He has retail shops across all major cities in India. He wants to diversify his business geographically and plans to open retail outlets outside India. What are the aspects he should look into in choosing investment locations outside India ?**

**Answer-** For the purpose of making investment overseas and choosing location outside India, the following issues should be considered by Mr. Somit Kapoor:

Geographical location of the business:

- Infrastructure (ports, airports, storage, specific storage types – such as cold- storage. secure storage);
- Access (transportation of goods, materials and personnel);
- Relevance to supply chain: raw material sourcing, processing, despatch of finished produce;
- Availability of talent pool for productions (labour), services and management.

Economic aspects:

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability;
- Cost of doing business: return on investment computations vis-à-vis comparable locations;
- Laws relating to labour;
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double taxation, avoidance agreements, information sharing, requirements such as FATCA, TRC etc.

Political aspects:

- Friendly country, MFN status;
- Long standing and established legislative precedents with companies going through regulatory recourse;
- Their relations with neighboring countries and neighbours and your country.

Social aspects:

- Trade bodies, interaction between commercial entities of both nations;
- Expatriate-friendliness of the nation for relocation key employee personnel.

Technological aspects:

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress;
- Power, communication, telecom - availability, quality and coastal issues like infrastructure, geography, time zone, political, considerations/conditions, safety of investment, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

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**Question 2- Hemanth, who is interested in making overseas investment (financial commitment) in an energy sector in Vietnam, which exceeds the prescribed limit of the net worth of his Company as per the latest audited Balance Sheet. Accordingly, investment falls under Approval route instead of Automatic route. What are factors to be taken into account by Reserve Bank of India for considering such application ?**

**Answer-** Overseas investment in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet falls under the approval route and accordingly needs RBI approval.

Reserve Bank would inter alia, take into account the following factors while considering such applications:

- a. Prima facie viability of the Joint Venture/Wholly Owned Subsidiary outside India;
- b. Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);
- c. Financial position and business track record of the India Party and the foreign entity, and  
Expertise and experience of the India Party in the same or related line of activity as of the Joint Venture/Wholly Owned Subsidiary outside India

### **DECEMBER 2021**

**Question 1- M N Ltd., a Company registered in Japan has established a place of business in India. Advise MN Ltd. on the documents required to be filed by the Company with the concerned Registrar of Companies under the provisions of the Companies Act, 2013**

**ANSWER-** The following documents are required to be filed by MN Ltd., a foreign company with the concerned Registrar of Companies within 30 days of establishment of place of business in India under the provisions of the Section 380 of the Companies Act, 2013:

- Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- Full address of the registered or principal office of the company;
- List of the directors and secretary of the company containing such particulars as prescribed;
- Name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- Full address of the office of the company in India which is deemed to be its principal place of business in India;
- Particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- Any other information as may be prescribed.

## Lesson 12 - Identifying laws applicable to various Industries and their initial compliances

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## Lesson 13 - Various Initial Registrations and Licenses

**June 2023**

1. **ABC Pvt. Ltd. is engaged in the business of manufacturing of machinery parts. The company has the following investment in fixed assets:**  
**Plant and Machinery ₹115 lakh**  
**(including second hand machinery of ₹ 25 Lakh and pollution control equipment of ₹ 20 lakh)**  
**Land and Building ₹ 100 lakh**  
**Turnover ₹ 600 lakh**  
**(including export turnover of ₹ 150 lakh)**  
**Explain with details whether ABC Pvt. Ltd. comes under Micro or Small or Medium Enterprise category as per the new definition of MSME vide Press Release dated 13th May, 2020 of Ministry of Finance.**

**Ans -** An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

- (i) a Micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) a Small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
- (iii) a Medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupee.

MSME includes all establishment engaged either in manufacturing or rendering services but it does not include those enterprises which are engaged only in trading activities. The expression “plant and machinery or equipment” of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings).

The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, shall be excluded from the calculation of the amount of investment in plant and machinery i.e. in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.

In the given situation, the investment in plant and machinery or equipment is ₹ 95 lakh (₹ 115 lakh - ₹ 20 lakh) and the turnover is ₹ 450 lakh (₹ 600 lakh - ₹ 150 lakh). Therefore, ABC Pvt. Ltd. comes under the category of Micro Enterprise as per the new definition of MSME.

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2. In the following cases who are the owners of the copyrights, in terms of the provisions of Copyright Act, 1957: (1) Musical sound recordings (2) Works by journalists during their employment (3) Painting or portrait drawn at the instance of any person (4) Drafting of examination question papers (5) Book written by a teacher being an employee in a college.

**Ans** - Section 17 of the Copyright Act, 1957 laid down the provisions of the ownership of the copyright. As per Section 17 and other relevant sections of Copyright Act, 1957, following would be the owners of the copyrights:

- (1) In musical sound recordings: lyricist, composer, singer, musician and the person or company who produced the answers to be sound recording.
- (2) In works by journalists during their employment: In the absence of any agreement to the contrary, the proprietor.
- (3) In painting or portrait drawn at the instance of any person: In the absence of any agreement to the contrary, the person at whose instance the work is produced.
- (4) In drafting of examination question papers: Rights vests in the paper setter where no contract to the contrary exists. The paper setter in such case is the author and owner and not the authority for whom the question papers are set.
- (5) In book written by a teacher being an employee in a college: Teacher is the author and owner of the copyright and not the college because teacher is employed to teach and not to write the books.

3. Explain the benefits extended to Micro & Small Enterprises (MSEs) for having valid NSIC registration.

**Ans** - The following benefits are extended to Micro & Small Enterprises (MSEs) having valid NSIC registration:

- (a) Issue of the Tender Sets free of cost.
- (b) Exemption from payment of Earnest Money Deposit (EMD).
- (c) In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price where L1 is non MSEs.
- (d) Consortia facility for Tender Marketing.

Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 25% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste /Schedule Tribes and 3% is earmarked for the units owned by Women entrepreneurs. Single Point Registration Scheme (SPRS) registered units are integral part of the supply chain to Government. In addition to the above, 358 items are also reserved for exclusive purchase from MSE Sector.

4. What conditions are required to be satisfied by the White Category of industries to be eligible for pollution license exemption

**Ans** - The White Category of industries has to satisfy the following conditions to be eligible for this pollution license exemption-

- (a) The industry is being established in the locality demarcated for them;
- (b) Their investment on plant and machinery as specified from time to time;
- (c) There will not be any discharge of trade effluent from the industry into stream or well or sewer or onto land and/or that industry will not discharge any air pollution including noise into the atmosphere;

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(d) The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

**June 2022**

**(a) Namit has completed his diploma in pharmacy from a premier institute and wants to start wholesale Drug business. He seeks to get registered himself as wholesale drug dealer in State Drugs Standard Control Organization. Explain him the minimum requirements before applying wholesale drug license. (3 marks)**

**Ans-** To start a pharmacy business, a drug license is required. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license in India. Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization and the list of State Drugs Standard Control Organization.

Normally, The Drug Control Organization issues two types of licenses for operating a pharmacy business. One is the Retail Drug License (RDL) issued to run a general chemist shop. The other is the Wholesale Drug License (WDL) issued to persons or agencies engaged in drugs and medicines.

In most states, a retail drug license is only issued to persons who possess a degree or diploma in pharmacy from a recognized institute or university after depositing the requisite fee. But this condition is relaxed in case of procuring a Wholesale Drug license (WDL).

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

**Area :** The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required

**Storage Facility :** The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.

### **Technical Staff**

**Wholesale :** The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed Secondary School Leaving Certificate with 4 years' experience in dealing in drugs, specially approved by the department of drug control for the purpose.

**Retail :** The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours

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**(b) Which industries come under the purview of compulsory licensing as per New Industrial Policy, 2015 ? (3 marks)**

**Ans-** The industries which comes under the purview of compulsory licensing are as follow:

1. Distillation and brewing of alcoholic drinks.
2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
3. Electronic Aerospace and defence equipment: all types.
4. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.  
Specified Hazardous chemicals i.e. (i) Hydrocyanic acid and its derivatives, (ii) Phosgene and its derivatives and (iii) Isocyanates & diisocyanates of hydrocarbon, not elsewhere specified (example Methyl isocyanate)

**(c) Ambika is a young entrepreneur in Bikaner dealing in precious stones across all major cities in India. She has explored some opportunities abroad and wants to start business abroad. She approached you to advise whether she would be required to get herself registered with Director General of Foreign Trade (DGFT) for export, if yes, what are all documents required for such registration ? Advise her**

**Ans- Importer Exporter Code (IEC)** registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods require registering for Import Export Code. IE code has lifetime validity. Importers are not allowed to proceed without this code and exporters cannot take benefit of exports from DGFT, customs, Export Promotion Council, if they do not have this code.

Documents Required for Import Export Code (IEC) Registration are:

- (i) Proof of establishment/incorporation/registration as Partnership/Registered Society/Trust/ HUF / Others.
- (ii) Proof of Address can be any one of the following documents:
  - i. Sale Deed, Rent agreement, lease deed, electricity bill, telephone land line bill, mobile, postpaid bill, MoU, Partnership deed.
  - ii. Other acceptable documents (for proprietorship only): Aadhar card, passport, voter id.
  - iii. In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the firm premises owner in favor of the firm along with the address proof is to be submitted as a single PDF document.
- (iii) Proof of Firm's Bank Account such as Cancelled Cheque or Bank Certificate.
- (iv) User should have an active DSC or Aadhaar of the firm's member for submission.
- (v) Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee.  
So, Ambika is required to submit all these documents to DGFT before starting export

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**(d) Karan wants to open garment shop in a shopping mall. Is he required to get his shop registered under Shops and Establishment Act, 1948 ? If so, advise him the procedure.**

**Ans-** Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act License within the prescribed time. The application for license in the prescribed form must contain the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested.

On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier. The registration certificate must be prominently displayed at the shop or commercial establishment and renewed periodically, as per the act.

The application is to be submitted along with the prescribed fees and should contain the following information:

- Name of the employer and the name of a manager, if any;
- The postal address of establishment;
- The name of establishment;
- Such other particulars as may be prescribed.

Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application. Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate for the establishment.

This certificate will be valid for 5 years and has to be renewed thereafter. It is important that the registration certificate has to be prominently displayed at the establishment

### **DECEMBER 2020**

**Question 1- What forms are required to be filed with ROC for registration of a new company where the registration of GST, EPFO and ESIC is also applied simultaneously ?**

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has notified & deployed a new integrated Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form. SPICe+ offer 11 services by 3 Central Govt Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and two State Govt. (Maharashtra & Karnataka), thereby saving as many procedures, time and cost for Starting a Business in India and would be applicable for all new company incorporations w.e.f 23rd February, 2020. The form is divided into two parts viz.: Part A-for Name reservation for new companies and Part B - offering a bouquet of services such as Incorporation, DIN allotment, Mandatory issue of PAN, Mandatory issue of TAN, Mandatory issue of EPFO registration, Mandatory issue of ESIC registration and Allotment of GSTIN (if so applied for) etc.

Registration for EPFO and ESIC shall be mandatory for all new companies incorporated w.e.f 23rd February 2020 and no EPFO & ESIC registration nos. shall be separately issued by the respective agencies.

Names of the Relevant web Forms shall be called as Form No – INC32 (SPICe- +) and AGILE Pro.

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**QUESTION 2- Registration of Import-Export Code (IEC) has lifetime validity. In view of the statement, mention essential features of IEC registration.**

**ANSWER-** Import Export Code (IEC) registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods require registering Import Export Code.

Features of the Import Export Code (IEC) Registration are as under:

- International Exposure : IEC Code helps you to grow your business from local market to international market and expand your product or service across the globe.
- Government Benefits : IEC Code Registration you can avail all the export scheme benefits from DGFT.
- No Renewals : IEC Code issued by the DGFT for the lifetime validity so you have not required renew every year so it's a just one time cost of the registration.
- No Annual Compliance : IEC Code have no annual compliance like returns filings etc.
- Individual person : IEC Code can also be obtained by the individual.

**JUNE 2021**

**Question 1- Cartoons Children Foundation is a charitable trust, formed with an objective of enhancing the standard of living of slum children and it carries out various welfare projects for children. The trust was registered during November, 2020. This foundation receives many donations from outside India, which is utilized for the activities like education, healthcare, livelihood of the needy and poor children. Explain whether the trust is eligible to receive such foreign contribution under Foreign Contribution Regulation Act, 2010 in Financial Year 2021-22. State the eligibility criteria for FCRA registration .**

**ANSWER-** Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through prior permission.

For grant of FCRA registration under FCRA, 2010, the association should:

- (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 8 of the Companies Act etc;
- (ii) Normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised.

An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. In case a newly registered entity would like to receive foreign contributions, then approval for a specific activity, specific purpose and from a specific source can be made to the Ministry of Home Affairs through the Prior Permission (PP) method.

As Cartoons Children Foundation is registered during November, 2020 (less than three years in existence). Hence Cartoons Children Foundation are required to take prior permission for a specific activity, specific purpose and from a specific source under FCRA, 2010 before accepting any foreign contribution in Financial Year 2021-22.

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**Question 2- XYZ Pvt. Ltd., is engaged in manufacture of engineering components. The Company has investment of ₹5 Crore and Turnover of 25 Crore. The Company wants to know their category as per new definition of MSME. Will your answer differ, if XYZ Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover.**

**ANSWER-** Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

**Micro Enterprise:** Investment in Plant and Machinery or Equipment:  
Not more than Rs.1 crore and Annual Turnover; not more than Rs. 5 crore.

**Small Enterprise:** Investment in Plant and Machinery or Equipment:  
Not more than Rs.10 crore and Annual Turnover ; not more than Rs. 50 crore.

**Medium Enterprise:** Investment in Plant and Machinery or Equipment:  
XYZ Pvt. Ltd. Can be categorised as a Small Enterprise as its investment is up to Rs. 10 crore and turnover is less than Rs. 50 crore.

Even if it is a service provider the Category will not change.

Not more than Rs.50 crore and Annual Turnover ; not more than Rs. 250 crore.

**Question 3- State with reasons whether the following Companies require registration as NBFC with Reserve Bank of India, if not who is regulating authority for these Companies:**

- (i) **Infrastructure Debt Fund Company**
- (ii) **Asset Finance Company**
- (iii) **Merchant Banking Companies**

**ANSWER-** (i) Infrastructure Debt fund : is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. Infrastructure Debt Funds raise resources through issue of Rupee or Dollar denominated bonds. Hence, such Company requires registration as NBFC with Reserve Bank of India.

(ii) Asset Finance Company : An Asset Finance Company is a company which is a financial institution carrying on as its principal business of the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment's, moving on own power and general purpose industrial machines. Hence, such Company requires registration as NBFC with Reserve Bank of India.

(iii) Merchant Banking Companies : Regulated by Securities and Exchange Board of India; do not require NBFC License.

**Question 4- Ameer is a registered Pharmacist under State Pharmacy Council wants to start his own pharmacy shop in India, for which he requires Drug license. Suggest him the minimum requirements for obtaining the Drug license.**

**ANSWER-** The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

- **Area :** The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required.

- **Storage Facility :** The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.

- **Technical Staff :**

(a) **Wholesale –** The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4 years'

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experience in dealing in drugs, specially approved by the department of drug control for the purpose.

(b) Retail – The sale of drug by retail must be made in the presence of registered pharmacist approved by the department. Registered pharmacist is required throughout the working hours.

**Question 5- A Company already engaged in the business of marine and fire insurance would like to take-up the business of life insurance. Discuss the possibility of taking on this business. Also briefly describe under what circumstances registration of Insurance Companies may be suspended.**

**ANSWER-** No person can carry on Insurance business unless & until he has obtained a certificate from the Authority for a particular class of Insurance business. For e.g. A person can start life Insurance, marine Insurance, fire Insurance, health Insurance etc. But a life Insurance business cannot be combined with other type of Insurance business.

The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed or any action that may be taken, for such period as may be specified by the Authority, in the following cases:

- Conducts its business in a manner prejudicial to the interests of the policy- holders;
- Fails to furnish any information as required by the Authority relating to its insurance business;
- Does not submit periodical returns as required under the Act or by the Authority;
- Does not co-operate in any inquiry conducted by the Authority;
- Indulges in manipulating the insurance business;
- Fails to make investment in the infrastructure or social sector as specified under the Insurance Act.

### **DECEMBER 2021**

**Question 1- M/s Ariyakudi Private Limited, an appellant Company fails to deposit the PF contribution, upon financial crises going on in the business and Assistant Provident Commissioner levied damages for delay in contribution. Now M/s Ariyakudi Private Limited has challenged the said matter with the higher jurisdiction. Whether the levy of damages is tenable ?**

**ANSWER-** The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation which aims at providing social security and timely monetary assistance to Industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. EPF or Employee Provident Fund is a retirement benefit under which both employer and employee contribute equally in the EPF account.

The Act imposes a statutory obligation on employer covered under the Act to pay his own contribution along with employee's contribution within fifteen days of the close of every month to the Fund by separate Bank drafts or cheques on account of contributions and administrative charge.

Section 14-B of the Act vests the Central Provident Fund Commissioner with the power to recover damages, where an employer makes default in the payment of any contribution to the Fund not exceeding the amount of arrears and after giving a reasonable opportunity of being heard to employer.

The issue in the given question is "Whether financial crisis could be a tenable ground to be considered justifiable for failure to deposit PF contribution by employer and consequently challenge levy of damages for delay in contribution?"

In *M/S Hindustan Times Limited vs. Union of India & Others* on 7 January, 1998, Supreme Court held that the following principles can be summarised w.r.t. of the Employees Provident Fund & Miscellaneous Provisions Act, 1952:

The Authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability.

Therefore, going by above judgement of Supreme Court, the levy of damages in case of *M/s Ariyakudi Private Limited*, for failure to deposit PF contribution, will be upheld and financial crisis as justification for delay in depositing the same cannot be accepted.

**QUESTION 2- UV Pvt. Ltd. wants to apply for Udyog Aadhar. The Company seeks your advice on the criteria for making application for Udyog Aadhar under the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. Advise UV Pvt. Ltd**

**ANSWER-** Government of India notified certain criteria for classifying the enterprises as micro, small and medium enterprises and specifies the form and procedure for filing the memorandum (hereafter in this notification to be known as “Udyam Registration” , with effect from the 1st day of July, 2020, namely:--

An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

- (i) a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
  - (ii) a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
  - (iii) a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.
- Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof.

On registration, an enterprise (referred to as “Udyam” in the Udyam Registration portal) will be assigned a permanent identity number to be known as “Udyam Registration Number”.

An e-certificate, namely, “Udyam Registration Certificate” shall be issued on completion of the registration process.

Accordingly, UV Ltd. is advised the aforesaid criteria for making application for Udyam Registration Certificate under MSMED Act, 2006.

**QUESTION 3- A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work’. Elucidate.**

**ANSWER-** Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and

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stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time. In the early stage of operations and post operation too, there are various contacts that a company has to abode, therefore, the adherence to contact law is one of the most important requirement for the company per se.

**QUESTION 4- Rajan, a toy manufacturer wants to export toys to Thailand. He seeks your advice on the requirement of Import Export Code (IEC) for exporting toys to Thailand. Advise Rajan along with the documents required for obtaining IEC.**

**ANSWER-** Import Export Code (IEC) registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods require registering Import Export Code. Import Export Code has lifetime validity. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code. The Import Export Code must be quoted by importers while clearing customs. Also, banks require the importers IE Code while sending money abroad. For exporters, Import Export Code must be quoted while sending shipments and banks require the exporters IE Code while receiving money from abroad.

Thus, Rajan needs to apply for IEC for exporting toys to Thailand. The following documents are required for obtaining IEC:

- Personal or Company or Firm Pan Card Copy.
- Personal Aadhar card or Voter ID or Passport copy.
- Personal or company or firm current bank account cancel cheque copy.
- Electricity Bill Copy or Rent Agreement or Sale deed of the premise copy.

**QUESTION 5- Ramesh is running a fast food shop in Chandni Chowk, Delhi. He seeks your advice on the requirement of obtaining FSSAI Registration. Advise Ramesh.**

**ANSWER-** FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- a. Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- b. Distributes foods including in any religious or social gathering except a caterer; or
- c. Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs. 12 lakhs and whose:

Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or Procurement or handling and collection of milk is up to 500 litres of milk per day or Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business. In view of the above, Ramesh is advised to obtain FSSAI registration for running a fast food shop in Chandni Chowk, Delhi.

## Part II: Industrial and Labour Laws (40 Marks)

**June 2023**

1. **A factory is having 400 employed persons and covered under the Payment of Wages Act, 1936. It wants to fix the wage period as one and half month and make the payment of wages within 10 days after the last day of the wage period. Is it permitted under the Payment of Wages Act, 1936?**

**Ans -** As per Section 4 of the Payment of Wages Act, 1936, every person responsible for the payment of wages shall fix wage- periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Further, Section 5 specifies the time of payment of wages. The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

As per above mentioned provisions, the factory cannot fix the wage period as one and half month as it cannot exceed one month and cannot pay the wages within 10 days after the last day of the wage period.

2. **Santhi was employed in a factory since 2008 when the total employees in the factory were 54. She resigned from that employment on 31st March, 2023 after 15 years of continuous service. The factory owner denied to pay the amount of gratuity to Santhi stating that on the date of her retirement, the number of employees in the factory had come down to 8, hence the provisions of Gratuity Act, 1972 would not be applicable. Referring to the provisions of Gratuity Act, 1972, advise whether Santhi will succeed in her claim?**

**Ans -** The Payment of Gratuity Act, 1972 provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

The Payment of Gratuity Act, 1972, shall apply to: -

- every factory, mine, oil-field, plantation, port and railway company;
- every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed or were employed on any day of the preceding twelve months;
- such other establishments or class of establishments in which ten or more employees are employed or were employed on any day of the preceding twelve months as the Central government may, by notification, specify in this behalf.

A shop or establishment once covered shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

In light of the above-mentioned provisions, Santhi will succeed in her claim irrespective of the fact whether the number of required employees/workers falls below ten.

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**3. Write down the duties of the employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

**Ans -** Duties of the employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Every employer shall-

- (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee;
- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made;
- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the internal Committee.

**4. Daadi ke Achaar Pvt. Ltd. is producing the pickles of all varieties. A few of the workers in the company are in the age group of 15 to 18. The company seeks your advice on the provisions regarding working hours and period of work under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Advise the company.**

**Ans -** Section 7 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class overall of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of an adolescent shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that:

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Accordingly, the Company is advised to consider the above-mentioned provisions regarding working hours and period of work under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

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**June 2022**

- (b) **Reshma is working as computer operator in M Ltd. on contractual basis. As per manpower agreement, all contractual employees are provided through outsourcing by H Ltd. only. One day she was working long after office hour due to extra work load. David, General Manager (Finance), M Ltd. made unfair touch with her. She wants to file written complaint against him under Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Advise her to file the Complaint and what is the Complaint Procedure ?**

**Ans-** As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Further, the Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC), in case a complaint is against the employer, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

In view of the above mentioned provisions, Reshma, working as computer operator in M Ltd. on contractual basis, can make written complaint of sexual harassment by General Manager of M Ltd. at workplace to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC) within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident in writing

- (c) **Discuss the applicability of Motor Transport Workers Act, 1961.**

**Ans-** The Motor Transport Workers Act, 1961, was enacted to provide for the welfare of motor transport workers and to regulate the conditions of their work. It applies to every motor transport undertaking employing five or more motor transport workers. The State Government may, after giving notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers. According to the Act, 'motor transport undertaking' means "an undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier"

Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act. No adult motor transport worker shall be required or allowed

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to work for more than eight hours in any day and forty-eight hours in any week. Also, no adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour; and between the hours of 10 P.M. and 6 A.M.

**(d) What is the difference between strike and lockout under Industrial Dispute Act, 1947 ? (3 marks)**

**Ans- Strikes and Lockouts**

As per Industrial Disputes Act, 1947-

“Strike” means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment”. Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.

“Lockout” means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Lockout is the antithesis of strike.

- It is a weapon of the employer while strike is that of the workers. Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his point of view and to accept his demands

**(e) Highlight the Cash Benefits, which are provided to women under the Women under Maternity Benefit Act ?**

**Ans-** Cash Benefits provided to Women under Maternity Benefit Act are as under:

- 26 Weeks of paid maternity leave
- For more than two children and for adopting/commissioning mothers not less than 12 weeks of paid maternity leave.
- One month maternity leave to a woman worker suffering from illness arising out of pregnancy, delivery, premature birth of child (miscarriage, medical termination of pregnancy or tubectomy operation).
- Medical Bonus of Rs.3500/- if no prenatal confinement and post-natal care is provided by the employer free of charge.
- No deduction of wages of woman entitled for maternity benefit

## **DECEMBER 2020**

**Question 1- J Ltd. is a Public Sector Undertaking in business of Cement Manufacturing. For education to children of Employees and near villages, through a Trust, the Company also runs the Primary School within the Premise of the Society of the Company. Some persons of the Village are differentially able Physically challenged. Right of Persons with Disabilities Act, 2016 speaks about provisions relating to education of children with disabilities as well as duties of educational institutions. Explain the duties of educational institutions as mentioned therein.**

**Answer-** Section 16 of the Right of Persons with Disabilities Act, 2016 specifically deal with the duties of educational institutes. It states that the State shall endeavour to:

1. To admit children with disability without any discrimination and provide equal opportunities to them with regards to education, sports and recreation;
2. Make buildings, campus and other facility accessible to children with disability;
3. To provide specific supports to such children in order to maximise academic and social development;
4. To make arrangements for students who are deaf or blind or both;
5. To provide for transportation facilities to children with high support needs.

**Question 2- State Government has decided to sell the loss making Undertaking in the sector of water supply. The workers employed in this sector announced strike to protest the said decision. In such situation, what are the circumstances under which the said strike shall be treated as breach of contract?**

**Answer-** Since undertaking is in the sector of Water supply so, according to Section 22(1) of the Industrial Dispute Act of 1947 no person employed in a public utility service shall go on strike in breach of contract-

- (a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) Within fourteen days of giving such notice; or
- (c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

**Question 3- You are Company Secretary of U Ltd. The Board of Directors has required to prepare a check list of Sector Specific Laws to be complied with by the Company in Human Health Sector. Prepare the check list to be submitted before the Board.**

**Answer-** Sector specific laws to be complied with by company in Human Health Sector are as under:

- National Medical Commission Act, 2019
- The Clinical Establishments (Registration and Regulation) Act, 2010
- Indian Medical Council Act, 1956
- The Drugs and Cosmetics Act, 1940
- The Pharmacy Act, 1948
- Dentist Act, 1948
- Nursing Council Act, 1947
- Homeopathic Central Council Act, 1973
- The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1956

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- The Drugs Control Act, 1950
- Mental Health Act, 1987
- Transplantation of Human Organ Act, 1994
- Epidemic Disease Act, 1897

## **JUNE 2021**

**Question 1- A Textile Mill workers have shown interest in starting a Trade Union for the collective benefit of all the workers, seeks your guidance in the following matters:**

- (i) **Registration of the Union**
- (ii) **Forms required for registration**
- (iii) **Minimum requirement for membership of Trade Union**
- (iv) **Disqualification of office bearers of Trade Union**
- (v) **Cancellation of Registration.**

**Answer-** Registration of Trade Union

- Any 7 or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least 10%, or 100 of the work-men, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has on the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.
- (ii) **Forms Required for Registration of Trade Union**
  - Form A or any other Form as may be prescribed by the Appropriate Government.
  - Names, occupations and address of the members' place of work.
  - Address of its head office; & Names, ages, addresses and occupations of its office bearers.
- (iii) **Minimum Requirements for Membership of Trade Union**
  - Not less than 10%, or 100 of the workmen, whichever is less,
  - Subject to a minimum of 7,
  - Engaged or employed in an establishments etc.
- (iv) **Disqualification of Office Bearers of Trade Union**
  - If one has not attained the age of 18 years.
  - Conviction for an offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.
- (v) **Cancellation of Registration**
  - If the certificate has been obtained by fraud or mistake or it has ceased to exist or has wilfully contravened any provision of this Act.
  - If it ceases to have the requisite number of members

**Question 2- PT Pvt. Ltd., is engaged in the business of textile related products and employs 20 employees. Out of which, 11 employees draw a monthly salary of more than 25,000 each and 9 employees draw a monthly salary of less than 20,000 each. Because of this the Management of the Company is of the view that the Company is not covered under Employee's State Insurance (ESI) Act, 1948. Referring to relevant provisions clarify whether the contentions of the Management of PT Pvt. Ltd. is correct.**

**Answer-** Registration of Employer : Any employer having more than 10 employees is mandatorily required to register under ESI. Employees earning 21,000 INR per month or less shall make contribution for ESI scheme. Employees with higher wages are exempt. Registration depends on the number of employees and not on earnings of the Employees. Though employees drawing more than Rs. 21,000 per month are exempt for ESI contribution. Registration limit is mandatory, if a Company has more than 10 employees, Accordingly PT Pvt. Ltd. have to obtain registration, even if the number of employees who are contributing is less than 10.

**Question 3- Brief on the applicability of Contract Labour (Regulation and Abolition) Act, 1970 for Contractor and Establishment. Also state the welfare measures to be taken by the Contractors.**

**Answer-** Applicability of the Contract Labour (Regulation and Abolition) Act, 1970

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Welfare measures to be taken by the Contractor

- Contract labor either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.
- First Aid facilities.
- Number of rest-rooms as required under the Act.
- Drinking water, latrines and washing facilities.

**Question 4- Define Internal Complaints Committee under Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

**Answer-** According to Section 2(h) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Internal Committee" means an Internal Complaints Committee constituted under section 4.

The Act makes it mandatory for every employer of a workplace to constitute an Internal Complaints Committee ("ICC") which entertains the complaints made by any aggrieved women. The members of the ICC are to be nominated by the employer and ICC should consist of :

- (i) A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees.
- (ii) Not less than two members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge and;
- (iii) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least one half of the members of ICC nominated by employer are women.

## **DECEMBER 2021**

**Question 1- Ram is working in a factory employing 30 persons. The gross salary of Ram is ₹20,000 per month. He has worked for 60 days in the year 2019-20. In the light of provisions of Payment of Bonus Act, 1965, examine whether Ram is eligible for payment of bonus for the year 2019-20.**

**ANSWER-** Payment of Bonus Act, 1965 is applicable to the establishment in which 20 or more persons are employed on any day during an accounting year. (Appropriate Government may specify lesser no. of employees).

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

According to Section 2(13) of the Act, "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding twenty-one thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

In view of the above Ram is eligible for payment of bonus for the year 2019-20 under the provisions of Payment of Bonus Act, 1965.

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