

JAHANGIR TUTORIALS

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

**SCANNER
(NEW SYLLABUS)**

**PROF ZUBAIR
JAHANGIR**

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

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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 3 - Limited Liability Partnership

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

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

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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 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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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.

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

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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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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 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- 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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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.

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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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(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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(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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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?"

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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

- (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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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.

- 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

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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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Certificate

of

Signature Completion

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