

JAHANGIR TUTORIALS

SETTING UP OF BUSINESS ENTITIES AND CLOSURE SCANNER

**(PAST YEARS EXAM
QUESTIONS AND MODEL
ANSWERS)**

PROF ZUBAIR JAHANGIR

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

PART "A"
CHP 1-CHOICE OF BUSINESS ORGANISATION

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

DECEMBER 2020

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 2 –TYPES OF COMPANIES

June 2022

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

DECEMBER 2020

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

JUNE 2021

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

DECEMBER 2021

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

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

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

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

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

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

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

Provided that nothing in this clause shall apply to—

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 3-CHARTER DOCUMENTS OF COMPANY AND ALTERATION OF CHARTER DOCUMENTS

June 2023

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

3. Explain the Doctrine of Alter Ego.

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

Alternate Answer

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

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

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

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

DECEMBER 2020

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

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

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

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

DECEMBER 2021

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 4-LEGAL STATUS OF REGISTERED COMPANY

June 2023

1. Explain the provisions contained in Section 129 of the Companies Act, 2013 and Companies (Accounts) Rules, 2014 relating to financial statements of Holding Company.

Ans - The provisions relating to financial statements of Holding Company as contained in Section 129 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 are given below:

Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form may be prescribed. The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures shall be in Form AOC-1.

Provided that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

The provisions of the Companies Act, 2013 applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements.

June 2022

- (a) Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
 - (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
 - (ii) The Registrar may, for any special reason, extend the time limit within which first AGM shall be held.
 - (iii) Subsequent AGM should be held within 6 months from closing of the financial year.
 - (iv) The AGM can be held on Saturday, however, the Company runs business for 5 days in a week i.e. Monday to Friday. (4 marks)

Ans-

- (i) According to the proviso to Section 96(1) of the Companies Act, 2013, the first annual general meeting of the company shall be held within a period of 9 months from the closing of the first financial year. So, the statement is incorrect.
- (ii) According to the proviso to Section 96(1), the registrar may, for any special reason, extend the time within which any annual general meeting, other than first annual general meeting, shall be held, by a period not exceeding three months. So, the statement is incorrect.
- (iii) According to the proviso to Section 96(1), subsequent AGM of the company shall be held within a period of 6 months from the closing of the financial year. So, the statement is correct.
- (iv) As per Section 96(2), the Annual General Meeting shall be called during the business

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

hours between 9 a.m. and 6 p.m. on any day is not a National Holiday. So the Annual General Meeting of the Company can be held on Saturday

DECEMBER 2020

Question 1- What penalty can be imposed on One Person Company or Officer of such company who contravenes the provisions with respect to conversion of Private Company into One Person Company ?

ANSWER- According to Section 18 read with Rule 7A of the Companies (Incorporation) Rules, 2014, if a One Person Company (OPC) or any officer of such company contravenes any of the provisions of the Companies (Incorporation) Rules, 2014, the OPC or any other officer of such company shall be punishable with fine which may extend to ₹5,000/- and with a further fine which may extend to ₹500/- for every day after the first offence, during which such contravention continues.

As Section 18 of the Companies Act, 2013 does not prescribe any penal provision for contravention of this section. Hence, the provisions of Section 450 of the Companies Act, 2013 related to punishment where no specific penalty or punishment is provided may be applicable in case of conversion of Private Company into One Person Company.

JUNE 2021

Question 1- PQR Power Corporation is a Government Company incorporated on 01.12.2018. The Comptroller and Auditor General of India (CAG) has appointed the Auditors for the Company on 09.01.2019. Akshay, filed an RTI on 05.03.2019, to know the status of appointment of Auditors of the Company and further he writes to the Registrar of Companies stating that the appointment of the First Auditor is invalid and company has contravened the provisions of the Companies Act, 2013. Whether the contention of Akshay is tenable? Also state the conditions for appointment of subsequent Auditors of PQR Power Corporation.

ANSWER- Provisions relating to Auditor

I. Appointment of First Auditor in a Government Company:

As per Section 139(7) of the Companies Act, 2013, in the case of Government Company, the first auditor is required to be appointed by the Comptroller and Auditor General of India (C&AG) within 60 days from the date of registration of the Company. If C&AG fails to appoint such auditor within 60 days, then the Board of Directors of the company shall appoint such auditor within the next 30 days

In case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 60 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

Thus, PQR Power Corporation is a government company incorporated on 01.12.2018 and C&AG has appointed the Auditor on 09.1.2019 i.e. within 60 days from the date of incorporation of the corporation. Hence the contention of Mr. Akshay is invalid.

II Appointment for Subsequent Financial year:

As per Section 139(5) of the Companies Act, 2013, the appointment of Auditor in a Government Company in every subsequent financial year shall be made by Comptroller & Auditor General of India within period of 180 days from the commencement of the financial year. The Auditor shall hold office till the conclusion of the Annual General Meeting.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

Question 2- Nataasha Dalvi was appointed as a Director of a Company imparting online education. She checked the MCA website to know the status of the Company and found that Company name is marked as 'ACTIVE – non-compliant'. Explain to her reasoning for such status and also brief her what types of Forms cannot be filed when Company is in 'ACTIVE – non-compliant' status.

ANSWER- Rule 25A of the Companies (Incorporation) Rules, 2014 deals with the provision related to Active Company Tagging Identities and Verification (ACTIVE) which states that: Every company incorporated on or before 31st December, 2017 was required to file the particulars of the company and its registered office, in e-form INC-22A-ACTIVE (Active Company Tagging Identities and Verification) on or before 15th June, 2019.

In case a company does not intimate, the said particulars, the Company was marked as "ACTIVE-non-complaint on or after 16th June, 2019 and shall be liable for action under Section 12(9) of the Companies Act, 2013.

Where a company files "e-Form ACTIVE", on or after 16th June, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of Rs.10000.

Further, no request for recording the following event based information or changes is accepted by the Registrar of Companies from such companies who are marked as "ACTIVE- non-compliant", unless " e-Form ACTIVE" is filed, namely:-

- (i) SH-07 (Change in Authorized Capital);
- (ii) PAS-03 (Change in Paid-up Capital);
- (iii) DIR-12 (Changes in Director except in case of :
 - (a) cessation of any director or
 - (b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of section 149(1) of the Companies Act, 2013 on account of disqualification of all or any of the director under section 164.
- (c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated.
- (d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016).
- (iv) INC-22 (Change in Registered Office);
- (v) INC-28 (Amalgamation, de-merger).

DECEMBER 2021

Question 1- Dinesh is running small handicraft unit with 3 workers. He is planning for expansion and it may require addition of 10-15 employees. He is planning to register his business under Employees State Insurance (ESI) and extend the benefit to all his employees. He is keen in knowing from you the benefits available to him as an employer in extending the ESI facilities to his employees. Advise Dinesh.

ANSWER- Following are the benefit available to employer in extending the ESI facilities to his employees:

- Employers are absolved of all their liabilities of providing medical benefits to their employees and their family members or dependents in kind or in the form of fixed cash allowance, reimbursement or actual expenses, lump sum grant or opting for any other medical insurance policy of limited scope, unless it is a contractual obligation of the employer.
- Employers are granted exemption pertaining to the applicability of Maternity Benefit Act, 1961, Employee Compensation Act, 1923.etc. in respect of employees covered under the ESIC Scheme. This results in employers possessing a productive and well secured workforce, at their disposal which is an essential ingredient for better productivity of an organisation.
- Employers are absolved of any responsibility in times of physical distress of their employees or workers such as employment injury, sickness or physical disablement thereby

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 7-FORMATION AND REGISTRATION OF NGO'S.

June 2022

- (a) A group of individuals intended to form a club namely 'Jet Pilots Flying Club' as limited liability company to impart classroom teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of 10 years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013. (5 marks)

Ans- According to Section 8 (1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company -

- (a) has in its object the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

The Central Government may, by issue of license, allow that person or association of persons to be registered as a limited liability company.

According to Section 8 (9) of the Companies Act, 2013, if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of 10 years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good since there is a restriction as pointed out in (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

DECEMBER 2020

Question 1- What are the Tax Exemptions available to Private Trust ?

ANSWER- Tax exemptions for a Private Trust

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate. Section 161(1A) of the Income Tax Act, 1961 provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust including any profits and gains from business would be liable to income tax at the maximum marginal rate.

Thus, tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

Further Private Trusts may comply with the provisions of Section 11 and 12 and 164 of the Income Tax Act, 1961.

JUNE 2021

Question 1- U & P wants to create a Trust. Advise them in the following matters :

- (I) What are the various aspects to be decided before registration of a Trust ?**
- (II) Provision regarding signature and witnesses on the Trust deed.**
- (III) Basis of chargeability of stamp duty at the time of Registration ?**
- (IV) Can a Trust open a Bank Account in its name, if yes, then other than Trust deed what other documents are required to open the bank account ?**

ANSWER- Various aspects to be decided before registration of the trust

I) A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding. Before registration of a trust, the following aspects have to be decided:

- (a) Name of the trust
- (b) Address of the trust
- (c) Objects of the trust (Charitable or Religious)
- (d) One settler of the trust
- (e) Two trustees of the trust
- (f) Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

II) Provision regarding signature and witnesses on the trust deed:

Obtain the signatures of Settlor, Trustees and Witnesses(s) at the appropriate places. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.

III) Provision regarding stamp duty

Print the Trust Deed on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

IV) Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

Other than Trust deed, the following documents would be required:

- a) Account opening form;
- b) Copy of PAN Card in the name of the Trust;
- c) Proof of address of the Trust;
- d) Certified copy of resolution regarding opening and operation of the account;

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

- e) Details of trustees, settlor, beneficiaries and signatories with their identity and address proof;(KYC documents)
- f) Power of attorney, if any, granted to any employee to transact business of the Trust;
- g) Registered and communication address of the Trust with telephone/fax/email address.
- h) Photographs of authorised signatories

DECEMBER 2021

Question 1- OP Ltd. wants to create a trust for the benefit of employees of the Company and their spouses and children. Decide with reasons whether this trust will be Public Trust or Private Trust. Also state the differences between Public Trust and Private Trust

ANSWER- A trust for the benefit of employees of a company however numerous would not be considered as public trust because who the beneficiaries are known. Therefore, the trust to be created by OP Ltd. for the benefit of employees of the Company and their spouses and children will be a Private Trust.

The differences between Public Trust and Private Trust are as follows:

- (a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a Board of Trustees. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the Trust is private.
- (b) In a Public Trust, the interest is vested in an uncertain and fluctuating body. They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756)
- (c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

June 2022

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

(4 marks)

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

DECEMBER 2020

Question 1- What are the Tax Exemptions available to Private Trust ?

ANSWER- Tax exemptions for a Private Trust

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate. Section 161(1A) of the Income Tax Act, 1961 provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust including any profits and gains from business would be liable to income tax at the maximum marginal rate.

Thus, tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

Further Private Trusts may comply with the provisions of Section 11 and 12 and 164 of the Income Tax Act, 1961.

JUNE 2021

Question 1- U & P wants to create a Trust. Advise them in the following matters :

- (I) What are the various aspects to be decided before registration of a Trust ?**
- (II) Provision regarding signature and witnesses on the Trust deed.**
- (III) Basis of chargeability of stamp duty at the time of Registration ?**
- (IV) Can a Trust open a Bank Account in its name, if yes, then other than Trust deed what other documents are required to open the bank account ?**

ANSWER- Various aspects to be decided before registration of the trust

I) A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding. Before registration of a trust, the following aspects have to be decided:

- (a) Name of the trust
- (b) Address of the trust
- (c) Objects of the trust (Charitable or Religious)
- (d) One settler of the trust
- (e) Two trustees of the trust
- (f) Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

II) Provision regarding signature and witnesses on the trust deed:

Obtain the signatures of Settlor, Trustees and Witnesses(s) at the appropriate places. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.

III) Provision regarding stamp duty

Print the Trust Deed on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

IV) Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

Other than Trust deed, the following documents would be required:

- a) Account opening form;
- b) Copy of PAN Card in the name of the Trust;
- c) Proof of address of the Trust;
- d) Certified copy of resolution regarding opening and operation of the account;

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

- (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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- State the Register to be maintained under Companies Act 2013 corresponding to the following forms :

- (I) MGT-2
- (II) MBP-2
- (III) SH-6.

Answer- The register to be maintained under Companies Act 2013 corresponding to following forms are:

- (I) MGT-2 : Register of Debenture Holders/ Other Securities Holders.
- (II) MBP-2 : Register or Loans, Guarantee, Security and Acquisition Made By Company.
- (III) SH-6: Register of Employee Stock Option.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

CHP 2 –TYPES OF COMPANIES

June 2022

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- State the Register to be maintained under Companies Act 2013 corresponding to the following forms :

- (I) MGT-2
- (II) MBP-2
- (III) SH-6.

Answer- The register to be maintained under Companies Act 2013 corresponding to following forms are:

- (I) MGT-2 : Register of Debenture Holders/ Other Securities Holders.
- (II) MBP-2 : Register or Loans, Guarantee, Security and Acquisition Made By Company.
- (III) SH-6: Register of Employee Stock Option.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 20- STRIKE OFF AND RESTORATION OF NAME OF CO.AND LLP

June 2023

1. Differentiate between 'Defunct Company' and 'Vanishing Company'.

Ans - Defunct company-A company which has failed to commence business operations within one year from the date of registration without any proper reason, which is beyond the control of the company or where a company has no assets or liabilities. Again, if a company is not filling its balance sheet for many years, then also it will be termed as a defunct company.

Vanishing Company - A company, registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

2. BBIL is an unlisted public company. The company is in insurance business. BBIL has incurred huge losses and applied for striking off its name after making due payments to all the creditors. The Registrar of Companies requires No Objection Certificate (NOC) from the appropriate regulatory authorities. Whether the NOC is required? Explain.

Ans -

As per Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, No Objection Certificate (NOC) from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act which shall be attached to the application in Form No. STK-2. The said NOC is required in case of the following companies:

- i. Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;
- ii. Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;
- iii. Insurance companies as referred to in the Insurance Act,1938 or rules and regulations thereunder;
- iv. Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- v. Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vi. Asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vii. Any other company which is regulated under any other law for the time being in force.

Accordingly, BBIL is required NOC from the appropriate regulatory authority under Insurance Act, 1938

i.e. Insurance Regulatory and Development Authority of India (IRDAI).

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

(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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

Question 2- A Company is having a paid-up Capital of 50 Lakhs and a Turnover of 1 Crore. The Company does not have any loans and outstanding deposits. The Board of Directors of the Company have decided not to carry on further business and proposed to wound up the Company.

One of the Director of the Company approaches you to suggest some methods to complete the winding up without cumbersome processes. Suggest him a suitable option by explaining the recent developments in this regard.

ANSWER- With a view to systemize the procedure of winding up of a Company under the Companies Act, the Ministry of Corporate Affairs (MCA) vide notifications dated 24th January 2020, had notified the Companies (Winding Up) Rules, 2020. The Rules are applicable to companies going into winding up for the circumstances mentioned under Section 271 as well as "Summary procedure for liquidation under Section 361" of the Act. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020.

It allows the following companies to wind up their business by making an application to Central Government without approaching National Company Law Tribunal (NCLT) :

| | |
|--|-------------------|
| Companies accepting deposit and having total deposits | Upto INR 25 Lacs |
| Companies having total outstanding loan including secured loan | Upto INR 50 Lacs |
| Companies having total turnover | Upto INR 50 Crore |
| Companies with Paid up capital | Upto INR 1 crore |

In the given case since, the Company Capital of Rs. 50 Lakh and Turnover of Rs. 1 Crore can wound up the Company without going to NCLT as per the new amendment.

Alternatively, a corporate person, who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under Section 59, Chapter V of Part II of the Insolvency & Bankruptcy Code

DECEMBER 2021

Question 1- PQ Finvest Ltd. is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India. The total assets of the Company are exceeding ₹ 500 crores. The Company has committed the default in making payment to Karan, who is an operational creditor. In the light of the provisions of Insolvency and Bankruptcy Code, 2016, examine whether Karan can initiate Corporate Insolvency Resolution Process against PQ Finvest Ltd.

ANSWER- The Ministry of Corporate Affairs ("MCA") vide its Notification dated 15th November 2019 had notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("Rules"). The Rules provide a framework for the insolvency and liquidation proceedings of systematically important Financial Service Providers ("FSPs") excluding banks. Section 227 of the Insolvency and Bankruptcy Code, 2016 ("Code") enables the Central Government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings, in such manner as may be prescribed. The Rules, therefore, will apply to such FSPs or categories of FSPs as will be notified under Section 227 of the Code.

Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 applicable to Non-banking Finance Companies (including housing finance companies) ("NBFCs") as a class of FSPs, having asset size of Rupees Five Hundred Crore or more, as per last audited balance sheet. The aforesaid Rules has designated the Reserve Bank of India ("RBI") as the appropriate regulator in this regard. An insolvency process i.e. CIRP can initiated against NBFCs only on an application by the Reserve Bank of India (RBI) before the NCLT.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 14-MAINTENANCE OF REGISTER AND RECORDS

June 2022

- (a) Rama Limited fails to maintain Statutory Registers under the provisions of the Companies Act, 2013, due to Lockdown. What kind of penalties are levied against it for failure to maintain Statutory Registers ? (3 marks)

Ans- Under the various provisions contained in the Companies Act, 2013, every company governed under Companies Act, 2013 is required to maintain statutory registers at its registered office until the dissolution of the company.

The following are the important statutory registers which are required to be maintained under the Companies Act, 2013:

| Form | Name of Register | Relevant Section of Companies Act 2013 | Penalty |
|-------|--|--|---|
| MGT-1 | Register of Members | Section 88 and Rule 3(1) of the Companies (Management and Administration) Rules, 2014. | The company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. |
| MBP-2 | Register of Loans, Guarantee, Security and Acquisition made by Company | Section 186 and Rule 12 of the Companies (Meeting of Board and its Powers) Rules, 2014 | The company shall be punishable with fine which shall not be less than twenty - five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. |

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

| | | | |
|-------|---|--|---|
| SH-10 | Register of Shares / Other Securities Bought Back | Section 68 and Rule 17(12) of the Companies (Share Capital and Debentures) Rules, 2014 | The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees. |
|-------|---|--|---|

So, Rama Limited fails to maintain Statutory Registers under the provisions of the Companies Act, 2013, will be liable for the above mentioned penalties

DECEMBER 2020

Question 1- You are appointed as Secretarial Officer of A Ltd., a BSE Listed company. Apart from the day to day secretarial work, you need to check & verify the purchase invoice and purchase order. Being an officer in that area, prepare the note on maintenance of Expense and Purchase Record and its advantage.

Answer- To be able to determine the business's profitability it is important that you should record and retain details of expenses and purchases made by your business. Documents that contain such details include:

- Invoices received
- Credit card statements
- Receipts/ counterfoils
- Cheque book counterfoils
- Cash vouchers
- Salary information
- Credit Documents

Collectively, these will represent the sum total of monies expended by the business in the pursuit of its main activities. Retaining and filing this data shall lead to meaningful information on the expense patterns of the company which can then be used to make informed decisions by the business owners.

This data is also useful in a tax context as it will form the basis for the justification of profitability figures as reflected by the business in its returns of income during scrutiny proceedings undertaken by the income tax department.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- State the Register to be maintained under Companies Act 2013 corresponding to the following forms :

- (I) MGT-2
- (II) MBP-2
- (III) SH-6.

Answer- The register to be maintained under Companies Act 2013 corresponding to following forms are:

- (I) MGT-2 : Register of Debenture Holders/ Other Securities Holders.
- (II) MBP-2 : Register or Loans, Guarantee, Security and Acquisition Made By Company.
- (III) SH-6: Register of Employee Stock Option.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 15-LAWS APPLICABLE TO VARIOUS INDUSTRIES AND INITIAL COMPLIANCES

June 2023

1. M Ltd. has a textile plant situated in Bhiwandi, Maharashtra. Mudit is the head of the plant, who possesses Master Degree in Mechanical Engineering from a reputed Institute. Mudit is appointed as the occupier of the plant under the Factories Act, 1948. What are the measures Mudit has to adopt for health of workers employed in the manufacturing process which generates dust, fume and other impurities ?

Ans - Mudit has to adopt the following measures in the manufacturing process which generates lot of dust, fume and other impurities to ensure health and safety of the workers:

- (1) Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc. in the work-rooms.
- (2) Wherever necessary, an exhaust appliance should be fitted, as far as possible, to the point of origin of dust, fumes or other impurities. Such point shall also be enclosed as far as possible.
- (3) In case stationary internal combustion engine is operated in factory, exhaust should be connected into the open air.
- (4) In cases of other internal combustion engine is operated in factory, effective measures should be taken to prevent the accumulation of fumes therefrom.
- (5) Precautions against dangerous fumes, gases, etc. should be taken and it must ensure that:
 - a. person shall not be allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.
 - b. person shall not be allowed to enter any confined space, until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless--
 - a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or
 - such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

June 2022

- (a) Discuss the applicability of the Plantation Labour Act, 1951. (3 marks)

Ans- The Plantation Labour Act, 1951, is enacted to provide for the welfare of plantation labour and regulates the conditions of work in plantations. According to the Act, the term 'plantation' means "any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply".

The Plantation Labour Act, 1951 applies to the following plantations, that is to say,—

to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom which admeasures hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months;

to any land used or intended to be used for growing any other plant, which admeasures hectares or more and in which fifteen or more persons are employed or were employed on

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs

DECEMBER 2020

Question 1- Z, a resident of Bangalore, desires to set up a food manufacturing unit where he will cook variety of food items like Idly, Dosa, PaniPuri, Pongal, Dry Samosa, Club Kachori and many more with the help of imported & automatic machines and pack itself for retail selling in the market under his brand name. Advise him on the registration requirement before starting any petty food business.

Answer- Food Safety and Standards Authority of India (FSSAI) license is mandatory before starting any food business. All the manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration or a license number which must be printed on food packages.

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

- a. Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- b. Distributes foods including in any religious or social gathering except a caterer; or
- c. Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and / or whose:
 - Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - Procurement or handling and collection of milk is up to 500 litres of milk per day or
 - Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

Hence based on the above requirement, Z has to apply for of a FSSAI registration before he start his food manufacturing business.

QUESTION 2- Can a woman be employed in the Mine Industry ? If yes, on what terms and conditions, a woman may be employed in any mine below the ground ?

Answer- Yes, a woman can be employed in Mine Industry.

In exercise of the power conferred under section 83(1) on the Mines Act, 1952, the Central Government hereby exempts the women employed in any mine above ground and in any mine below ground from the provisions of section 46 of the Mines Act, 1952, subject to the following conditions, namely:-

In the case of women employed in any mine below ground:

- The owner of a mine may deploy women between the hours of 6 am and 7 pm in technical, supervisory and managerial work where continuous presence may not be required;
- the deployment of women shall be after obtaining the written consent of the concerned woman employee;
- the women so deployed shall be provided with adequate facilities and safeguards regarding occupational safety, security and health;
- the deployment of women shall be subject to the framing and implementation of Standard Operating Procedures on the basis of the guidelines issued in this regard by the Chief Inspector of Mines from time to time;
- the deployment of women shall be in a group of not less than three.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- Srinivas, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Srinivas on the requirements of Industrial licensing based on category of Industries.

Answer- Though industrial licensing has been abolished for all, there are five industries which still fall under compulsory licensing mainly on account of environmental, safety and strategic considerations. They are:

1. Distillation and brewing of alcoholic drinks
2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes
3. Electronic Aerospace and defense equipment of all types
4. Industrial explosives including detonating uses, safety fuses, gun power, nitrocellulose and matches
5. Specified Hazardous chemical i.e. (i) Hydrocyanic acid and its derivatives (ii) Phosgene and its derivatives and (iii) Isocyanates & di-isocyanates of hydrocarbon, not elsewhere specified

Hence, Srinivas has to obtain license for setting up cigarette factory. FSSAI registration will not be the correct registration as the business falls under compulsory licensing.

DECEMBER 2021

Question 1- Kumar is a proprietor of a small scale unit manufacturing cotton clothes. He wants to know the benefits of registration with National Small Industries Corporation (NSIC). Advise Kumar.

ANSWER- The units registered under Single Point Registration Scheme of NSIC are eligible to get the following benefits under "Public Procurement Policy for Micro & Small Enterprises (MSES) Order" as notified by the Government of India, Ministry of Micro, Small & Medium Enterprises:

- Issue of the Tender Sets free of cost;
- Exemption from payment of Earnest Money Deposit (EMD),
- In tender participating MSEs quoting price within price band of L1+15% shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price where L1 is non-MSEs.
- Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25% of the total annual purchases of the products or services produced or rendered by MSEs.
- In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

QUESTION 2- Explain the duties of Conciliation Officers under the Industrial Disputes Act, 1947

ANSWER- Duties of Conciliation Officers under the Industrial Disputes Act, 1947 are as follows:

- Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- Investigate the matters of the disputes.
- Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

- (a) Sunita has taken some books from library and she wants to reproduce 'Verbatim' and she wants to use the same for her LL.M. thesis. She would like to know from you whether she will be violating any Copyright protection in doing so. Also brief her about the exceptions and protection available to protect the interest of the users under Copyright law.

Ans- Verbatim reproduction of pages of the book for the LL. M thesis is not protected under the fair use doctrine of the Copyright Act, 1957. The case of Fateh Singh Mehta v OP Singhal decided by the Rajasthan High Court deals with similar set of facts whereby research thesis submitted by the respondent was copied verbatim to large extent by the appellant for preparing his Ph.D. thesis. It was held to be infringement on part of the appellant.

In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. It includes:

- (i) for the purpose of research or private study,
- (ii) for criticism or review,
- (iii) for reporting current events,
- (iv) in connection with judicial proceeding.
- (v) for the purpose of education and religious ceremonies

Section 52 of the Copyright Act, 1957 provides for various other purposes which will constitute fair use of copyrighted material

- (b) Aman and Kaushal have written a book jointly and seek to get the book registered in the Copyright Act, 1957 as joint owners. Can they do so ?
(3 marks each)

Ans- Yes. Copyrights can be owned jointly. The Copyright Act, 1957, provides that "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors

DECEMBER 2020

Question 1- If a lyricist copy a very catching phrase from another lyricist's song, there is likely to be infringement even if that phrase is very short. Referring to the statement, mention commonly known acts which are termed as infringement of copyright along with the penalty of infringement.

Answer- The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire;
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
- Public exhibition of infringing copies by way of trade; and
- Importation of infringing copies into India.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

- A copyright owner can take legal action against any person who infringes the copyright and is entitled to remedies by way of injunctions, damages and accounts.
- Penalty for infringement and the status of the infringing copies The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

QUESTION 2- Ms N is studying in Mass Media and under the syllabus; she needs to prepare a project report on Propaganda supported by Political Moto. Ms N wants to use the report of one of News channels but the same is protected under the Copyright Act. What are the exceptions where Ms N can use the material of copyright?

Answer- In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work:

- for the purpose of research or private study,
- for criticism or review,
- for reporting current events, in connection with judicial proceeding,
- performance by an amateur club or society if the performance is given to a non-paying audience, and
- making of sound recordings of literary, dramatic or musical works under certain conditions.
- for the purpose of education and religious ceremonies.

On the basis of the explanation given above, as Ms. N is studying in mass media and wants to prepare a project report, which comes under above exception.

JUNE 2021

Question 1- 'Geographical indications are a special kind of Trademarks' — Analyze the correctness of the statement highlighting the differences between Geographical indications and Trademarks.

Answer- As per Section 2(1) (e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

According to Section 2 (1) (zb) of the Trade Marks Act, 1999 "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.

Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

Question 2- Pratap, a civil engineer devises a new principle of construction. He would like protect his new construction principle and approaches you to suggest for suitable Intellectual Property (IP) protection measures. Suggest Pratap, a suitable IP protection registration for his new principle of construction and brief him some of the salient features of the Act which provides such protection.

Answer- Pratap may register under the Designs Act, 2000. However, any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.

The salient features of the Design Act, 2000 are as under:

- (a) Enlarging the scope of definition of the terms "article", "design" and "introduction of definition of original".
- (b) Amplifying the scope of "prior publication".
- (c) Introduction of provision for delegation of powers of the Controller to other officers and stipulating statutory duties of examiners.
- (d) Provision of identification of non-registrable designs.
- (e) Provision for substitution of applicant before registration of a design.
- (f) Substitution of Indian classification by internationally followed system of classification.
- (g) Provision for inclusion of a register to be maintained on computer as a Register of Designs.
- (h) Provision for restoration of lapsed designs.

DECEMBER 2021

Question 1- Mudit has invented a tool which may reduce the human efforts significantly. He wants to file the patent application for the tool. Advise Mudit the procedure to be followed by him for filing patent application.

Answer- Mudit should follow the following procedure for filing patent application for the tool: Before filing a patent application in India, one should perform a detailed patentability search to determine whether a patent for it will be available or not. Application for grant of patent may be filed either physically at patent office or electronically.

While filing a patent application, provisional specifications or complete specifications can be filed by the applicant. The following is a list containing all documents that must be filed for obtaining patent registration:

- Patent application in the specified Form.
- Proof of right to file application from the inventor. The proof of right can either be an endorsement at the end of the application or a separate agreement attached with the patent application.
- Provisional specifications, if complete specifications are not available.
- Complete specification in specified Form within 12 months of filing of provisional specification.
- Statement and undertaking under Section 8 in Form- 3, if applicable. Form 3 can be filed along with the application or within 6 months from the date of application.
- Declaration as to inventorship in Form 5 for applications with complete specification or a convention application or a PCT application designating India. Form-5 or Declaration as to inventorship can be filed within one month from the date of filing of application, if a request is made to the Controller in Form-4.
- Power of authority in Form-26, if patent application is being filed by a Patent Agent. In case a general power of authority, then a self-attested copy of the same can be filed by the Patent Agent or Patent Attorney.
- Priority document must be filed in the following cases:
 - (i) Convention Application (under Paris Convention).

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

DECEMBER 2020

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

- 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

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

- Furnish required information to SPCB and other agencies.
 - Allow entry to the SPCB to ascertain that the provisions of the Act are being complied with
- Responsibilities.
Obtain consent from SPCB to establish and to operate a cloth dyeing factory

DECEMBER 2020

Question 1- Whether National Green Tribunal (NGT) has power to hear civil matters related to environmental laws ? If yes, under which enactments ? Also, explain whether the provisions of the Civil Procedure Code applies to the proceedings before NGT.

Answer- National Green Tribunal(NGT) established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

The NGT has a power to hear all civil matters which are related to environment and questions regarding the enforcement and implementation of laws which fall under the The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002 .

The NGT has been given the power to regulate the procedure by itself. It does not follow the principles of Civil Procedure Code instead it follows principles of natural justice. The NGT also at the time of giving orders shall apply the principles of sustainable development and also the principle that the one who pollutes shall pay. It will have the same power as of the Civil Court in deciding the matter falling within these seven legal acts. NGT will also not be bound by the rules of evidence as mentioned in the Indian Evidence Act.

Question 2- Government of India is taking various steps towards “Ease of Doing Business” and “Make in India”. Apart from these initiatives, Govt. is also strengthening the principles ensuring the minimal impact of environment and one of the major steps is enforcement of Hazardous and Other Wastes (Management & Transboundary Movement) Amendment Rules, 2019. Highlight the key provisions of these rules

Answer- Key provisions of the Hazardous and Other Wastes (Management & Trans boundary Movement) Amendment Rules, 2019 are as follows:

1. Solid plastic waste has been prohibited from import into the country including in Special Economic Zones (SEZ) and by Export Oriented Units (EOU).
2. Exporters of silk waste have now been given exemption from requiring permission from the Ministry of Environment, Forest and Climate Change.
3. Electrical and electronic assemblies and components manufactured in and exported from India, if found defective can now be imported back into the country, within a year of export, without obtaining permission from the Ministry of Environment, Forest and Climate Change.
4. Industries which do not require consent under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981, are now exempted from requiring authorization also under the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016, provided that hazardous and other wastes generated by such industries are handed over to the authorized actual users, waste collectors or disposal facilities.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

Question 3- What are the purpose and objective of The Plantation Labour Act, 1951 and which ministry administers the same?

Answer- The Plantation Labour Act, 1951 enacted to provide for the welfare of plantation labour and regulates the conditions of work in plantations. According to the Act, the term 'plantation' means "any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply".

The Act is administered by the Ministry of Labour & Employment.

QUESTION 4- Public Liability Insurance Act, 1991 is to save owner of establishment producing hazardous substance from hefty penalties. Elucidate.

ANSWER- Public Liability Insurance Act, 1991 is to provide compensation for damages to victims of an accident caused by handling any hazardous substance or as it is also called, to save the owner of production/storage of hazardous substance from hefty penalties. This is done by providing compulsory insurance for third party liability.

First time owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

Actually the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accidents come in knowledge of Collector, then he/she verify the occurrence of accident and order for relief as he/she deem

JUNE 2021

Question 1- Dilip would like to carry on the business of manufacturing of Industrial chemicals and gases. One of his friend informs him that there are strict compliance norms under Air (Prevention and Control of Pollution) Act, 1981 for such type of Industry. Brief, Dilip on the various requirements to be complied under the aforesaid Act at the time of setting up of Industry.--

ANSWER- Compliance under Air (Prevention and Control of Pollution) Act, 1981 are as under:

- Not to discharge air pollutant(s) in excess of the prescribed standards
 - Furnish information to the State Pollution Control Board (SPCB) of any accident or unforeseen act or event
 - Allow entry to the SPCB to ascertain that provisions of the Act are being complied with
 - Provide information to enable SPCB to implement the Act
 - Provide access to the SPCB for taking samples
 - Comply with the directions issued in writing by the SPCB
 - Obtain "Consent To Establish"
 - Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received. A prior "Notice of Inspection" to be served by the SPCB
 - Industry to ensure that specified emission sampling procedure is being followed by the SPCB
 - Opportunity to file objections with the SPCB within 15 days from the date of service of notice
 - SPCB to record reasons in writing in case it does not provide an opportunity to the industry to file objections
 - Obtain "Consent to Operate"
- Apply for the renewal of "Consent to Operate" before expiry of the validity period

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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

DECEMBER 2020

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

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

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

JUNE 2021

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

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

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

DECEMBER 2021

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 20- STRIKE OFF AND RESTORATION OF NAME OF CO.AND LLP

June 2023

1. Differentiate between 'Defunct Company' and 'Vanishing Company'.

Ans - Defunct company-A company which has failed to commence business operations within one year from the date of registration without any proper reason, which is beyond the control of the company or where a company has no assets or liabilities. Again, if a company is not filling its balance sheet for many years, then also it will be termed as a defunct company.

Vanishing Company - A company, registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

2. BBIL is an unlisted public company. The company is in insurance business. BBIL has incurred huge losses and applied for striking off its name after making due payments to all the creditors. The Registrar of Companies requires No Objection Certificate (NOC) from the appropriate regulatory authorities. Whether the NOC is required? Explain.

Ans -

As per Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, No Objection Certificate (NOC) from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act which shall be attached to the application in Form No. STK-2. The said NOC is required in case of the following companies:

- i. Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;
- ii. Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;
- iii. Insurance companies as referred to in the Insurance Act,1938 or rules and regulations thereunder;
- iv. Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- v. Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vi. Asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vii. Any other company which is regulated under any other law for the time being in force.

Accordingly, BBIL is required NOC from the appropriate regulatory authority under Insurance Act, 1938

i.e. Insurance Regulatory and Development Authority of India (IRDAI).

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

3. **Effective Green Energy Ltd. was incorporated on 22nd May, 2020. Due to the restrictions imposed to combat COVID-19 pandemic and consequent slowdown in the economy, the company could not start any business. The Registrar of Companies (RoC) removed the name of the company from the Register of Companies without giving a prior notice to the company. The company desires to challenge the action of the RoC. Referring to the provisions of the Companies Act, 2013, examine whether the action of the RoC is tenable?**

Ans - Removal of name of the company by the Registrar of Companies

Subject to the provisions of Section 248(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, in the following cases, the Registrar can suo moto remove the name of the company from the Register:

- (a) a company has failed to commence its business within one year of its incorporation or;
- (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013; or
- (c) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not filed within 180 days of its incorporation under section 10A(i); or
- (d) the company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9) of the Act.

Before removal of the name of the company from the Register, the ROC is required to send a notice in Form STK 1 to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies. Such a notice should contain the reasons for which the name of the company is to be removed from the Register of Companies. Such a notice should be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post. On receipt of such a notice, the company and all the directors of the company are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the company should not be removed from the Register of Companies. Such representations should be given within a period of thirty days from the date of the notice.

In the given case, RoC has removed the name of Effective Green Energy Ltd. from the Register of Companies without giving prior notice to the Company. Therefore, the action of the RoC is not tenable.

June 2022

- (a) **The Registrar has suo moto struck off the name of Mithali Sports LLP. Being aggrieved by the order of Registrar, the LLP wants to file an appeal before National Company Law Tribunal (NCLT) for restoration of the name of LLP in the Register of Partnership maintained by the registrar. Referring to the provisions of the Limited Liability Partnership Act, 2008, advise the LLP on the procedure for the restoration of struck off LLP.**

Ans- The ROC can suo moto after issuing the notice under section 75 of the Limited Liability Partnership Act, 2008, strike off the name of the LLP. In such a case, it may happen that the name of the LLP may be struck off even though the LLP is active, but the ROC removed the name of the LLP from the Register, either inadvertently or due to incorrect information furnished by the LLP or its partners.

In such a case, there is no relief provided in the Limited Liability Partnership Act, 2008

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

or in the Limited Liability Partnership Rules, 2009 to restore the name of the LLP in the Register, hence, the partners of such a LLP have to approach the jurisdictional High Court by filing writ petition under Article 226 of the Constitution of India for restoration of the name of the LLP in the Register of LLP.

Unlike procedure for revival of a company enumerated in section 252 (1) and (3) of the Companies Act, 2013, there is no corresponding provision for the revival of LLP's in the Limited Liability Partnership Act, 2008. Therefore, in the case of strike-off of LLP's the ultimate remedy for revival is to file the Writ Petition before the High Court of appropriate jurisdiction.

However, in the matter of Lawns Hospitality LLP, the NCLT Chennai Bench has allowed revival of the struck off LLP on the same parallel lines as that of companies under section 252(3) of the Companies Act, 2013.

The procedure that may be followed before NCLT for restoring the name of the LLP is as follows:

- An application is to be filed before the bench of NCLT where the registered office of the LLP is situated in form NCLT 9, such an application should be accompanied by various documents proving that the LLP is active LLP and that the name of the LLP should be restored in the register.
- A copy of application or appeal is required to be sent to the Registrar concerned.
- Registrar may send his report to NCLT as to his comments and views on the restoration of the name of the LLP

(b) **Discuss in brief when a company is declared as a vanishing company.**

Ans- A vanishing company is a company, registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and listed with the Stock Exchange which has failed to file its return with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable

DECEMBER 2020

Question 1- State the powers of the Registrar in regard to 'fraudulent application for removal of name' of the company from the Register of companies.

ANSWER- If it is found that an application by a company has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved be liable for the following:

- (i) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
- (ii) be punishable for fraud in the manner as provided in section 447 of the Companies Act, 2013.

The Registrar has the power to recommend prosecution of the persons responsible for the filing of a fraudulent application.

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

JUNE 2021

Question 1- State the Register to be maintained under Companies Act 2013 corresponding to the following forms :

- (I) MGT-2
- (II) MBP-2
- (III) SH-6.

Answer- The register to be maintained under Companies Act 2013 corresponding to following forms are:

- (I) MGT-2 : Register of Debenture Holders/ Other Securities Holders.
- (II) MBP-2 : Register or Loans, Guarantee, Security and Acquisition Made By Company.
- (III) SH-6: Register of Employee Stock Option.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

principles of natural justice. Hence, the petition was accepted. The petitioner company was restored in the Register of Companies maintained by the ROC.

Question 4- Diamond Home Finance Limited (DHFL) is a housing finance company incorporated on 31.12.2018. It has failed to commence its business and now proposes to make an application to Registrar of Companies (ROC) for removing its name from the Register of Companies maintained by ROC.

What type of specific certificate required to be submitted by DHFL to ROC along with its Application ? Also list out the types of Companies which are required to submit such certificate and brief the penalty for non-compliance.

ANSWER- No objection certificate from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act. In case of the following companies, such a No objection certificate should be attached to the application in form STK-2.

(i) Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;

(ii) Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;

(iii) Insurance companies as referred to in the Insurance Act, 1938 or rules and regulations thereunder;

(iv) Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;

(v) Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;

(vi) Asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;

Penalty for non-compliances: If an application is made in violation of section 248(1), it shall be punishable with fine which may extend to one lakh rupees. An application filed under section 248(2) shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice

DECEMBER 2021

Question 1- The Registrar of Companies has removed the name of ST Pvt. Ltd. from the Register of Companies under provisions of Section 248 of the Companies Act, 2013. The directors of ST Pvt. Ltd. have approached you seeking your advice to whom and when they should file an appeal for restoration of name of the Company. As a practicing Company Secretary, advise them with reference to the provisions of Companies Act, 2013.

ANSWER- The directors of ST Ltd. have to approach National Company Law Tribunal (NCLT) by making an appeal for the restoration of the name of the company in the Register of companies maintained by the Registrar of Companies. Legal provisions related to restoration of name of the struck off companies are given in Section 252 of the Companies Act, 2013 read with Rule 87A of the NCLT (Amendment) Rules, 2017 and the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016.

Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC and if the Tribunal is of the opinion that the removal of name of company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the register of companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

CHP 8-FINANCIAL SERVICES ORGANISATION AND ITS REGISTRATION PROCESS

June 2023

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

Ans –

- (i) 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.
- (ii) 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.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

June 2022

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

(d) X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit by one of the directors of the X Ltd. verifying full inquiry of the affairs of the company. However, declaration of solvency was not given on affidavit in case of voluntary liquidation. Analyze the given situation and comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration ? (5 marks each)

Ans- Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default, to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:

- (a) A declaration from majority of the directors of the company verified by an affidavit stating that-
- they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - the company is not being liquidated to defraud any person.
- (b) The declaration shall be accompanied with the following documents, namely:
- Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later
 - A report of the valuation of the assets of the company, if any, prepared by a registered valuer.
- (c) After making the declaration the corporate debtor shall within four weeks –
- pass a special resolution at a general meeting requiring that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
 - pass a resolution at a general meeting requiring that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

In view of the above mentioned provisions, a declaration was made on affidavit by one of the directors of the X Ltd. verifying full inquiry of the affairs of the company which is in contravention of the provisions of the Insolvency & Bankruptcy Code, 2016

DECEMBER 2020

Question 1- Explain the term 'Insolvency Resolution Process Cost' as defined under the Insolvency and Bankruptcy Code, 2016.

ANSWER- According to Section 5(13) of the Insolvency and Bankruptcy Code, 2016, "Insolvency resolution process costs" means –

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board.

QUESTION 2- What are the duties of an “Interim Resolution Professional” ?

ANSWER- The Interim Resolution Professional (RP) takes over the management of the corporate debtor and is in charge of day-to-day affairs of the corporate debtor. The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the IRP. He may appoint professionals and consultants to support him in his duties. The IRP is responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

The primary duties of the IRP are to:

- (b) Make public announcement about the CIRP of the corporate debtor
 - (c) Invite claims from creditors
 - (d) Get valuation of the corporate debtor done
- On receipt of claims from the creditors, the IRP shall verify the claims and make list of accepted claims.

Within 30 days of commencement of CIRP, the IRP shall constitute a Committee of Creditors (COC) which primarily consists of all financial creditors of the corporate debtor. The IRP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

JUNE 2021

Question 1- A Company is in the process of Liquidation under Insolvency and Bankruptcy Code, 2016. Citing relevant provisions of the Code state where the following will rank in the order of priority on distribution of the assets of the Company:

- (iv) **Workmen’s dues for the period of 12 months preceding the liquidation commencement date.**
- (v) **Costs of Liquidation**
Employees dues for the period of 15 months preceding the liquidation commencement date

ANSWER- As per Section 53 of the Insolvency and Bankruptcy Code, 2016 following is the order of priority:

- (i) Costs of Liquidation
- (ii) Workmen's dues for the period of 24 months preceding the liquidation commencement date – along with secured creditors
- (iii) Employees dues for the period of 12 months preceding the liquidation commencement date – only 12 months shall be considered and balance shall be payable out of the remaining dues.

Question 2- A Company is having a paid-up Capital of 50 Lakhs and a Turnover of 1 Crore. The Company does not have any loans and outstanding deposits. The Board of Directors of the Company have decided not to carry on further business and proposed to wound up the Company.

One of the Director of the Company approaches you to suggest some methods to complete the winding up without cumbersome processes. Suggest him a suitable option by explaining the recent developments in this regard.

ANSWER- With a view to systemize the procedure of winding up of a Company under the Companies Act, the Ministry of Corporate Affairs (MCA) vide notifications dated 24th January 2020, had notified the Companies (Winding Up) Rules, 2020. The Rules are applicable to companies going into winding up for the circumstances mentioned under Section 271 as well as "Summary procedure for liquidation under Section 361" of the Act. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020.

It allows the following companies to wind up their business by making an application to Central Government without approaching National Company Law Tribunal (NCLT) :

| | |
|--|-------------------|
| Companies accepting deposit and having total deposits | Upto INR 25 Lacs |
| Companies having total outstanding loan including secured loan | Upto INR 50 Lacs |
| Companies having total turnover | Upto INR 50 Crore |
| Companies with Paid up capital | Upto INR 1 crore |

In the given case since, the Company Capital of Rs. 50 Lakh and Turnover of Rs. 1 Crore can wound up the Company without going to NCLT as per the new amendment.

Alternatively, a corporate person, who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under Section 59, Chapter V of Part II of the Insolvency & Bankruptcy Code

DECEMBER 2021

Question 1- PQ Finvest Ltd. is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India. The total assets of the Company are exceeding ₹ 500 crores. The Company has committed the default in making payment to Karan, who is an operational creditor. In the light of the provisions of Insolvency and Bankruptcy Code, 2016, examine whether Karan can initiate Corporate Insolvency Resolution Process against PQ Finvest Ltd.

ANSWER- The Ministry of Corporate Affairs ("MCA") vide its Notification dated 15th November 2019 had notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("Rules"). The Rules provide a framework for the insolvency and liquidation proceedings of systematically important Financial Service Providers ("FSPs") excluding banks. Section 227 of the Insolvency and Bankruptcy Code, 2016 ("Code") enables the Central Government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings, in such manner as may be prescribed. The Rules, therefore, will apply to such FSPs or categories of FSPs as will be notified under Section 227 of the Code.

Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 applicable to Non-banking Finance Companies (including housing finance companies) ("NBFCs") as a class of FSPs, having asset size of Rupees Five Hundred Crore or more, as per last audited balance sheet. The aforesaid Rules has designated the Reserve Bank of India ("RBI") as the appropriate regulator in this regard. An insolvency process i.e. CIRP can initiated against NBFCs only on an application by the Reserve Bank of India (RBI) before the NCLT.

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFIED BY OTP

Zubair Jahangir

27 Nov, 2023 02:22:37pm

Authenticated by Lex-Sign.com

Certificate

of

Signature Completion

This document has been signed through



Digitally signed by DS LEX SIGN Technologies
Private Limited (Lex-Sign.com)

